IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.119 of 2008

V.P.Athinarayanan ... Appellant

Vs.

P.Indirani ... Respondent

PRAYER: Appeal filed under Section 378 Cr.P.C. against the Judgment in C.A.No.20 of 2006 on the file of the Additional District Judge, Fast Track Court No.1, Salem, dated 07.08.2007 and the Judgment in C.C.No.921 of 2003 on the file of the Judicial Magistrate No.I, Salem, dated 04.01.2006.

For appellant : Mr.P.Jagadeesan

For Respondent : Mr.I.C.Vasudevan

J U D G M E N T

The Criminal Appeal is filed by the appellant/complainant as against the Judgment in C.A.No.20 of 2006 on the file of the Additional District Judge, Fast Track Court No.1, Salem, dated 07.08.2007, reversing the Judgment of conviction in C.C.No.921 of 2003 on the file of the Judicial Magistrate No.I, Salem, dated 04.01.2006.

2.For the sake of convenient, the complainant is referred as appellant and the accused is referred as respondent.

3.The appellant, who lost his case before the First Appellate Court and succeeded before the trial Court, has filed the present Criminal Appeal.

4.The sum and substance of the case is as follows:-

The respondent/accused is having loan transactions with the appellant/complainant and borrowed money from him and issued cheque for Rs.1,10,000/- dated 28.05.2003, (Ex.P.1), to discharge his debt. When the above said cheque was presented before the bank, the same was returned on 30.05.2003 (Ex.P.2), with an endorsement as ''funds insufficient''. Thereafter, the appellant issued legal notice to the respondent on 02.06.2003 and the same was received by him on 06.06.2003. After receipt of the legal notice, the respondent neither sent any reply nor paid any amount to the appellant.

5.Therefore, the appellant had filed a case under Section 138 of the Negotiable Instruments Act in C.C.No. 921 of 2003 on the file of the Judicial Magistrate No.I, Salem.

6.Before the trial Court, since, the respondent did not plead guilty, the trial was proceeded against him. The appellant examined himself as P.W.1 and marked 4 documents and the respondent examined himself as D.W.1 and not marked any documents.

7.After elaborate consideration, the trial Court convicted the respondent under Section 138 of the Negotiable Instrument Act and sentenced for one year Simple Imprisonment. Further, the respondent is directed to pay a compensation of Rs.1,10,000/- to the appellant.

8.Aggrieved against the judgment of the trial Court in C.C.No.921 of 2003 dated 04.01.2006, the respondent herein had preferred Criminal Appeal before the learned Additional District Judge, Fast Track Court No.1, Salem and the same was taken on the file in C.A.No.20 of 2006. Thereafter, the First Appellate Court acquitted the respondent. Against which, the present Criminal Appeal has been filed by the appellant.

9.Heard the learned counsel appearing for the appellant and the learned counsel for the respondent also perused the materials available on record.

10.The learned counsel appearing for the appellant would submit that as per Section 138 of the Negotiable Instrument Act, the initial burden lies upon the appellant and presumption is in favour of holder of the instrument. Accordingly, the appellant has clearly established that the instrument was issued by the respondent, in favour of the appellant, for legally enforceable debt, which was borrowed in the year 2003. Since, the said amount was not paid, in order to clear the legally enforceable debt, the respondent issued Ex.P.1 - Instrument, in favour of the appellant, to repay the debt. The said instrument was presented before the bank, however, the same was returned as “insufficient funds”. Further, the said facts were clearly established before the trial Court. Therefore, the trial Court has rightly convicted the respondent under Section 138 of the

Negotiable Instruments Act. However, the First Appellate Court, on erroneous consideration of witnesses, acquitted the respondent, which is unsustainable in law. Hence, he prayed for allowing this Criminal Appeal.

11.Per contra, the learned counsel appearing for the respondent would submit that admittedly, cheque was issued to one Kamala for her security purpose. But, the said cheque was misused by the appellant and the same presented before the Bank and got dishonored. Further, the respondent deposed that there was no loan transaction between the appellant and the respondent. Hence, the lower appellate Court has rightly acquitted the respondent. Therefore, he prayed for dismissal of the present appeal.

12.Admittedly, the cheque belongs to the Salem Urban Co-operative Bank. The said instrument was presented on 29.05.2003 by the appellant and the same was returned as insufficient funds on 30.05.2003. Legal notice was issued on 02.06.2003 and the same was received by the respondent on 06.06.2003, for which the offence was made out for non-payment of the cheque amount. On a perusal of Ex.P.1, the instrument was signed by the respondent. However, other columns are filled by some other person. There is a vast difference between the letters and the numeric letters. The cheque which was written by the drawer is looking as seven lakhs in words. Whereas, the words written in numeric letters contains only Rs.1,10,000/-. Further, the appellant filed a complaint under Section 138 of NI Act, for business transaction, for which the respondent has issued Ex.P.1 instrument on 28.05.2003. However, on perusal of the entire records, no business transaction either by way of invoice nor by way of promissory note was filed before the trial Court to prove that there was a legally enforceable debt in favour of the appellant. Further, on perusal of D.W.1 evidence, she clearly stated that the said instrument was handed over to one Kamala. The appellant used to visit the house of Kamala, who is doing textile business, on her request, the blank cheque of the respondent was handed over for the purpose of getting loan from somewhere. The said cheque was misused by the appellant. In the absence of any material to show that there was a business transaction between the appellant and the respondent, the presumption is always on the holder of the cheque. However, the presumption is rebuttable one. This Court is unable to accept the contention of the learned counsel for the appellant. It is clear from the Ex.P.1, except the signature, all other columns are filled by some other person, which creates a doubt with regard to the transaction between the appellant and the respondent.

13.Perusal of the judgment of the lower appellate Court shows that the lower appellate Court has considered the irrelevant factors, which are not related to the case on hand. However, this Court perused the entire evidence as well as the documents filed in support of the case and independently arrived at a conclusion that the appellant/complainant did not prove his case. Hence, the order of acquittal does not call for any interference at the hands of this Court.

14.In the result, there is no merit in the Criminal Appeal and accordingly, it is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
   Fast Track Court No.1, Salem.

2. The Judicial Magistrate No.I, Salem.

3. The Section Officer
   Criminal Section
   High Court of Madras.

+1 cc to M/s.P.Jagadeesan, Advocate Sr.No.2885

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KAN(CO)
CSL/25.03.2019