IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.195 of 2010

T.L.Guruvayurappan
...Appellant /complainant

Vs.

Uma Shankar ... Respondent/ accused

PRAYER: Criminal Appeal has been filed under Section 378 of Criminal Procedure Code to call for the entire records pending on the file of the XVIII Metropolitan Magistrate in C.C.No.1462 of 2006 and set aside and revise the judgment of the XVIII Metropolitan Magistrate in C.C.No.1462 of 2006 dated 23.12.2009 and convict the respondent / accused for an offence u/s.138 of Negotiable Instruments Act and impose the compensation amount of Rs.2,50,000/- and also fine amount on the case cheques bearing Cheque Nos.441741 & 396629 drawn on Bank of India for a sum of Rs.1,50,000/- and Rs.1,00,000/- respectively dated 16.08.2005.

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.K.Srinivasan
Amicus Curie

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside and revise the judgment of the XVIII Metropolitan Magistrate in C.C.No.1462 of 2006 dated 23.12.2009 and convict the respondent / accused for an offence u/s.138 of Negotiable Instruments Act and impose the compensation amount of Rs.2,50,000/- and also fine amount on the case cheques bearing Cheque Nos.441741 & 396629 drawn on Bank of India for a sum of Rs.1,50,000/- and Rs.1,00,000/- respectively dated 16.08.2005.

2.Though this Criminal Appeal was filed in the year 2010, till date the appellant did not take any steps to serve copies to the respondent / accused. Considering the long pendency of the case, this Court appoints Mr.K.Srinivasan, the learned Special Public Prosecutor (CBI Cases) as Amicus Curie to conduct this case.

3.For the sake of convenience, the parties are hereinafter referred to in this judgment as they are arrayed before the Trial Court.

4.The case of the prosecution is that the accused/ respondent borrowed a sum of Rs.2,50,000/- for his urgent family expenses with the promise to repay the same within a short period, in order to discharge the liability of the above said amount, the accused issued two cheques bearing No.441741 dated 16.08.2005 for Rs.1,50,000/- and 396629 dated 16.08.2005 for Rs.1,00,000/- respectively both drawn on Bank of India, Thousand Light Branch, Chennai. When the said instruments were presented to the bankers namely Indian Bank, Mylapore Branch, Chennai on 17.08.2005, they were returned / dishonoured on 18.08.2005 due to insufficient fund. The said instruments and the bankers return memos are marked as Ex.P1 to Ex.P4 series. Thereafter, the appellant / complainant sent a legal notice to the accused on 23.08.2005 and the same was received by the accused on 29.08.2005. After the receipt of the legal notice, the accused has falsely lodged a complaint before the Police and the appellant / complainant appeared before the Police officials on 24.08.2005 and it is represented by the accused that he had received only Rs.10,000/-. However, the police siding with the accused attempted to secure the case cheques illegally from the complainant. Thereafter, the appellant / complainant through his Advocate sent notices to the police officials in this regard on 26.08.2005 including to the Assistant Commissioner of Police (Crimes), which was returned unserved. After a lapse of several days, the respondent / accused sent a reply notice to the appellant / complainant on 08.09.2005, making false allegation which was followed by rejoinders and reply etc., Ex.P7 is the Advocate notice and Ex.P16 is the reply notice. Since the accused did not pay the borrowed amount, the complainant filed a complaint under Section 138 of Negotiable Instruments Act, 1881 to impose the compensation amount of Rs.2,50,000/- from the accused.

5.The copies were furnished to the accused under Section 207 Cr.P.C. the particulars of an offence alleged were explained to him on 12.06.2006. The accused denied of having committed the offence. In order to prove the prosecution case, the complainant was examined himself as PW1 and Exhibits P1 to P20 were marked by the PW1. The accused was questioned under Section 313(1)(b) of Cr.P.C. The accused denied the charges and claimed to be tried. The accused was examined himself as DW1 and his wife as DW2. No documents were marked on their side. After elaborate trial, the learned XVIII Metropolitan Magistrate in C.C.No.1462 of 2006 dismissed the same on 23.12.2009 by acquitting the accused. Challenging the same, the appellant has preferred the present Criminal Appeal in Crl.A.No.195 of 2010.

6.Heard the learned counsel appearing for the appellant / complainant and the learned Amicus Curie.

7.On a perusal of the entire records, it is seen that PW1 in his evidence interalia reiterated his version as in the complaint and marked about 18 documents on his side. Ex.P1 and Ex.P2 are cheques issued by the accused. Ex.P3 and Ex.P4 are cheque return memos. Ex.P5 and Ex.P6 are the debit advices dated 19.08.2005. Ex.P7 is the advocate notice dated 23.08.2005. Ex.P16 is the reply notice.

8.On a perusal of the deposition of PW1 and the documents marked on his side, it reveals that the subject instruments were issued by the accused in favour of the complainant / appellant on 16.08.2005. The said instruments were presented for clearance on 17.08.2005 and the same was returned with an endorsement "insufficient funds" on 18.08.2005. PW1 in his evidence has admitted that he is doing a money lending business and eight other cases of similar nature are pending against different persons in the very same Court. When the person professionally doing money lending business without obtaining any promissory note while advancing a huge amount of Rs.2,50,000/- to the respondent / accused is unbelievable.

9.Even the appellant / complainant himself had admitted in his complaint when appeared before the Police officials for the complaint lodged by the accused that he had advanced only Rs.10,000/- in favour of the accused. Subsequently, the appellant sent legal notices to the police authorities, and the same was denied by the police officials. The deposition of the accused DW1 and his wife DW2 state that they used to borrow Rs.5,000/- and Rs.10,000/- for their urgent expenses from the appellant, for which, they issued two blank cheques towards security. Later on the said cheques were filled up by the appellant and were presented for clearance with a view to harass the accused.

10.The appellant / complainant has miserably failed to prove that there was a legally enforceable debt for which the subject cheques were issued for discharging the said legally enforceable debt. In the absence of evidence that there was a legally enforceable debt, for which the said cheques were issued, this Court has no other option, except to accept the verdict of the learned XVIII Metropolitan Magistrate Saidapet, Chennai 600 015.

11.Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was recorded by the trial Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 has held that, in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Hon'ble Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that, an order of acquittal need not be interfered with by the higher Courts unless, there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

12.Having regard to the above parameters laid down by the Hon'ble Supreme Court in the above decisions, this Court is of the view that the order of acquittal recorded by the First Appellate Court does not suffer from any legal infirmity warranting interference by this Court.

13.So in view of the categorical opposition, this Court is not hesitating to arrive at a conclusion and I do not find any error in the the judgment passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai-15 in C.C.No.1462 of 2006 dated 23.12.2009. Accordingly, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The XVIII Metropolitan Magistrate
Saidapet, Chennai 600 015

2.-do-Thro' Chief Metropolitan Magistrate,
Chennai.

3.The Section Officer
Criminal Section
High Court of Madras

Crl.A.No.195 of 2010

PA(CO)
GSP(21/02/2019)