

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2018

DELIVERED ON : 21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.599 of 2008

Shri Kasturi Agencies,
Rep. by its Proprietor,
L.J.Soundarajan,
72/16, Kosa Street,
Thiruvannamalai.

... Appellant

Vs

Mohan,
Proprietor,
Arunachala Marketing,
52 Vadakku Muthappa Street,
Thirupattur.

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the judgment in C.C.No.208 of 2006 dated 08.04.2008 on the file of the Principal District Munsif, Thiruvannamalai.

For Appellant : Mr.R.Rajarajan
For Respondent : Mr.D.Baskar

JUDGMENT

This Criminal Appeal is preferred by the appellant against the order passed by the learned Principal District Munsiff, Thiruvannamalai in C.C.No.208 of 2006 dated 08.04.2008, wherein the learned trial Court acquitted the respondent/accused under section 138 of the Negotiable Instruments Act.

2.Breif case of the appellant:

The appellant/complainant running an agency namely "Sri Kasthuri Agency" and dealing with consumer durables. The respondent/accused purchased goods on cash and credit basis from the appellant/complainant. On 8.3.2005 the respondent/accused bought Rs.30,000/- as hand loan from the appellant/complainant and assured to repay within a month and issued cheque bearing No.643831 dated 4.5.2005 for Rs.30,000/- drawn on Catholic Syrian Bank. Thirupattur Branch. The appellant/complainant

presented the above said cheque through his Banker, Tamilnadu Mercantile Bank, Thiruvannamalai Branch for realization on 4.5.2005 and the same was returned with an endorsement "Insufficient funds" on 6.5.2005. The appellant/complainant issued a statutory notice dated 12.5.2005 and the same was not received by the respondent/accused and failed to pay the above said cheque amount within the stipulated time. Hence the appellant filed the complaint before the learned trial Court under section 138 of Negotiable Instrument Act.

3. During trial the appellant/complaint examined himself as PW1 and marked Exhibits-P1 to P7. The respondent examined himself as RW1 and marked as Exhibits-R1 to R10.

4. On completion of the trial, the learned trial Court acquitted the respondent/accused on the ground that the appellant/complainant failed to establish the ingredients under Section 138 of the Negotiable Instrument Act. Aggrieved over the same this criminal appeal is filed.

5. Rival Submissions:

The learned counsel for the appellant/complainant submits that the trial Court erred in both law and upon facts by placing reliance on Exhibit-R3 which is the bank account transaction sheet of the appellant/complainant exonerates the appellant/complainant from the guilt. Exhibit-R3 has not been properly considered by the Trial Court and hence the trial Court erroneously landed in the finding that the cheque was given as security to the complainant and no consideration was passed on it.

6. The learned counsel for the appellant/complainant submits that the trial Court grossly failed to see that the cheques bearing earlier serials viz., 407591, 407592, 407593, 407935, 407936, 407937, 407939 etc., were presented for encashment and encashed very belatedly in the months of November and December 2004 even subsequent to cheque of 643831 series which belongs to the later period. Hence the inference drawn on this basis by the trial Court that the cheque No. 643831 is given as security by the respondent in the year 2003 on the basis of Exhibit R3 is untenable.

7. The learned counsel for the appellant/complainant submits that the finding of the trial Court that the cheque No. 643831 is a blank cheque is without any basis and against the evidence presented before the Court.

8. The learned counsel for the appellant/complainant submits that the trial Court grossly misconstrued section 138 of Negotiable Instruments Act and by holding that the cheque is barred by limitation.

9.The crucial date for computing the limitation period for the cheque is date of drawing the cheque and since in the present case the cheque was drawn on 04.05.2005 and the complainant was preferred after the statutory notice as stipulated in the act, the cheque is within the period of limitation.

10.The learned counsel for the appellant/complainant submits that the trial Court erred in law in extracting only a portion of evidence divested from the context given by PW1 to draw the inference that the cheque was issued as security for the goods to be given in for credit and the same is not supported by evidence.

11.The learned counsel for the appellant/complainant submits that the evidence of PW1 has not been read and understood in entirety which clearly reiterated the fact that the cheque was only given in consideration to the hand loan of Rs.30,000/- given by the complainant to the respondent.

12.The learned counsel for the appellant/complainant submits that the trial Court grossly failed to see Exhibit-P4 which is the statutory notice issued under section 138 of Negotiable Instrument Act and which was purportedly returned by the appellant/accused as refused. The respondent has also not denied the same in his examination in chief as DW1. Therefore Exhibit-P4 imputes knowledge and admittance on the part of the respondent and the same has not been rebutted by the appellant/complainant.

13.The learned counsel for the respondent supported the order passed by the trial Court and seeks for dismissal of the criminal appeal.

14.I heard Mr.R.Rarajan, learned counsel for the appellant and Mr.D.Baskar, learned counsel for the respondent and perused the entire materials available on record.

15.In this case, admittedly the cheque was issued as security and no consideration was passed on. According to the respondent the cheque was issued in the year 2003-2004 as security for the business transaction with the complainant. But even then the respondent did not take any care to seek for the return of the cheque earlier, when the business transaction ends on 15.7.2004. The respondent has not come forward with any proper explanation for the same. The respondent sought for the return of the cheque only subsequently to Exhibit P4. This aspect has been completely ignored by the trial Court while dismissing the complaint. The Exhibit P5 advocate notice issued by the respondent is unexplained. Thus the stand of the respondent/accused is not supported by any evidence.

16.When ingredients of Section 138 of N.I. Act namely (a) accused drew the cheque on an account maintained by him (b)

cheque issued for the discharge of debt/liability (c) cheques were presented within six months (d) cheques returned unpaid for insufficiency of funds and stop payment (e) notice was given but no payment was made, stood proved and defence having not led any evidence, conviction should have been recorded.

17. Section 138 of N.I. Act does not distinguish between a cheque issued by the debtor in discharge of an existing debt or other liability, or a cheque issued as a security cheque on the premise that on the due future date the debt which shall have crystallized by then, shall be paid. So long as there is a debt existing, in respect whereof the cheque in question is issued, in my view, the same would attract Section 138 of N.I. Act in case of its dishonour.

18. Thus, the defence that the cheques in question were issued as "security" cheques has no force in the facts and circumstances of this case, as, on the date when the said cheques were issued simultaneously, the debt was outstanding. The appellant was well within his rights to enforce the security in respect whereof the cheques in question were issued and to seek to recover the outstanding debt by encashment of the said cheques. Since the cheques in question were dishonoured upon presentation, the accused suffered all consequences as provided for in law and the appellant became entitled to invoke all his rights as created by law. Thus, the appellant was entitled to invoke Section 138 of the N.I. Act, issue the statutory notice of demand, and upon failure of the accused to make payment in terms of notice of demand - to initiate the complaint under Section 138 of the N.I. Act.

19. The learned Munsif has returned findings of fact which are palpably wrong; its approach in dealing with evidence is patently illegal; its decision is based on an erroneous view of the law, and the impugned judgment, if sustained, would lead to grave miscarriage of justice.

20. For the aforesaid reasons, this Criminal Appeal filed by the appellant/complainant is allowed and the impugned judgment in C.C.No.208 of 2006 dated 08.04.2008 on the file of the learned Principal District Munsif, Thiruvannamalai is set aside. The respondent/accused is convicted of the offence under Section 138 of the N.I. Act.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

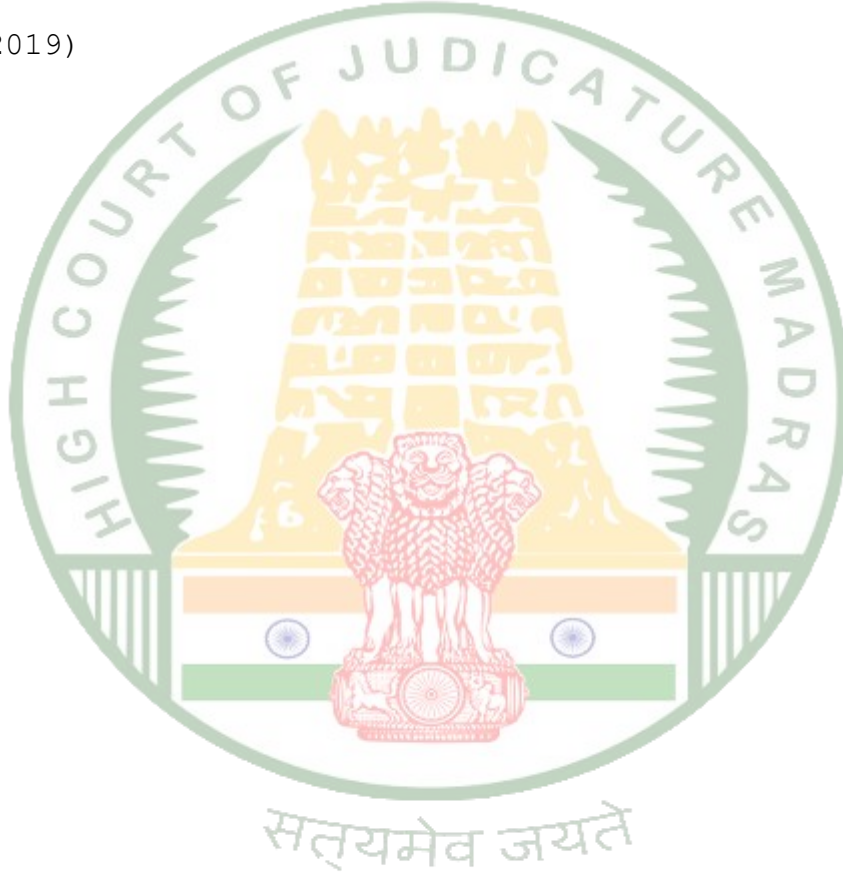
To

The Principal District Munsif,
Thiruvannamalai.

+1cc to Mr.R.Raja Rajan, Advocate, S.R.No. 5129
+1cc to Mr.D.Baskar, Advocate, S.R.No. 4748

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KS (CO)
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