IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.120 of 2008

V.P.Athinarayanan ... Appellant

Vs.

1. V.Praba

2. S.Manickaraju ... Respondents

PRAYER: Appeal filed under Section 378 Cr.P.C. against the Judgment in C.A.No.21 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.922 of 2003 on the file of the Judicial Magistrate No.I, Salem, dated 04.01.2006.

For appellant : Mr.P.Jagadeesan

For Respondents : Mr.R.Nalliyappan

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.21 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.922 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 to as appellant and the accused is referred to as respondents.

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 respondents/accused are having loan transactions with the appellant/complainant and borrowed money from him and issued cheque for Rs.1,10,000/- dated 23.05.2003, (Ex.P.1), to discharge their debt. When the above said cheque was presented before the Bank, the same was returned with an endorsement as ''funds insufficient''. Thereafter, the appellant issued a legal notice to the respondents on 02.06.2003 and the same was received by him on 03.06.2003. After receipt of the legal notice, the respondents sent a reply on 21.06.2003 with false allegations, but they did not repaid the cheque amount.

5.Therefore, the appellant had filed a case under Section 138 of the Negotiable Instruments Act in C.C.No. 922 of 2003, on the file of the Judicial Magistrate No.I, Salem.

6.Before the trial Court, since the respondents did not plead guilty, the trial was proceeded against them. The appellant examined himself as P.W.1 and marked 5 documents and the respondents examined D.W.1 and marked 1 document.

7.After elaborate consideration, the trial Court convicted the respondents under Section 138 of the Negotiable Instrument Act and sentenced each for one year Simple Imprisonment and directed the respondents to pay compensation of Rs.1,10,000/- [each Rs.55,000/-] to the appellant.

8.Aggrieved against the judgment of the trial Court in C.C.No.922 of 2003 dated 04.01.2006, the respondents 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.21 of 2006. Thereafter, the First Appellate Court acquitted the respondents. 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 respondents 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 respondents 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 respondents 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 respondents under Section 138 of the Negotiable Instruments Act. However, the First Appellate Court Court, on erroneous consideration of witness, acquitted the respondents, which is unsustainable in law. Hence, he prayed for allowing the criminal appeal.

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

12.Admittedly, the respondents herein are husband and wife. The cheque in question, belongs to the Salem Urban Co-operative Bank. The said instrument was presented on 23.05.2003 by the appellant and the same was returned as ''insufficient funds''. Legal notice was issued on 02.06.2003 and the same was received by the respondents on 03.06.2003, for which, the offence was made out for non-payment of the cheque amount. In order to disprove the prosecution case, the respondents examined D.W.1-Bank Manager, who clearly deposed that the account was opened on 04.02.2003 with a balance of Rs.1,000/-. However, in the said account, there was no money transaction. Further, the appellant has admitted that there are cases pending in the trial Court, which was filed by him. On a perusal of Ex.P.1, it is seen that the instrument was signed by the respondent. However, other columns are filled by some other person. There are 10 cheques, which were given in the Bank, out of which, only two leaves alone being taken for transaction and there was no further transaction by the respondents in this regard. Which creates a doubt on the transaction held between the appellant and the respondents. Already, this Court has dismissed the Criminal Appeal filed by the appellant in Crl.A.No.119 of 2008, on the ground that the cheques involved in both C.C.Nos.921 and 922 of 2003 are filled by the some other person. There is no evidence to prove that there was a money transaction between the appellant and the respondents. In the absence of the any material to show that there was a money transaction between the appellant and the respondents, the presumption is always on the holder of the cheque. This Court is unable to accept the contention of the learned counsel for the appellant. It is clear from 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 respondents.

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

Jer/smn2

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.R.Nalliappan, Advocate Sr.No.2782

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KAN(CO)
CSL/25.03.2019