BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.02.2020
CORAM
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.A.(MD).No.326 of 2009

Somasundaram .. Appellant/Complainant

Vs.

1.M/s.Rohini Enterprises,
Dealers, Godrej Enterprises,
D29, Perumalpuram, 'C' Colony,
Palayamkottai – 627 007.
Represented by its partner,
B.K.Ramachandran.

2.B.K.Ramachandran .. Respondents/Accused 1 and 2

PRAYER: This Criminal Appeal has been filed under Section 378 of Cr.P.C, to set aside the judgment passed in S.T.C.No.68 of 2006, dated 12.08.2009, on the file of the learned Special Judicial Magistrate cum II Additional District Munsif Court, Tirunelveli, to punish both the accused in accordance with law.

For Appellant : Mr.N.Mohideen Basha

For Respondents : Mr.S.C.Herold Singh, Legal Aid Counsel.

JUDGMENT

The Criminal Appeal has been filed against the judgment, dated 12.08.2009 in S.T.C.No.68 of 2006, on the file of the learned Special Judicial Magistrate cum II Additional District Munsif Court, Tirunelveli.

2.The appellant/complainant had lodged a private complaint against the respondents/accused Nos.1 and 2 for the offence punishable under Sections 138 r/w 142 of Negotiable Instruments Act. The date of the judgment is before the amendment to Section 372 of Cr.P.C. (Dated 31.12.2009)

3.The brief facts of the case are as follows:

(i)The first accused/first respondent is a partnership firm, who is dealing Godrej Steel and consumer goods. The second accused/second respondent is the Managing partner of the first accused firm. The second respondent/A2 and the appellant were good friends. The second respondent usually getting loan from the complainant for his business and returned the same.

(ii) During the month of July 2003, A2 had approached the complainant and asked loan for a sum of Rs.5,50,000/- for improvement of his business. On his request, the complainant arranged for the said amount, on 20.07.2005 and for which, the second respondent had executed a promissory note in favour of the complainant on the same day. Thereafter, A2 was irregular in paying the interest. Thereafter, the complainant came to know that A2 was in the process of winding up his business. Therefore, the complainant asked A2 for return of money. A2 had issued a cheque, bearing No.004141 drawn at Central Bank of India, Tirunelveli. When the cheque was presented for collection, the same was returned for the reason that ' Account Closed'. Therefore, on 18.08.2005, the complainant issued a statutory notice to the accused person /A1 and A2 and the same was received by them on 19.08.2005. After receipt of notice, the accused neither paid the money nor has given any reply. Hence, the complainant had lodged a complaint as against the accused persons.

4.Before the trial Court, the complainant had examined himself as P.W.1. Ex.P.1 to Ex.P.7 were marked. On the side of the defence, the Officer of ICICI Bank/D.W.1 had been examined as defence witness. The statement of Bank account of the complainant for the period of 01.05.2003 to 31.08.2003 has been marked as Ex.D.1.

5. After completion of trial, the trial Court acquitted the accused, as against which, the present criminal appeal has been filed by the appellant/complainant.

6.The contention of the learned counsel for the appellant is that P.W.1/complainant in his evidence, had categorically stated about the nature of his business and the accused availing loans from him. On one such occasion, during July 2003, the appellant gave a sum of Rs.5,50,000/- to the second respondent /A2. The second respondent/A2 had executed a loan agreement, which has been marked as Ex.P.7. After sometime, the accused was making interest payments and later, he became irregular.

7. The complainant came to know that the accused was in the process of winding up his business. Therefore, the complainant had approached the accused and demanded the loan amount. In order to return back the money, the accused had issued a cheque, dated 23.07.2005 drawn at Central Bank of India for a sum of Rs.5,50,000/-. Thereafter, the cheque was presented for encashment, the same was returned with an endorsement that 'Account Closed' with bank memo and the same were marked as Ex.P.2 and Ex.P.3 respectively. Thereafter, the appellant/complainant had issued a statutory notice/Ex.P.4 on 18.08.2005 and the same was received by the accused on 19.08.2005. But, they have not responded for the same. Therefore, the appellant had lodged a complaint. These facts have been proved by the complainant through his evidence and documents.

8. The defence taken by the accused is that in the year 2002, there was some business transaction, at that point of time, the cheque was handed over to the second respondent, which was filled up by the appellant/complainant.

9.The trial Court, on a wrong presumption, had concluded that the loan was received by the accused through the cheque of complainant, which was is an inadvertent admission by the complainant taking advantage of this inadvertent stand, failing to look into the fact that neither in the complaint nor in the notice, the complainant had taken such stand. Giving undue advantage of the said in advertent admission, the lower Court had acquitted the accused, despite Ex.P.1/cheque supported with Ex.P.6 and Ex.P.7/pro-note have been produced. The accused had not discharged the presumption under Section 139 of Negotiable Instruments Act and hence, the finding of the trial Court is perverse.

10.The learned counsel for the respondents submitted that the certain admission of P.W.1/complainant that the loan was given through self-cheque and he had re-confirmed the same that the cheque was drawn from his account maintained in ICICI Bank Further, stating that the transaction would reflect in the statement of account book. He also submitted that the complainant is a financier. He is in the finance business for the past 5 years and he has been maintaining proper accounts for his loan business.

11.In this case, the appellant/complainant had not produced any such contemporary documents to show that the loan was advanced. Further, submitted that the writings in both Ex.D.1 and Ex.P.6 and Ex.P.7, the Ink and style varies as to the signature found in it. Hence, the learned counsel for the appellant submitted that the cheque was given earlier and the pro-note, which was given on an earlier transaction during October 2002 got filled up without any authority. Hence, a false case has been foisted against him. Though the writings are apparently different, the complainant denies that he had filled up the same. Further, submitted that the complainant had admitted that he had not produced any book of accounts to show that the accused had received a sum of Rs.5,50,000/- as loan. There seems to be some business transaction between the complainant and the accused, there were some misunderstanding in that business. Hence, in order to wreck vengeance, the above case has been foisted.

12.The learned counsel for the respondents further submitted that pro-notes are not proper. D.W.1/ Bank Officer of ICICI Bank, in his evidence, had stated that in the month of July 2003, there is no entry in the complainant' probalisied account book to show that Rs.5,50,000/- has been encashed. Further, he had also produced Ex.D.1, the statement of account for the period from 01.07.2003 to 31.07.2003. Thus submitted that he had probalisied by cogent evidence to prove that the complainant had not proved his case beyond reasonable doubt. He also submitted that the lower Court had given a well reasoned judgment taking into consideration both oral and documentary evidence. Hence, prayed for dismissal of the revision. Further, the respondent probalisied his defence by cogent evidence and materials. The trial Court after proper analysis of the evidence and materials had rightly acquitted him from the case.

13.Considering the rival submissions and on a perusal of Ex.P.1/Cheque and Ex.P.7/Pro-note, it is apparent that the writings have been filled up by the complainant, no explanation whatsoever has been given by the complainant, despite specific suggestion have been put to him. Further, it is the specific case of the complainant that during July 2003, the loan was given through the cheque, which was drawn from his account maintained in ICICI Bank and he reiterates the same in his evidence. On the other hand, D.W.1/Bank Manager, who produced Ex.D.1/ Statement of Account book of the complainant, categorically states that during the month of July 2003, there is no entry showing withdrawal of Rs.5,50,000/- by way of cheque.

14.In fact, there is no cheque transaction of Rs.5,50,000/- during the month of July 2003. Thus from the above, it is seen that the accused had probabilised his defence by letting in cogent evidence and also by examining D.W.1 and Ex.D.1.

15. In view of the above, this Court finds that the complainant had failed to prove his case beyond reasonable doubt as against the accused. Further, the lower Court had given a well reasoned finding, which need not be interfered with. Accordingly, this Criminal Appeal is dismissed.

16. Before parting with the case, this Court place on record it appreciation for the strenuous effort taken by the Legal Aid Counsel Mr.S.C.Herold Singh, who appeared for the respondents, this Court directs the Legal Service Committee attached to this Bench to pay his remuneration.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

To

1.The Special Judicial Magistrate cum
II Additional District Munsif Court,
Tirunelveli.

2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Officer in Charge,
Legal Service Committee,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.C.HEROLD SINGH, Advocate (SR-6889[F]dated 18/02/2020)

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