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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 25.08.2018

Orders Pronounced on : 31.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Crl.A.No.554 of 2007

P.Thangappan (died)

1.Vasanthakumari

2.Vithra

3.Vigesh

4.Radha

(A1 to A4 impleaded as per order of this Court

made in Crl.M.P.(MD)No.4630 of 2018 in

Crl.A.(MD)No.554 of 2007, dated 23.06.2018)

.. Appellant/Complainant

Vs.

S.Jesu Raj

.. Respondent /Accused

PRAYER: The Criminal Appeal has been preferred under Section 378 (5) Cr.P.C against the judgment dated 09.12.2006 made in S.T.C.No.3138 of 2004 by the learned Judicial Magistrate, Eraniel, Kanyakumari District.

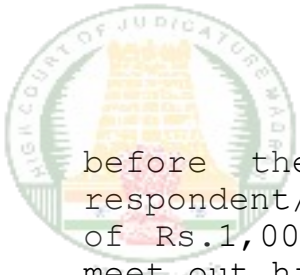
For Appellant : Mr.S.Ramakrishnan
for
Mr.R.Russelraj

For Respondent: Mr.C.R.Nirmal for
Mr.C.K.M.Appaji

J U D G M E N T

This Criminal Appeal has been filed by the appellant against the order of acquittal passed by the learned Judicial Magistrate, Eraniel, Kanyakumari District. in S.T.C.No.3138 of 2004, dated 09.12.2006.

2.The appellant is the complainant before the Trial Court. Subsequent to the filing of the appeal, the appellant/complainant died and therefore, vide Crl.M.P.(MD)No.4630 of 2018 in Crl.A.(MD) No.554 of 2007, dated 23.06.2018, his legal heirs were impleaded as appellants. The appellant/complainant has instituted a complaint



before the learned Judicial Magistrate, Eraniel, against the respondent/accused herein on the ground that he had borrowed a sum of Rs.1,00,000/- on 17.07.2004 from the appellant/complainant to meet out his family expenses and towards the repayment of the above said amount of Rs.1,00,000/-, the respondent/accused issued a cheque bearing No.621713 on 17.08.2004 drawn on Indian Bank, Padmanabhapuram Branch in favour of the complainant. When the cheque was presented for collection on 19.08.2004, through the Tamil Nadu Mercantile Bank Limited, Thucklay Branch, the same was returned with an endorsement 'insufficient fund'. Therefore, the complainant issued a statutory notice, on 02.09.2004 to the respondent/accused to settle the amount. After receipt of notice, the respondent/accused failed either to settle the amount or to send any appropriate reply for non payment of the said sum of Rs.1,00,000/-. Under the said circumstances, the appellant/complainant filed a private complaint on 05.10.2004 before the trial Court and the same was taken on file in S.T.C.No.3138 of 2004.

3. Before the trial Court on the side of the complainant, P.Ws.1 & 2 were examined and Exs.P1 to P7 came to be marked. On the side of the respondent, D.Ws.1 to 3 were examined and Ex.D1 came to be marked.

4.In the cross examination, P.W.1 deposed that he is running a finance business and he used to lend money against pledging of gold. He further deposed that he used to maintain accounts only for lending money against pledging of gold and for all other lending, the complainant did not maintain any register. In the cross examination, P.W.1 denied that he did not lend a sum of Rs.10,000/- on 13.08.2000 to the accused and he has also not charged 120% interest. On 23.02.2001, the complainant never met the accused and therefore, the question of quarrel with the accused does not arise. He further deposed that it is also false to state that he visited the accused place to take Electric generator towards non payment of loan along with interest. Further, he denied that the public those who assembled at the place of the accused compromised and finally fixed the price of generator to the tune of Rs.30,000/-; that he never took possession of the generator towards outstanding amount of Rs.17,000/- and therefore, the balance amount of Rs.13,000/- the complainant is not liable to pay to the accused; P.W.1 further deposed that he lend the sum of Rs.1,00,000/- to the respondent/accused without any interest.

5.The accused came forward and deposed evidence as D.W.1 that on 13.08.2000, he borrowed a sum of Rs.10,000/- from the complainant as a collateral security and he has issued a cheque; that he was not able to repay the said sum of Rs.10,000/- to the



complainant. Therefore, the complainant came to his business place, where he was running the photo studio, on 23.01.2001 and demanded Rs.10,000/- along with interest, for which, D.W.1 requested a month time. However, the complainant insisted to make the payment immediately, otherwise, he will take away the electric generator, which worth about Rs.38,000/-. At this juncture, through the mediator viz., Manohar(D.W.2) and Akbarali (D.W.3), the matter was compromised to Rs.30,000/- for the electric generator. Towards payment of principal amount of Rs.10,000/- + interest of Rs.7,000/-, totally for a sum of Rs.17,000/-, the complainant took away the electric generator, promising to pay back the balance sum of Rs.13,000/- along with blank cheque. However, the complainant failed to repay the sum of Rs.13,000/- and return the blank cheque, inspite of repeated request made by D.W.1. Further, D.W.1 deposed that the said agreement was written by the complainant himself in his own hand writing. As per the said agreement, the complainant is supposed to return the sum of Rs.13,000/- along with blank cheque to the accused. Further, D.W.1 states that he has paid a sum of Rs.700/- p.m. as interest for the first three months.

6.Further, the Court also examined D.W.2-Manohar, on behalf of the accused, who was one of the witnesses for the agreement. He has also deposed that he himself and Akbarali compromised between the complainant and the accused on 23.02.2001 and finally settled the amount to a sum of Rs.30,000/- for the electric generator. Towards payment of loan amount of Rs.10,000/- along with interest of Rs.7,000/-, totally for a sum of Rs.17,000/-, the accused handed over his electric generator to the complainant. Therefore, the appellant/complainant is liable to pay the remaining sum of Rs.13,000/- along with blank cheque. To that extent, he has executed an agreement deed, dated 23.02.2001 in front of him and Akbarali. However, the appellant/complainant failed to pay a sum of Rs.13,000/- and also returned the blank cheque.

7.The trial court, after considering the materials available on record, came to the conclusion that the complaint is not maintainable and hence, dismissed the same and acquitted the accused. Aggrieved over the same, the present Criminal Appeal has been filed by the appellant/complainant.

8.Heard the learned counsel appearing for the appellant; the learned counsel appearing for the respondent and also perused the entire materials on record.

9.The learned counsel appearing for the appellant/complainant advanced his arguments that the appellant lent a sum of Rs.1,00,000/- on 17.07.2004 to the respondent/accused to meet out his family expenses. Towards payment of the said loan, the



respondent/accused issued a cheque bearing No. 621713 on 17.08.2004. The appellant/complainant has not charged any interest for the said amount. The appellant/complainant was carrying on his business of finance and during the course of his business, he is used to lend money to his customers; that the appellant used to lend money against pledging of gold and whenever the appellant lent money against gold, the same will be entered in the register and for all other lending, the appellant did not maintain any register. Accordingly, the appellant/complainant did not maintain any register for lending the sum of Rs.1,00,000/- to the respondent/accused and that the appellant/complainant also at the time of chief examination, before the trial Court, stated that he did not maintain any accounts for the lending other than the loan against gold. The appellant did not execute any deed of agreement on 23.02.2001 and that the signature in the said agreement was denied by the appellant.

10. On the other hand, the learned counsel appearing for the respondent/accused advanced his arguments stating that he has not borrowed any money as stated by the complainant and also not issued cheque bearing No. 621713 on 17.08.2004 for a sum of Rs.1,00,000/-. He states that the respondent/accused borrowed a sum of Rs.10,000/- from the appellant/complainant on 13.08.2000 at the rate of 120% interest i.e. for Rs.10,000/- he is liable to pay a sum of Rs.700/- p.m. as interest. As agreed, he has paid Rs.700/- for first three months, totally Rs.2,100/- and thereafter, since the respondent/accused was not able to pay the interest and the principal amount. The complainant came to his business place house on 23.02.2001 and demanded the repayment of Rs.10,000/- with interest, which comes to Rs.17,000/- and therefore, there was quarrel between them. However, the said issue was compromised in front of one Akbarali and Manohar, who were present at the time of incident and finally, the rate of the electric motor was fixed at Rs.30,000/-. On the same day, towards payment of Rs.17,000/-, the respondent/complainant handed over electric generator to the complainant and hence, the complainant is liable to pay the balance amount of Rs.13,000/-. Further, the complainant agreed to return the blank cheque and to that extent, he has written an agreement in his own hand writing on 23.02.2001 and the same was executed in front of the said Akbarali and Manohar. The said Manohar also deposed before the trial Court that the agreement was entered in front of him and Akbarali. Therefore, the learned counsel submitted that the respondent/accused is not liable to pay any amount and that only the appellant/complainant is liable to pay the sum of Rs.13,000/- and without repaying the said amount, he has filled up the blank cheque bearing No.621713, dated 17.08.2004, which was issued as collateral security for Rs.10,000/- borrowed on 13.8.2005, for a sum of Rs.1,00,000/- as if the respondent/accused



borrowed a sum of Rs.1,00,000/- from him on 17.07.2004, which will be liable to pay on 17.08.2004. Further, due to the said controversy, the Court also directed the complainant to write the averments in the agreement in his handwriting and the same was marked as Ex.P7 and the same was confirmed by D.W.2-Manoharan and the Court compared the said hand written agreement along with the agreement deed executed in the stamp paper on 23.02.2001 and further, the Court also compared the signature of the complainant with the vakalat, deposition and complaint and after comparing the signature of the complainant with all available documents, the trial Judge came to the conclusion that the respondent/accused did not execute the cheque for Rs.1,00,000/- and the complainant also did not lend any money to the respondent/accused, other than Rs.10,000/- as stated above. Therefore, the trial Court has rightly dismissed the complaint and acquitted the respondent/accused.

11.This Court has also perused the Judgement of the trial Court, deposition, pleadings and arguments of both sides. It is an admitted fact that a sum of Rs.10,000/- was borrowed by the respondent/accused from the complainant on 13.08.2000 and due to the non payment of the said amount, a compromise was arrived at between the parties on 23.02.2001 and an agreement deed was written by the complainant in his own handwriting and the said handwriting was compared by the trial Court by asking the complainant to write once again in his handwriting and also his signatures were compared with the other documents, such as complaint, vakalat and deposition. Thereafter, the trial Court came to the conclusion that the agreement deed was executed by the complainant and in fact, as per the agreement deed, only the appellant/complainant is liable to pay a sum of Rs.13,000/- to the respondent/accused, which he failed to pay the said sum even as on today and it was specifically stated that a blank cheque bearing No.621713, should be returned and the same was agreed by the complainant. However, he failed to return the said cheque and without returning the said cheque, he has filled up the amount of Rs.1,00,000/- as if he has lent the same to the respondent/accused, which is not correct.

12.Further, it is also confirmed from the deposition of P.W.1, where he stated that he did not maintain any account for the payment of sum of Rs.1,00,000/-, however, he has stated that he used to maintain registers, whenever he is lending money against pledging of gold. When the business of the complainant was lending money to the customers, definitely he has to maintain accounts and therefore, it cannot be acceptable for anyone including this Court that the complainant did not maintain any account or any register other than the lending of money against gold. Therefore, it is proved beyond doubt that there was no liability of Rs.1,00,000/- on the part of accused to the complainant. The cheque bearing



No.621713 was also not issued to the complainant by the accused towards discharge of any liabilities, but it was issued as collateral security for Rs.10,000/- borrowed by the accused from the complainant.

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13.In view of the above discussions, this Court has no hesitation to hold that there is no error apparent or infirmity in the conclusion reached by the trial Court in acquitting the respondent/accused and therefore, the finding of the learned Judicial Magistrate, Eraniel, Kanyakumari District, need not be interfered with and consequently, this Court uphold the Judgment of the trial Court.

14.In the result, this Criminal Appeal fails and the same is dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-II)

To

The Judicial Magistrate, Eraniel, Kanyakumari District.

+1 CC To MR.R.RUSSELRAJ, Advocate SR. NO. 82101

+1 CC To MR.C.K.M.APPAJI, Advocate SR. NO. 81446

**Judgement made in
Cr1.A. (MD) No.554 of 2007
31.08.2018**

RJI2

TR/SKN/SAR-II(08.10.2018)6P 4C