

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.700 of 2013

T. Jayathilipan

Appellant/Complainant

Vs

V. Sathish

Respondent/Accused

Rep.by Power of Attorney

K.Sekar

Prayer: Criminal Appeal is filed under Section 378 of the code of Criminal Procedure, praying to set aside the Judgment of acquittal made in C.A.No.142 of 2012 dated 15.07.2013 by the Principal District and Sessions Judge, Vellore in reversing the Judgment of conviction and sentence dated 17.07.2012 made in CC No.502 of 2011 on the file of Judicial Magistrate (Fast Track Court), Vellore District.

For Appellant : Mr.V. Madhavan

For Respondent : No appearance

J U D G M E N T

This Criminal appeal is directed against the Judgment of acquittal by the lower Appellate Court.

2. The case of the appellant/Complainant is that the respondent/accused borrowed a sum of Rs.4,50,000/- as a loan from the appellant/Complainant for his business after executing a promissory note on 19.09.2010, to discharge the debt gave a cheque for Rs.4,50,000/- and got back the pro note. When, the appellant/complainant presented the said cheque for collection on 01.02.2011, the same was returned as unpaid due to "insufficient funds". The Statutory notice sent to the residence of the accused was returned as "not claimed" and another notice sent to his office is not yet returned. Hence, Private Complaint filed against the respondent/accused for the offence under Section 138 of Negotiable Instrument Act.

3. The trial Court after taking into consideration the evidence adduced and the documents placed before it, has convicted the respondent/ accused under Section 138 of Negotiable Instruments Act and sentenced him to undergo 6 months

simple imprisonment and a fine of Rs.15,000/- in default to undergo simple imprisonment for 3 months. Challenging the said Judgment, the respondent/ accused had preferred an appeal before the Principal District and Sessions Court, Vellore. The lower Appellate Court after re-appreciating the evidence and more particularly considering the defence documents, acquitted the respondent/accused, against which the present Criminal Appeal is preferred.

4. Heard the Counsel for the appellant. Perused the records.

5. The main point involved in this case is whether the subject cheque was issued to discharge the debt or not. While the trial Court has accepted the case of the complainant, the lower Appellate Court considering the averments that the alleged Pro-note, which was executed at the time of availing loan and the receipt given by the accused while giving the subject cheque for discharge of the debt are not proved by the complainant. Though Ex.P.7 receipt been marked by the complainant, it does not prove any debt enforceable. Regarding the service of notice, taking note of the fact, that notice was returned as not claimed, the lower Appellate Court has concluded that not claimed can not be equated as refused and had arrived at a conclusion that statutory notice was not served on the accused.

6. Considering the lack of evidence to substantiate the wherewithal to advance the money of Rs.4,50,000/-, which is not been admittedly reflected in any of his account maintained by the complainant. The lower Appellate Court has therefore disbelieved the case of the complainant and reversed the findings of the trial Court.

7. Aggrieved by the order of the lower Appellate Court, the present appeal is preferred on the ground that the reasons stated by the lower Appellate Court for rejecting the complaint is unsustainable and against the law. Return of Statutory notice as unclaimed is to be construed as refused and the cause of action shall accrue from the date of return.

8. As far as this legal proposition, this Court has no doubt, such notice shall be treated as completed service provided the notice is sent to the correct address of the accused. In this case, though the accused has not served with the statutory notice, he has received the Court summon and attended the proceedings. Therefore, the complaint can not be dismissed for this reason.

9. However, for the other reasons the dismissal of the complaint by the lower Appellate Court has to be sustained. The contention of the complainant is that, the accused borrowed loan and executed a Pro-note to discharge the debt, he gave subject

cheque and took back the Pro-note. Gave receipt to that effect. These are all self serving statement of the complainant without any corroboration. The receipt which is marked as Ex.P.7 on the face of it, it does not inspire the confidence, that it was executed in the manner as deposed by the complainant. Further more, before the trial Court, when the proof affidavit in lieu of the chief examination was confronted with the complainant, when he was in the witness box, he has candidly admitted that the signature in the proof affidavit is not his signature. Therefore, the complainant does not survive due to the inherent lacuna.

10. In the light of the above discussions, this Criminal appeal is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge, Vellore
2. The Chief Judicial Magistrate, Vellore
3. The Judicial Magistrate (Fast Track Court), Vellore
4. The Section Officer,
Criminal Section Records,
High Court, Madras

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