IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2019

CORAM
THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.386 of 2007
and
Crl.R.C.No.1914 of 2007
and
M.P.No.1 of 2007

Crl.R.C. No. 1914 of 2007

Krishnasamy .. Petitioner/Respondent/Complainant

Vs.

K.Uma .. Respondent/Appellant/Accused -3.

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, against the judgment of the learned Additional District and Sessions Judge (Fast Track Court No.I) Coimbatore dated 16.10.2007 in Crl.A.No.97 of 2007 setting aside the order of the learned Judicial Magistrate No.I, Udumalpet, dated 12.02.2007 in C.C.No.301 of 2001 and remitting the matter for recording additional evidence and pass fresh order.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr.V.Ayyadurai

Crl.A.No.386 of 2007

Krishnasamy .. Appellant/Complainant

Vs.

1.M/S.Muthukumaran Cotton Mills Pvt.Ltd.,
Rep.by its Managing Director R.Kanagaraj,
223, Kanniappa Nadar Layout,
Gandhi Nagar, Udumalpet - 642 126.

2.R.Kanagaraj

3.Uma .. Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the order of acquittal passed by the learned Judicial Magistrate No.1, Udumalpet dated 12.02.2007 in C.C.No.304 of 2001.

For Appellant : Mr.V.Nicholas

For Respondents : Mr.V.Ayyadurai

COMMON JUDGMENT

The Criminal Revision Case as well as the Criminal appeal arise out of an identical order passed by the Courts below, in which the parties to the case are one and the same. Therefore, the Criminal Revision case as well as the Criminal Appeal are taken up for hearing together and are disposed of by this common judgment.

Crl.R.C. No. 1914 of 2007

Criminal Revision Case arises out of the Judgment dated 16.10.2007 passed in Criminal Appeal No. 97 of 2007 setting aside the order dated 12.02.2007 passed in C.C. No. 301 of 2001.

2.The complainant Krishnasamy has filed C.C. No. 301 of 2001 against Sri Muthukumaran Cotton Mills Pvt Ltd., rep. by its Managing Director R. Kanagaraj and six others. The first accused is the firm, which is represented by the second accused as its Managing Director. The accused 3 to 7 are also Directors of the first accused firm engaged in it's day-to-day affairs. According to the complainant, he is engaged in finance business and there were financial transactions between him and father of the second accused, namely R. Kanagaraj. Further, during the course of such business, accused 2, 6 and 7 have approached the complainant on 10.02.1999 and sought for financial assistance to the tune of Rs.3 lakhs. On the same day, the complainant has paid Rs.3 lakhs by way of a cheque and it was also encashed. Further, on the request of accused 2, 3, 4 and 5, a further sum of Rs.2,00,000/- was paid by the complainant on 18.04.2000. This amount was also paid as cash and encashed by the accused. Subsequently, on 16.06.2001, the second accused drawn a cheque for Rs.5,00,000/- in favour of the complainant firm - Vignesh firm, towards the legally enforceable debt and liability and when it was presented for collection on 02.08.2001, the cheque was returned unpaid with an endorsement "not arranged for". Therefore, on 09.08.2001, the complainant sent a notice, which was received by the accused 1 to 7 on various dates. On receipt of the notice dated 09.08.2001, the accused have sent a reply containing false and frivolous statement. Therefore, the complainant has filed the complaint in C.C. No. 301 of 2001 on the file of Judicial Magistrate No.1, Udumalpet.

3.Before the trial Court, it was contended on behalf of the complainant that the accused 4 and 5 have re-paid the amount to the complainant and therefore, the complaint as against the accused 4 and 5 shall be dismissed. Similarly, the non-bailable warrant issued to the accused 6 and 7 could not be served and it remains pending therefore, the complainant sought for dismissal of the complaint as against the accused 6 and 7 as well. Therefore, the trial court proceeded with the complaint only against accused 1 to 3.

4.On behalf of the accused, it was contended that there is yet another case filed by the complainant in C.C. No. 304 of 2001 (subject matter of Criminal Appeal No. 386 of 2007) in which the same transaction between the complainant and the accused was questioned and that the present complainant has been filed only to harass the accused. The third accused is in no way connected with the affairs and administration of the first accused company and therefore, she cannot be arrayed as an accused. The complainant has filed the complaint in his individual capacity and when he had lent amount in his capacity as a Proprietor of M/s.Vignesh Finance, the complaint filed in his individual capacity is not maintainable under Section 138 of the Negotiable Instruments Act.

5.Before the trial court, the complainant examined himself as CW1 and marked Exs. P1 to P19. On behalf of the accused, no witness was examined, however, Exs. R1 to R3 were marked. The trial court concluded that the third accused had taken active participation in the management of first accused company and therefore, she cannot be relieved from the liability and responsibility towards the first accused firm. The trial court, ultimately held that the accused 2 and 3 are guilty of the offence under Section 138 of The Negotiable Instruments Act and consequently convicted the accused 2 and 3 to undergo rigorous imprisonment for a period of one year. The trial court also recorded that the second accused was already under incarceration for a period of more than a year without getting bail. That apart, the third accused was directed to pay a fine of Rs.5,000/-, failing which, to undergo six months rigorous imprisonment. Therefore, the period of sentence already undergone by the accused, if any, was directed to be given set off.

6.Challenging the Judgment dated 12.02.2014 passed in C.C. No. 301 of 2001, the third accused filed Crl. Appeal No. 67 of 2007. Pending appeal, the appellant/third accused has filed Crl.M.P. No. 69 of 2007 to call for the records relating to C.C. No. 304 of 2001, in which identical averments have been raised by the complainant and unless the documents in C.C. No. 304 of 2001 are considered, the appellant/third accused will be highly prejudiced. The complainant has not opposed the Petition in Crl.MP No. 69 of 2007 and therefore, considering the same, the first appellate Court by Judgment dated 16.10.2007, allowed the appeal and set aside the Judgment of the trial Court and remanded the matter to the trial court for fresh consideration. Aggrieved by the same, the revision petition is filed by the complainant.

Criminal Appeal No. 386 of 2007

This appeal arises out of the Judgment dated 12.02.2007 passed by the Judicial Magistrate No.I, Ulundurpet, in C.C. No. 304 of 2001 acquitting the accused in a proceedings initiated by the complainant under Section 138 of the Negotiable Instruments Act. The averments in C.C. No. 304 of 2001 are verbatim to the same in C.C. No. 301 of 2001, which is the subject matter of Criminal Revision Case No. 1914 of 2007. Even in C.C. No. 304 of 2001, the complainant has given the complaint as against the accused 4 to 7 and therefore, the trial court proceeded with the complaint only as against the accused 1 to 3. After considering the evidence on record, the trial court concluded that the averments made in the complaint and the deposition of PW1 are contrary to each other and it is not clear as to whether the cheque in question was given to clear the legally enforceable debt and liability or interest payable for the principal amount. Therefore, the trial court dismissed the complaint in C.C. No. 304 of 2001 by order dated 12.02.2007. Aggrieved by the same, the present Criminal appeal has been filed by the complainant.

2.Heard the counsel for both sides. In a proceedings under Section 138 of The Negotiable Instruments Act, the burden lies on the complainant to prove the allegations made in the complaint beyond reasonable doubt. In the present case, the complainant has filed both the complaints in C.C. Nos. 301 and 304 of 2001 under Section 138 of The Negotiable Instruments Act. In both the cases, the complainant has arrayed the firm as first accused and the accused 2 to 7 as Managing Director or Managing Partner as the case may be of the first accused. Even though in the complaint, the complainant has made averments implicating all the accused 1 to 7 and sought to launch prosecution against them for having committed the offence of Section 138 of the Negotiable Instruments Act during the pendency of the complaint, the complainant himself sought to withdraw the complaint as against accused 4 to 7. When the averments in the complaint are made to the effect that the accused are jointly and severally liable for having committed the offence with a common intention to defraud the complainant, the withdrawal of the complaint as against the accused 4 to 7 by the complainant itself creates suspicion as regards the nature of the transaction between the complainant and the accused. It is not known as to whether the transaction between the complainant and the accused 1 to 7 is a personal transaction or the amount was borrowed by the accused 2 to 7 by representing the first accused firm. Such inconsistency in the case projected by the complainant, had resulted in the acquittal of the accused in both the cases. Of course, before the lower Appellate Court, the third accused in C.C. No. 301 of 2007 has sought for production of the records in the connected case in C.C. No. 304 of 2007 and therefore, the matter was remitted back to the trial Court, for fresh consideration. I do not find any illegality or irregularity in such Judgment passed by the Appellate Court, which is the subject matter of the Criminal Revision Case.

3.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 rendered by the lower Court by considering irrelevant materials 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 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 lightly interfered with. In yet another decision of the Honourable 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.

4.In the result, both the Criminal Revision Case as well as Criminal Appeal are dismissed and MP No.1 of 2007 in closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Judicial Magistrate No.1,
Udumalpet

2.The Additional District and Sessions Judge
(Fast Track Court No.I),
Coimbatore.

3.The Government Advocate(Crl.side)
High Court of Madras.

Copy To

The Section Officer/ Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.4955

Crl.A.No.386 of 2007
and
Crl.R.C.No.1914 of 2007

VBA(CO)

RRS(25/04/2019)