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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL (MD) No.158 of 2018

Sudalaiyandi

:Appellant/Respondent/
Complainant

Vs.

Lakshmanan

:Respondent/Appellant/
Sole Accused

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, to call for the records in Criminal Appeal in C.A.No.10 of 2014 dated 20.10.2017 on the file of First Additional District Sessions Court, Tirunelveli preferred against the judgment and sentence in C.C.No.318 of 2013 dated 04.01.2014 on the file of the learned Judicial Magistrate Court, Valliyoor, Tirunelveli District and to set aside the judgment and sentence of the lower appellate court by allowing this appeal petition.

For Appellant : Mr.V.Kannan

For Respondent: Mr.Gowrishankar
for Mr.T.Antony Arul Raj

JUDGMENT

The criminal appeal is filed against the reversing judgment of the appellate Court dated 20.10.2017

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3.The brief facts of the case is that the appellant herein alleged that the respondent has borrowed a sum of Rs.5,00,000/- from him on 13.04.2010 agreed to pay the interest at the rate of 2% per month and also gave a cheque dated 13.10.2010. When the cheque was presented for collection, it bounced with an endorsement 'insufficiency of funds'. Therefore, after serving a statutory notice, complaint has been filed under Section 138 of Negotiable Instruments Act.

4.Before the trial Court to prove his case the complainant has examined himself as P.W.1. The cheque, which is subject matter of the complaint, is marked as Ex.P.1. The Written memo issued by the ICICI Bank dated 23.11.2010 is marked as Ex.P.6.



The statutory notice issued by the complainant is marked as Ex.P.9 and the same has been returned as unserved and the return cover is marked as Ex.P.11. On the side of the accused, one Panneer Selvam has been examined and four exhibits were marked.

5. The trial Court has accepted the case of the complainant and held that the cheque was issued for legally enforceable debt. The explanations given by the accused through P.W.1 and Exs.D1 to D4, were not found favour with the trial Court. On the appeal preferred by the accused, the first appellate Court after considering Ex.P.2/pro-note, Ex.D.3/sale agreement entered between the parties and Ex.D.4 cancellation deed dated 12.08.2010, had rightly observed that if the accused really borrowed a sum of Rs.5,00,000/- and issued a cheque to discharge the debt, he would not have entered into an agreement to sell his property and later had there been any debt recoverable from the accused, the complainant would not have agreed to cancel the sale agreement vide Ex.D4. Since Exs.P-2 and D3 are mutually destructive to the case of the complainant and the explanation given by the accused person probabilises and shift the presumption, the appellate Court has allowed the appeal.

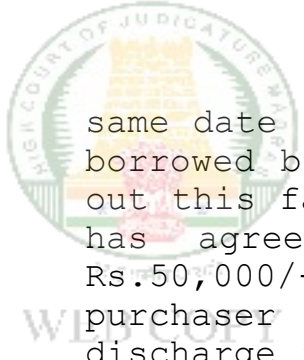
6. In the grounds of appeal it is contended by the appellant/complainant that the accused is a learned man, working as an engineer and he has admitted the execution of the subject cheque. The transaction between the parties are substantially proved through the exhibits and ocular evidence of the witnesses.

7. In such circumstances, the presumption ought to have been drawn by the appellate Court. Though the trial Court has rightly held in favour of the complainant, the appellate Court taking note of the sale agreement-Ex.D3 and cancellation of the said sale agreement Ex.D4, vis-a-vis the pro-note-Ex.P2, has erroneously reversed the well considered judgment of the trial Court.

8. The contention raised by the appellant that the cheque of Rs.5,00,000/- dated 13.10.2010 was issued by the accused to discharge his debt of Rs.5,00,000/- borrowed on 13.04.2010 has been disproved through the Exs.D3 and D4. The person, who is initially agreed to sell his property for a sum of Rs.13,00,000 /- and received advance of Rs.50,000/- from the complainant, need not borrow money from the buyer against the pro-note and need not issue any cheque to discharge that money, but he would have insisted for payment of sale consideration. Instead, in this case the complainant would say that he entered into an agreement with the accused for a sale consideration of Rs.13,00,000/- and he has paid advance of Rs.50,000/-. He lend a sum of Rs.5,00,000/- as a security and got a pro-note also, to discharge the said debt, the

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9. The sale agreement Ex.D.3 is dated 13.04.2010. On the



same date the complainant alleges that a sum of Rs.5,00,000/- was borrowed by the accused. The appellate Court has rightly pointed out this fact and had arrived at a conclusion that the person, who has agreed to sell his property and received advance of Rs.50,000/-, need not borrow a sum of Rs.5,00,000/- from the said purchaser and execute the pro-note or need not issue a cheque to discharge the debt. The subsequent cancellation of the said sale agreement-Ex.D3 is on 12.08.2010. If really there is any due from the accused recoverable, then while cancelling the sale agreement on 12.08.2010, the complainant would have recorded the same or insisted for recovery of the money before cancelling the sale agreement. The cancellation deed Ex.D4 does not whisper about anything about borrowal of Rs.5,00,000/- on 13.04.2010. Therefore, having not proved his case of existence of enforceable debt by preponderance of probability, the order of the appellate Court cannot be questioned.

10. Therefore, this Court finds no merit in the appeal. This Court totally concurs the view of the first appellate Court. Therefore, this Criminal Appeal is dismissed and the Judgment of the First Additional District and Sessions Court, Tirunelveli in C.A.No.10 of 2014 is confirmed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The First Additional District Sessions Court,
Tirunelveli.

2. The Judicial Magistrate Court,
Valliyoor,
Tirunelveli District.

+ 1 CC TO MR.V.KANNAN, ADVOCATE IN SR NO.81106

+ 1 CC TO MR.T.ANTONY ARUL RAJ, ADVOCATE IN SR NO. 81230

CP

BU/SKN/SAR-II : 01.10.2018 : 3P/5C

JUDGMENT MADE IN
CRIMINAL APPEAL (MD) No.158 of 2018
29.08.2018