



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl.A.(MD)No.279 of 2019

T.Chinnaraja

... Petitioner

Vs

R.Joseph Chandran

... Respondent

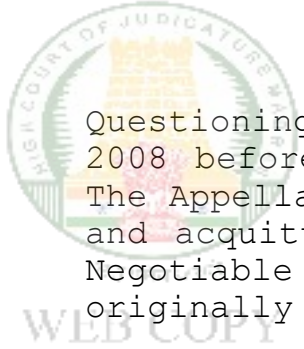
PRAYER: Criminal Appeal is filed under Section 379 R/W 401 of Cr.P.C., to call for the records from the Lower Court and set aside the Judgement of the Lower Court passed by the learned First Additional Sessions Judge (PCR), Thanjavur in C.A.No.61 of 2008, dated 18.09.2009 in C.C.No.441 of 2002, dated 27.05.2008 on the file of the Learned District Munsif Cum Judicial Magistrate Court, Papanasam, Thanjavur District by allowing this revision.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.C.Arunachalam @ ARun

ORDER

The petitioner is the complainant in C.C.No.441 of 2002 on the file of the Judicial Magistrate, Papanasam. It is a case arising under Section 138 of the Negotiable Instrument Act. The case of the complainant is that the accused Mr.R.Joseph Chandran issued complaint cheque-Ex.P1, dated 07.09.2002 for a sum of Rs.1,00,000/- in favour of the complainant towards, legal enforceable liability. According to the complainant, the accused had borrowed a sum of Rs.1,00,000/- from him. The cheque was presented for collection and the same was returned unpaid on 11.09.2002 for the reason of insufficiency of funds in the account of the accused. The complainant issued statutory notice-Ex.P3, dated 17.09.2002 calling upon the accused to pay the cheque amount. The accused received the statutory notice. This is evident from the acknowledgment card-Ex.P4. He did not issue any reply nor he did not comply with the demand set out in the statutory notice. Therefore, the complainant filed the aforesaid private complaint. Before the learned trial Magistrate, the complainant examined himself as P.W.1. He marked Ex.P1 to Ex.P4. On the side of the accused, no evidence was adduced. The learned trial Magistrate, by Judgment dated 27.05.2008, came to the conclusion that the offence under Section 138 of the Negotiable Instrument Act has been established beyond reasonable doubt. She sentenced the accused one year simple imprisonment and also levied a fine of Rs.5,000/-.



Questioning the same, the accused filed Criminal Appeal No.61 of 2008 before the First Additional Sessions Judge, (PCR), Thanjavur. The Appellate Court, by Judgment dated 18.09.2009 allowed the appeal and acquitted the accused of the offence under Section 138 of the Negotiable Instrument Act. Challenging the same, the complainant originally filed CrI.R.C.No.656 of 2010.

2. When the matter was taken up for hearing, this Court took the view that against the Judgment of acquittal, only an appeal will lie and the revision will not lie. Therefore, the revision case was converted to one of appeal. Since there was no representation on the side of the complainant, this Court directed the Registry to appoint a Legal Aid Counsel.

3. The learned Legal Aid Counsel submitted that the Appellate Court had acquitted the accused by holding that the presumption under Section 139 of the Negotiable Instrument Act will not be arisen in respect of the existence of an enforceable debt or liability. The Appellate Court had applied the Judgment of the Hon'ble Supreme Court reported in **2008 (1) CTC 433 (Krishna Janardhan Bhat Vs. Dattatraya G.Hegde)**.

4. The learned counsel appearing for the revision petitioner rightly pointed out that this Judgment was subsequently over ruled by the Full Bench in the Judgment reported in **2010 (11) SCC 441 (Rangappa Vs. Sri Mohan)**.

5. Since the Judgment of the Appellate Court proceeds on the basis of an over ruled Judgment, this Court will have to necessarily interfere. In this view of the matter, the impugned Judgment is set aside and the matter is remitted to the file of the Appellate Court for fresh disposal in accordance with law. The Appellate Court will issue notice to the accused and the complainant before disposing it of on merits and in accordance with law. This criminal appeal is allowed accordingly.

Sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The First Additional Sessions Judge (PCR), Thanjavur.

2. The District Munsif Cum Judicial Magistrate Court,
Papanasam, Thanjavur District.

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