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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.NO.928 OF 2007

G.Thangaraj

.. Appellant

Vs

R.Manickam

.. Respondent

Prayer:- This Criminal Appeal is filed under Section 378 of Cr.P.C., to call for the records in C.C.No.569 of 2001 on the file of the Judicial Magistrate No.5, Coimbatore and set aside the order dated 15.03.2004.

For Appellant : No appearance

J U D G M E N T

The appeal is filed against the judgment of acquittal in C.C.No.569 of 2001 dated 15.03.2004 rendered by learned Judicial Magistrate No.5, Coimbatore. The appellant is the complainant, who had filed a private complaint under Section 138 of Negotiable Instrument Act against the respondent.

2. It is an appeal arising out of a private complaint under Section 138 of Negotiable Instrument Act. It is pending from the year 2007 and it is found that the appellant had also not shown any interest in prosecuting the above appeal for more than a decade. Therefore, keeping the appeal further pending would serve no purpose. Hence, this Court proceeds to dispose the appeal on merits on the materials available.

3. The gist of the case is that the respondent had borrowed a sum of Rs.1,00,000/- on 11.12.2000 for his urgent business needs from the appellant, for which, he issued a post dated cheque bearing No.067200 dated 10.01.2001 drawn on Tamil Nadu Mercantile Bank in favour of the appellant and requested that on instructions from the respondent the same has to be deposited for collection. Thereafter, on instructions from the respondent, the appellant had deposited the cheque in his bank, namely, Punjab National Bank, Coimbatore on 09.06.2001. The cheque was returned for the reason "Exceeds Arrangement" and it was intimated to the appellant. The appellant had issued



Statutory Notice on 15.06.2001, which was received by the respondent and thereafter with false averments, the respondent had sent a reply dated 13.07.2001.

4. The defense of the respondent was that during the year 1998, the respondent had borrowed money from the appellant and during the time of borrowing, five signed blank cheques and five letter heads had been obtained by the appellant. In the meanwhile, the respondent had paid the entire principal amount with interest and the appellant had not returned the signed blank cheques and letter heads. Hence, the appellant had filed the above case.

5. In the trial, the appellant had examined two witnesses and marked Exs. P1 to P8. The respondent on the side of defense had examined three witnesses and marked Exs. D1 to D15. PW1 is the appellant, he had marked Ex.P1-Cheque, Ex.P2-Return Memo, Ex.P3-Debit advice, Ex.P4-Notice, Ex.P5-Acknowledgment Card and Ex.P6 is the reply.

6. A sum and substance of this case is that the respondent had received a loan for a sum of Rs.1,00,000/- from the appellant and in discharge of the said liability, Ex.P1-Cheque was issued to him and when it was deposited, the same was returned through Ex.P2-bank return memo, thereafter, Ex.P4-Statutory Notice was issued, which was received by the respondent and he had sent reply with false allegations, which was marked as Ex.P6. These facts have been reiterated in his evidence.

7. P.W.2 is the Bank Manager of the respondent, who had stated that the Ex.P1-cheque was issued to the appellant and on that date, when the cheque was presented, there was no sufficient balance in the account of the respondent. The respondent had denied the facts in 313 statement and had examined one Noorul Amin, under whom the respondent was a tenant and he was carrying on the business in the name and styled of 'Senthil Traders'. He had vacated the premises after D.W.1 had filed a Civil Case for his eviction.

8. D.W.2 is the Manager, Tamil Nadu Mercantile Bank, in which the respondent was having the Bank Account. The respondent examined himself as D.W.3 and through him Exs.D7 to D15 have been marked. In his evidence, it is found that he had been maintaining proper accounts of his business and he had produced the Ledger Extracts, Income Tax returns and Day Books of his firm. It is found from these exhibits that for repayment of loan, payments have been made by the respondent and the entries are found in the Accounts Book and these books have been regularly maintained in course of his business.



9. The certain case of the respondent is that the loan has been obtained in the year 1998 and it has been repaid and proved through the exhibits produced by him. It is found that the cheque is of the year 2001. Further, the appellant had admitted in his evidence that there is variation in the ink, signature and the inscription and dates of the cheque. Other than the production of the cheque, the appellant had not produced any contemporary corresponding documents to show that the respondent had received any loan during the year 2001 and the cheques were issued at the relevant point of time. Further, it is proved that on 21.08.2000, the respondent had handed over the shop to D.W.1-owner of the building, which has been recorded in the Civil proceedings and it is categorical assertion that after 21.08.2000, he was not carrying out any business and he had no necessity to obtain loan from the appellant.

10. On the other hand, the categorical evidence of the appellant is that during the year 2001, the respondent had approached him for loan and Ex.P1-cheque was given in the year 2001. On the exhibits produced by the respondent, the Trial Court on proper appreciation of evidence, had acquitted the respondent. It is found that the respondent had probalised his defense by examining himself and other defense witnesses and also producing contemporary documents as exhibits. More particularly, in the Income Tax return Ex.D9, repayment of the loan obtained of the 1998 by the respondent to the appellant is found.

11. Thus on perusal of the materials and documents available, this Court finds that a well reasoned judgment of acquittal has been passed by the Trial Court and there is no infirmity and reason to interfere with.

12. In view of the same, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

rsi/ssi

To

1. The Judicial Magistrate No.V,
Coimbatore.



2. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section (Records)
High Court, Madras-104.

Crl.A.No.928 of 2007

SS (CO)
CS/06/08/2019