IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.01.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.458 of 2008

R.Viswanathan ... Appellant

Vs.

M.Krishnan ... Respondent

Prayer: Appeal filed under Section 378 of Cr.P.C. seeking to set aside the acquittal dated 16.04.2008 by the Judicial Magistrate, Polur, Thiruvannamalai District in C.C. No.22 of 2004, allow this appeal and convict the respondent for the offence under Section 138 of the Negotiable Instrument Act.

For Appellant : Mr.Anand Gopal for
Mr.T.S.Gopalan & CO
For Respondent : Mr.P.Nagaraju

J U D G M E N T

The appellant has filed this appeal seeking to set aside the acquittal dated 16.04.2008 made in C.C. No.22 of 2004 by the learned Judicial Magistrate, Polur, Thiruvannamalai District.

2. The appellant is the complainant and the respondent is the accused in C.C.No.22 of 2004. For the sake of convenience the appellant will be herein after referred as Complainant and the respondent will be hereinafter referred as accused. The case of the appellant is that the respondent/accused is working as a clerk in Kamaraj Co-operative Town Bank Limited, Polur and on 16.03.2002, the accused borrowed a sum of Rs.2,00,000/- from the complainant and executed a promissory note along with one Jayakumar S/o.Arumugam for the same. The respondent also agreed to give interest at the rate of 1.50 per month. After repeated demands by the complainant, the respondent gave an instrument/cheque bearing No.003173 dated 26.12.2003 for a sum of Rs.1,00,000/- drawn on Kamaraj Co-op.Town Bank Limited, Polur for repaying his part of the principal amount. The said cheque when presented for collection was returned as 'insufficient funds' on 21.01.2004. Thereafter, the complainant sent a legal notice to the respondent on 04.02.2004 through Registered Post with Acknowledgement due and the same was returned as “refused”.

Since the accused neither gave reply for the legal notice nor repaid the amount, the appellant filed a private Complaint under Section 200 Cr.P.C. in C.C.No.22 of 2004 before the learned Judicial Magistrate, Polur.

3. The accused was questioned about the charge under Section 138 of Negotiable Instruments Act, and he denied the same. In order to prove the case of the complainant, P.W.1 & P.W.2 were examined and 6 documents were marked as Exhibits Ex.P1 to Ex.P6. On the side of the respondent/ accused no witness was examined, however two documents were marked as Ex.D1 and Ex.D2. On the side of Court one witness was examined as C.W.1 and three documents were marked as Exhibits as Ex.C1 to Ex.C3.

4. After an elaborate trial, the trial Court acquitted the respondent/ accused for the offence under Section 138 of the Negotiable Instruments Act. Aggrieved by the said acquittal, the complainant/appellant filed the present appeal before this Court.

5. Learned counsel for the appellant would submit that in order to prove the case of the complainant, the instrument/cheque (Ex.P1) was marked which clearly reveals that Rs.1,00,000/- was due in favour of the complainant. In order to discharge the legally enforceable debt the complainant filed the promissory note along with complaint as Ex.P7, but the trial Court has not allowed the complainant to mark the promissory note on the ground that it is only a Xerox copy.

6. Mr.Anand Gopal, learned counsel for the appellant would further submit that though the original is not available with the complainant however as per Section 65 of the Indian Evidence Act, secondary evidence can be marked with subject to objection. However, the trial Court has not allowed to mark the secondary evidence viz., promissory Note. The promissory Note clearly reveals that the accused along with one Jayakumar borrowed a sum of Rs.2,00,000/- (each Rs.1,00,000/-). The said amount was not repaid. Hence, he issued instrument in order to discharge the legally enforceable debt. As per Section 139 of Negotiable Instruments Act, the presumption always is in favour of the holder of the cheque. The initial burden lies on the appellant/complainant, to prove the initial burden, he marked Ex.P1 before the trial Court for consideration. Accordingly, the appellant prayed this Court to convict the accused/respondent and allow this appeal.

7. Per contra, learned counsel for the respondent would submit that the complainant and the accused are working in the Bank. The accused used to borrow some amount from the complainant for immediate need. At the time of borrowing money, he executed a promissory note and gave some blank papers and

blank cheques for the purpose of security. Finally, there was a due of Rs.65,000/- in favour of the complainant, the said amount also repaid by the accused. After repayment of the said amount on 02.02.2003, the accused issued a notice of communication for return of the blank cheques and blank papers given by him. However, on 17.02.2003 the complainant has sent a written communication stating that there have been no transaction in between them and he has recommended the accused to his brothers and friends to borrow some amounts. The written communication is sufficient and so, there is no legally enforceable debt.

8. After an elaborate consideration the accused was acquitted from the case for which this Court need not interfere with the well considered judgment of the trial Court.

9. Heard the arguments advanced on either side and perused the materials placed on record.

10. On perusal of the records it reveals that the complainant clearly stated that the accused and his friend one Jayakumar borrowed a sum of Rs.2,00,000/- on 16.03.2002, for which they have executed promissory note by agreeing to repay the amount along with interest at the rate of 1.50 per month. Thereafter, the accused in order to discharge the alleged liability issued Ex.P1 instrument for an amount of Rs.1,00,000/- on 26.12.2003. The said instrument when presented for collection was returned with an endorsement "refused". However, to prove the legally enforceable debt the complainant marked Ex.P1/instrument and no other documents were filed. Learned counsel appearing for the appellant submitted that the trial Court have not permitted the complainant to mark the promissory note as secondary evidence.

11. However on perusal of Exs.D1 & D2 there was a communication in between the accused and complainant for which the said two documents reveals the accused in his communication dated 02.02.2003 demanded the blank papers and blank cheques also complainant sent reply dated 17.03.2003, in which he did not disclose any transaction in between the complainant and accused. However, he disclose the accused borrowed some amounts from his brothers and other persons, the said amount was not repaid. In order to avoid the repayment of the amount they issued a false notice to him. Admittedly the instrument promissory note was executed on 16.03.2002. The alleged instrument was issued in favour of the complainant on 26.12.2003 much after, the reply dated 17.02.2003.

12. Therefore, in view of the above, this Court has to

arrive at a conclusion that there was no legally enforceable debt.

13. In view of the above, this Court has no hesitation to come to the conclusion that there is no legally enforceable debt. The appellant did not prove the case that there is legally enforceable debt.

14. Considering all the above facts, I do not find any error in the judgment dated 16.04.2008 made in C.C.No.22 of 2004 by the Judicial Magistrate, Polur, Thiruvannamalai District.

15. The criminal appeal is accordingly dismissed. The judgment dated 16.04.2008 made in C.C. No.22 of 2004 by the learned Judicial Magistrate, Polur, Thiruvannamalai District, is hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Polur,Thiruvannamalai District.

2.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.P.Nagaraju, Advocate, S.R.No.1373

+1cc to Mr.T.S.Gopalam & Co, Advocate, S.R.No.1166

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VSNII(CO)
GSP(06/02/2019)