

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.06.2018

CORAM :

THE HON'BLE MR. JUSTICE G.R.SWAMINATHAN

Cr1.A.No. 780 of 2006

V.Satish Kumar
Rep by Power Agent
Mohammed Ibrahim
Raja Nagar, Coimbatore .. Appellant/Complainant

Vs.

A.S.Kathiresan
Proprieter, Revathi Buildings
2nd Street, Gopalapuram
Coimbatore ..Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the order of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court No.2, Gobichettipalayam, in C.A.No.334 of 2005 dt 07.06.2006 and confirm the Judgment conviction and sentence imposed upon the respondent by the learned Judicial Magistrate, Sathyamangalam in C.C.No.168 of 2002 dt. 12.09.2005.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.P.Udhayashankar

JUDGMENT

The complainant is the appellant in this appeal. The respondent had issued Ex.P2 cheque dated 06.06.2002 for a sum of Rs.2,50,000/-. The cheque, on transaction, got dishonoured. After complying with the statutory formalities set out under Section 138 of the Negotiable Instruments Act, the appellant filed C.C.No.168 of 2002 before the Judicial Magistrate, Sathyamangalam. The complainant examined himself as PW2 and the power of attorney was examined as P.W.1. Ex.P1 to P6 were marked. On the side of the accused, One Mohammed Ali was examined as DW1 and Ex.R1 to R.10 were marked on the side of the defence.

2. The learned Trial Magistrate, by judgment dated 12.09.2005, found the respondent herein guilty of the offence under section 138 of the Negotiable Instruments Act and imposed punishment of 1 year imprisonment. That apart, the accused was also directed to pay cheque amount as a compensation.

3. Aggrieved by the same, the accused filed CrI.A.No.334 of 2005 before the Additional District Judge, Fast Track Court No.2, Gobichettipalayam. The lower appellate Court by judgment dated 07.06.2006, reversed the judgment of the Trial Court and acquitted the respondent herein. Challenging the judgment of the lower appellate court, acquitting the accused, this appeal has been preferred under Section 378 of Cr.P.C.

4. Heard the learned counsel on either side.

5. It is seen that the lower Appellate Court acquitted the respondent only on the ground that the complainant has been found to be a money lender within the Government of Tamilnadu under Tamil Nadu Money Lenders Act, 1957. Since he had been carrying on the said business without obtaining licence, invoking section 17 of the said Act, the lower Appellate Court chose to acquit the accused.

6. This Court is of the view that being a person who carries on the business on money lending, without a license, he will have to pay penalty in terms of Section 17 of the Tamil Nadu Money Lenders Act, 1957. But, that cannot debar or disable the lender from recovering the loan amount from the borrower. The case on hand is one under Section 138 of the Negotiable Instruments Act. The appellant has fulfilled all the statutory formalities and all the ingredients of the said offence stood fulfilled in this case. That is the specific finding of the Trial Court also. Therefore, mere non-possession of the license under the Tamil Nadu Money Lenders Act, 1957 cannot result in acquittal of the accused. The judgment of the lower appellate Court is set aside.

7. Now the question arises is as to whether this Court can straight away restore the judgment of the Trial Court. The learned counsel for the respondent submitted that the respondent is in difficult circumstances. He appears to have met with a major accident and admitted in the hospital and he was discharged only last week. In fact, the learned counsel for the respondent wanted further time, so as to explore modalities of compromise.

8. Considering all these aspects, this Court is of the view that the interest of justice will be served by convicting the respondent only under Section 138 of the Negotiable Instruments

Act and sentencing him to pay fine of Rs.2,00,000/- within a period of twelve weeks from the date of receipt of a copy of this judgment. In default, the respondent shall undergo simple imprisonment of six months.

This Court exercising its compensating jurisdiction under Section 357 of the Cr.P.C, directs that the fine amount so recovered from the respondent shall be paid as compensation to the appellant/complainant.

9.Accordingly, this appeal is allowed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

msv

To

1.The Additional District and Sessions Judge
Fast Track Court No.2, Gobichettipalayam

2.The Judicial Magistrate, Sathyamangalam.

3.The Section officer (Records)
Criminal Section
High Court, Madras 104.

+1 CC to Mr.P.Karthikeyan, Advocate sr 40451.

+1 CC to Mr.P.Udhayashankar, Advocate sr 40499.

सत्यमेव जयते

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NRJK (CO)

SP (12/09/2019)

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