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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.255 of 2015

P.Ranganathan ... Appellant/Complainant

Vs.

K.Duraisamy ... Respondent/Accused

Prayer: This Criminal Appeal has been filed under Section 378 of Crl.P.C to call for the entire records in CA No.92 of 2013 on the file of the Principle Sessions Judge, Salem, setting aside the Judgment in C.C No.268 of 2012 on the file of the Judicial Magistrate No.II, Salem and to set aside the said Judgment CA No.92 of 2013 and to confirm the conviction and sentence in the judgment dated 12.08.2013 in CC NO.268 of 2012 on the file of Judicial Magistrate No.II, Salem.

For Petitioner : Mr.Sanjay
For Mr.P.Jagadeesan

For Respondent : Ms.Sathya Satheesh
For Mr.T.Murugamanikkam

O R D E R

(This case has been heard through video conference)

For the sake of convenience parties are referred to as per the ranking before the Trial Court.

2.The complainant has filed a private complaint against the respondent in C.C.No. 268 of 2012, on the file of the Judicial Magistrate No.II Salem, for the offence under Section 138 of Negotiable Instruments Act.

3.The case of the complainant was that the accused had borrowed a sum of Rs.2,00,000/- on 25.02.2012 and in order to discharge the loan he issued a cheque bearing No.125219, dated 24.05.2012, drawn on ICICI Bank Ltd., Salem Shevapet Branch. The cheque was presented on 26.05.2012 in State Bank of India, Salem Town and it was returned as "Insufficient Funds". The



complainant has sent a statutory notice on 31.05.2012 and the same was received by the accused on 08.06.2012 and the accused has not chosen to pay the cheque amount nor sent any reply. Hence, the complainant has preferred the complaint in C.C.No.268 of 2018.

4.The learned Magistrate after a careful consideration of entire evidence on record, has convicted the accused in its judgment dated 12.08.2013 and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month.

5.Against the judgment of conviction and sentence passed in C.C.No. 268 of 2012, the accused has preferred an appeal in C.A.No. 92 of 2013 before the learned Principle Sessions Judge, Salem. The learned Sessions Judge, without property considering the facts and circumstances of the case, has allowed the appeal and set aside the conviction and sentence passed in C.C.No. 268 of 2013. Aggrieved against same, the complainant has preferred the present Criminal Appeal before this Court.

6.Heard both the learned counsels and perused the materials placed on record.

7.The learned counsel for the private complainant would contend that the accused has not proved his case that Ex.P1/cheque was issued only as a security for the loan borrowed by his son from the complainant. Further, he would submit that the Lower Appellate Court ought not have relied on Ex.D1/the statement of accounts of the complainant's Bank for the purpose of holding that the complainant was not having sufficient money to advance the loan to the accused. Further, he would contend that the accused himself admitted that his son Nanda Kumar had borrowed money from the complainant and the accused gave his cheque as a security.

8.On a perusal of the records, the case of the complainant is that the accused had borrowed a sum of Rs. 2,00,000/- on 25.02.2012 from the complainant for his urgent family needs agreeing to repay the same within three months and to discharge the same he issued a cheque bearing No. 125219 dated 24.05.2012 drawn on ICICI Bank Ltd., Salem Shevapet Branch, Omalur Main Road, Near New Bus Stand, Salem - 9 to the complainant and on 26.05.2012 the complainant presented the said cheque through his banker Salem Town State Bank Branch, Salem.1 for collection and the same was returned as "In sufficient Funds". Therefore the complainant had issued statutory notice on 31.05.2012 and since there is no reply from the accused, the complainant had lodged a complaint on 10.07.2012, before learned Judicial Magistrate No.II, Salem. After considering the oral and documentary evidence of the parties, the learned Magistrate has convicted the accused for the offence punishable under Section 138 of the negotiable instruments and sentenced him as stated supra.



9.The case of the accused is that P.W.1 deposed that he advanced the alleged loan of Rs.2,00,000/-, to him by withdrawing the amount of Rs. 2,00,000/- from his bank i.e. the Salem District Central Co-Operative Bank Ltd., Gorimedu Branch, Salem-8, two days prior to the alleged lending i.e. 25.02.2012, but no proof has been produced to establish the withdrawal from the above bank of the complainant and Ex.D1 the bank statement of the complainant does not have any entry to that effect and this goes to show that alleged lending by the complainant to the accused is false and fake. Hence, in short, the main contention of the accused is that the complainant has no means to give a loan of Rs.2,00,000/- to the accused and therefore, it is the duty of the complainant to prove that he had requisite funds for advancing the sum of money/loan in question to the accused.

10.The copy of Savings Pass Book bearing Savings Bank A/c No. 00354 of the complainant in Salem District Central Co-Operative Bank Limited, Gorimedu Branch, Yercaud Main Road, Salem along with statement of account, was marked as Ex.D1. It is seen from the statement of account for Savings Bank Account from the period of 13.08.2003 to 30.04.2013 that as on 25.02.2012 an amount of Rs. 982/- was only available in the bank account of the complainant. Therefore, the evidence of P.W.1 that he was sufficient means in his bank account and withdraw Rs.2,00,000/- two days prior to the handing over of amounts on 25.02.2012 itself is false. Therefore, there is no possibility for the complainant to give a sum of Rs. 2,00,000/- to the accused on 25.02.2012 as alleged by him.

11.It is also categorically established by the complainant that the complainant has not engaged in money lending business. Therefore, the complainant was having no sufficient money as on the date of 25.02.2012. Therefore, it is established by the accused that the complainant was not having requisite funds for advancing such a sum of Rs. 2,00,000/- in question to the accused on 25.02.2012. The complainant also failed to prove the issuance of cheque by the accused in support of payment of money advanced to the accused. Mere the fact that the complainant is a retired teacher and able to give a loan of Rs. 2,00,000/- to the accused cannot be assumed.

12.On a perusal of Ex.P1 and also answer elicited from the cross examination of PW1 regarding the mode of payment of Rs.2,00,000/- on the said date and the same does not co-related with the bank accounts of the complainant/Ex.D1. Merely because the complainant is a retired teacher, loan of Rs.2,00,000/- to the accused cannot be accepted in view of the specific admission in the cross-examination of PW1.



13.Hence, the Lower Appellate Court has rightly set aside the said findings and ordered the acquittal. Furthermore, when it is a specific case of the complainant that he gave Rs.2,00,000/- and obtained the cheque/ Ex.P1 from the accused. However, in the cross examination, regarding the collection of the money or source of income to a loan Rs.2,00,000/-, he has described his own version which runs contrary to Ex.D1 and hence, in view of the inconsistency in the evidence of the complainant, oral evidence with that of Ex.D1 documentary evidence, the Lower Appellate Court has rightly come to the conclusion that the accused has probablised the suggestive case that the complainant was not having sufficient amount to lend such an amount of Rs.2,00,000/- find by the Lower Appellate Court does not warrant any interference. Hence, the order of acquittal passed by the Lower Appellate Court is confirmed.

14.Accordingly, this Criminal Appeal stands dismissed and the order passed by the learned Principal Sessions Judge, Salem, in C.A.No.92 of 2013, dated 22.12.2014, by setting aside the judgment made in C.C.No.268 of 2012, by the learned Judicial Magistrate No.II, Salem, dated 12.08.2013 is hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Principal Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.II,
Salem.

+1cc to M/s.P.Jagadeesan, Advocate Sr.47042

Cr1.A.No.255 of 2015

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