IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2022

PRONOUNCED ON : 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.693 of 2022

K.P.Senthilkumar ... Appellant

Vs.

R.Mohan ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C. to set-aside the judgment/acquittal order passed by the Fast Tract Court No.II Judicial Magistrate, Erode made in STC.No.100 of 2015 dated 12.12.2019 and convict the 1st respondent/accused by allowing the above Criminal appeal.

For Appellant	: Mr. K. Basker
For Respondent	: Mr.N. Manoharan

O R D E R

Challenging the judgment of acquittal, passed by the learned Judicial Magistrate, Fast Track Court-II, Eroe in STC No.100 of 2015, dated 12.12.2019, the present Criminal Appeal has been filed.

2. The fact of the case is that the brother of the accused, one Aravindoss had borrowed a sum of Rs.4 lakhs from the complainant on 26.12.2012 as a handloan. To discharge the above debt, Aravindoss handed over a post dated cheque bearing No.183977 with an endorsement that he issued the same in favour of the Complainant for a sum of Rs.4 lakhs drawn on State Bank of India, G.H.Road, Erode, dated 06.03.2013. When the complainant presented the said cheque for collection with State Bank of India, Sathy Road, Erode Branch on 06.03.2013, it was returned unpaid on the ground of "Funds Insufficient". Hence, the complainant issued statutory notice to the accused and demanded unpaid cheque amount. Thereafter, filed the private complaint against the accused person.

3. The accused appeared before the Court and raised the defence that the transaction between the accused and Aravindoss was not proved and further, there is no valid endorsement to the holder in due course as contemplated under Section 50 of the Negotiable Instruments Act and not complied with the requirement of Section 58 of Negotiable Instruments Act. The trial Court, after considering the evidence, the argument of the counsel for the parties, and relying upon the jugment of this Court reported in ***2011(1) MWN (cr.) SCC 76 (Palaniappa Mills ,rep. by its Partner P.Natarajan /vs/ A.Vaithiyalingam),*** found the accused not guilty for the offence under Section 138 of Negotiable Instruments Act and acquitted the accused. Aggrieved over the same, the present appeal has been filed by the complainant.

4. The learned counsel for the appellant submitted that the trial Court failed to consider the evidence of the complainant properly. The accused has not denied his signature in the disputed cheque and that cheque was maintained by the accused in his account, which is also not disputed. The

endorsement in favour of the complainant is also legally valid and the accused did not let in any evidence to probabilise his defence. Under these circumstances, the acquittal order passed by the Trial Court is contrary to the evidence on record and against the law and thus, pleaded to allow the Criminal Appeal and to convict the accused.

5. The learned counsel appearing for the respondent/accused supported the judgment of the Trial Court and further contended that the complainant had not let in any evidence to discharge his initial burden of proof that there is a legal transaction between the accused and the Aravindoss, who borrowed the amount from the complainant. Further the endorsement in the disputed cheque is not in compliance with Section 50 of Negotiable Act. There is also no endorsement upon the instrument and there is no express words as required under Section 50 of the Negotiable Instruments Act. Under this circumstances, the complaint is not maintainable and the complainant is not a person holder in due course and he cannot prosecute the accused person. Therefore, the trial Court rightly

acquitted the accused and dismissed the complaint. To support his argument, he relied upon the following judgments :

i) 2004 SCC ONLINE MAD 797 = 2005 MLJ CRL.186 (ASHOK KUMAR /VS/ K. GUNASEKARAN)

ii) 2010(1) MWN CRI DCC 110 = 2010 CRI.L.J.3323 (JAYARAM FINANCE /V/ JAYAPRAKASH.

iii) 2011 (1) MWN CRI DCC 76 = 2011(1) LW CRL 542 (PALANIAPPA MILLS REP. BY P.NATARAJAN /VS/ A.VAITHIYALINGAM.

iv) 2012 (2) MWN CRI DCC 28 = 2012 (2) MLJ CR 621 (G.B. FINANCE REP BY POA THIRU KOTTEESWARAN V.JOTHI.

v) 2021 SCC ONLINE MAD 11218 = 2022(1) MWN CIVIL 78 (SRI MURUHAVEL FINANCE /VS/ MUTHUSAMY & ORS)

6. I have considered the submission made by the learned counsel for the parties and also perused the materials available on records carefully.

7. The appellant is the complainant in STC No.100 of 2015 on the file of the Judicial Magistrate, Fast Track Court NO.II, Erode. He filed a private

complaint against the respondent/accused under Section 138 of Negotiable Instruments Act.

8. The case of the complainant is that the accused is brother of one Aravindoss. The said Aravinddoss borrowed a sum of Rs.4 lakhs from the complainant on 26.12.2012. In order to discharge the above said handloan, the Aravinddoss handed over a disputed post dated cheque bearing No.183977 given by the accused to him with an endorsement on 06.03.2013 for a sum of Rs.4 lakhs maintained/drawn on the State Bank of India, G.H.Road, Erode. When the complainant presented the cheque for collection, it was returned unpaid on 06.03.2013 with an endorsement "Funds insufficient"in the accused bank account. Even after issuance of legal notice, as the accused has not repaid the cheque amount, the complaint has been filed.

9. Before the Trial Court, the complainant examined himself as P.W.1 and filed 7 documents. The accused has not let in any evidence. On

considering the evidence, the Trial Court acquitted the accused on the ground that the complainant is not a valid person holder in due course of the cheque and there is no evidence to prove that the accused has any legal liability towards the Aravindoss, who handed over the cheque with endorsement to the complainant. Apart from this, the requirement of Section 50 of Negotiable Instruments Act with regard to the endorsement is not fulfilled. The disputed cheque ExP.1 did not contain a valid endorsement as required under Section 50 of the Negotiable Instruments Act.

10. Admittedly, the disputed cheque, Ex.P.1 belongs to the accused account. Initially, the cheque was given to Aravindoss. But, there is no evidence as to why the accused gave the disputed cheque to Aravindoss. Apart from this, on a perusal of Ex.P.1, it is seen that only signature is available and there is no endorsement payable to the borrower as required by Section 50 of the Negotiable Instruments Act.

11. Our High Court in ***Ashok Kumar /vs/ K.Gunasekaran (2004***

SCC Online Madras 797) considered the issue and held that in the absence of endorsement made on the instrument in the manner prescribed under Section 50 of the Act, the complainant cannot be held as a holder in due course. The decision rendered in the i) 2004 SCC Online Mad 797(Ashok kumar /vs/ K. Gunasekaran), 2) 2010(1) MWN CRI DCC 110 (Jayaram finance /v/ Jayaprakash., 3) 2011 (1) MWN CRI DCC 76 (Palaniappa Mills rep. by P.Natarajan /vs/ A.Vaithiyalingam., 4) 2012 (2) MWN CRI DCC 28 (G.B.Finance rep. by POA Thiru Kotteeswaran V.Jothi. & 5) 2021 SCC ONLINE MAD 11218 (Sri Muruhavel Finance /vs/ Muthusamy & Ors) settled the principle. Mere signature of the holder on the backside of the cheque in question is not enough to held holder in due course. The holder in due course means any person, who for consideration became the possessor of a promissory note and when the consideration for passing of the cheque is not satisfactorily proved, the presumption that the other person is holder of cheque in due course cannot be drawn in favour of the complainant. The same view is also expressed by Andhrapradesh High Court in the judgment reported in M.Ethirajuu /vs/ Rangam Adinarayana and others, 205(1)

Bankman 452. The Andhra Pradesh High Court expressed similar view on the basis of law laid down by our Apex Court in the judgment reported in U.Ponnappa Moothan Sons /vs/ Catholic Syrian Bank Ltd., 191(1) SC 113, that "the definition makes it clear that to be a "holder"in due course a person must be a holder for consideration and the instrument must have been transferred to him before it becomes overdue and he must be a transferee in good faith and another important condition is that the transferee namely the person who for consideration became the possessor of the cheque should not have any reason to believe that there was any defect in the title of transferer.

12. On the facts of this case, there is no endorsement found in the document, Ex.P.1, as required under Section 50 of the Negotiable Instruments Act. Therefore, the complaint is not maintainable and the accused is entitled for acquittal. Hence, I find no infirmity in the acquittal order passed by the Trial Court and there is no merit in the Criminal Appeal and this Criminal Appeal is liable to be dismissed.

13. In the result, the Criminal Appeal is dismissed and the judgment

passed by the Judicial Magtrate, Fast Track Court NO.II , Erode in STC No.100 of 2015, date d 12.12.2019 is confirmed.

23.12.2022

mrp

To

1. The Judicial Magistrate,
   Fast Track COurt No.II,
   Erode.

V.SIVAGNANAM, J.,

mrp

Pre-delivery order in

Crl.A.No.693 of 2022

23.12.2022