BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.251 of 2012

Subramani ... Appellant/Respondent/Complainant

Vs.

1.M/s.Dee Yes Dhe-Chem,
Rep. by its partner,
P.R.Sekar,
No.41, Sengunthapuram 3rd Cross,
Karur – 2.

2.P.R.Sekar ... Respondents/Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C, to set aside the order of acquittal passed in C.A.No.39 of 2011, dated 10.12.2011 by the learned Sessions Judge, Karur, reversing the conviction and sentence imposed on the accused in C.C.No.622 of 2008, dated 27.06.2011, on the file of the learned Judicial Magistrate No.I, Karur.

For Appellant : Mr.N.Shanmugaselvam

For Respondents : Mrs.M.Krishnaveni, Legal Aid Counsel

J U D G M E N T

The appellant is the complaint in C.C.No.622 of 2008, on the file of the learned Judicial Magistrate No.I, Karur. It is a case arising under Section 138 of the Negotiable Instruments Act.

2.The case of the complainant is that the first accused is a partnership firm and that A2 and A3 are its partners and that they had borrowed a sum of Rs.60,000/- from the complainant for the development of the business. The borrowal is said to have taken place on 22.05.2008. Towards discharge of the said liability, the complaint cheque/Ex.P.1 was issued by A2 in his capacity as partner of the A1 firm. The said cheque was presented for collection on 05.06.2008. But then, it was returned unpaid. Therefore statutory notice dated 14.06.2008 was issued by the complainant (Ex.P.3). It was however returned unserved. Thereafter the said private complaint was filed by the appellant herein.

3.The appellant examined himself as P.W.1 and marked Exs.P.1 to P.8. The second respondent herein was shown as A2 in the complaint examined himself as D.W.1 and Ex.D.1 to D.4 were marked on his side.

4.The learned trial Magistrate after a detailed consideration of the evidence on record acquitted A3 but then found A1 and A2 guilty. A2 was sentenced to undergo one year simple imprisonment and directed to pay compensation of Rs.60,000/- vide judgment dated 27.06.2011.

5.Aggrieved by the same, the convicted accused namely., A1 and A2 filed C.A.No.39 of 2011 before the learned Sessions Judge, Karur. The Appellate Court by judgment dated 10.12.2011 allowed the appeal and set aside the judgment of the Trial Magistrate and acquitted the accused namely., A1 and A2. Aggrieved by the same, this criminal appeal has been filed.

6.When the matter was taken up for hearing, there was no representation on behalf of the respondents. Therefore, this Court directed the Registry to appoint a legal aid counsel to defend the interest of the respondents. Today, when the matter was taken up for hearing, the learned counsel on either appeared and advanced their respective contentions.

7.After carefully hearing the arguments on either side, I am of the view that the impugned judgment passed by the Appellate Court in acquitting the respondents does not warrant any interference.

8.The case of the complainant is that he advanced a sum of Rs.60,000/- to the accused. He would further claim that he handed over the amount of Rs.60,000/- in the office of the accused firm. The case of the accused is that the firm itself was wound up as they suffered business loss in the year 2007 itself. But then, the complainant would claim that on 22.05.2008, he gave a sum of Rs.60,000/- to A2.

9.P.W.1 claimed that he pledged his wife's jewels and gave the loan amount to the accused. It is stretching one's credulity. The complainant admittedly has not taken any pronote or any other security from the accused. The stand of the accused that they had closed down the business in the year 2007 itself, is strengthened by the return of the statutory notice/Ex.P.3 as unserved. A2 examined himself as D.W.1 and he marked Ex.D.1 to D.4 He specifically pointed out that he was having transaction with Sastha Captial, Sastha City Finance and Sastha Chits. The case of the accused is that he had closed his accounts with those institutions and that the complaint cheque was given by him as security and that it has been misused through the complainant. The complainant admitted in his cross examination that he was working as typist in the auditing firm of one Muthusamy. He also admitted that his wife was one of the partners in a firm run by the said Muthusamy. The specific suggestion of the accused is that the complainant is acting as a front-person for collecting the dues of said Muthusamy. By marking Ex.D1 to D.4 and by examining himself, the accused had more than probalized his defence. This Court finds it very difficult the believe the complainant's version that without getting any security or pronote, he gave a sum of Rs.60,000/- as hand loan to the accused. More than anything else, his claim that after pledging his jewels, he raised the said amount of Rs.60,000/- is not carrying any conviction and credulity. The Appellate Court has given strong and convincing reasons for acquitting the respondents herein. I find no ground to interfere and the criminal appeal stands dismissed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Sessions Judge, Karur.

2.The Judicial Magistrate No.I, Karur.

+1 CC to M/s.M.KRISHNAVENI, Advocate (SR-83056[F] dated 22/08/2019)

+1 CC to M/s.N. SHANMUGASELVAM, Advocate (SR-83688[F] dated 27/08/2019)

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