THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.A.No.400 of 2021

T.Senthil Kumar ... Appellant

Vs.

S.Shanmugasundaram ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the order of acquittal dated 19.11.2019 made in S.T.C.No.111 of 2017 on the file of the Judicial Magistrate (FTC-II), Erode.

For Appellant : Mr. M.Guruprasad

For Respondent : Mr.D.Selvaraju
for M/s C.S.Saravanan

ORDER

This Criminal Appeal has been filed to set aside the order of acquittal dated 19.11.2019 passed in S.T.C.No.111 of 2017 by the Judicial Magistrate, Fast Track Court No.2, Erode.

2. The appellant herein is the complainant in STC No.111/2017 before the Trial Court and he filed the above complaint against the respondent/ accused for the offence punishable under Section 138 of Negotiable Instruments Act. The case of the appellant/complainant is that he lend a sum of Rs.9,00,000/- on 01.10.2003 to the respondent/accused to meet out his business needs and in order to repay the same, the respondent issued three cheques bearing Nos.258061 dated 31.10.2003; 258062 dated 28.11.2003; and 258063 dated 26.12.2003, each for a sum of Rs.3,00,000/-, drawn on Katholic Siriyan Bank, Erode Branch. Subsequently, the appellant presented the above cheques for collection and the same were returned as " Account closed" by his banker viz.,Oriental Bank of Commerce, Erode on 27.04.2004. Hence, after issuing statutory notice on 28.05.2004 to the respondent/accused, he filed the above complaint.

3. Before the Trial Court, the appellant/complainant examined himself as PW1 and marked 9 documents as Ex.A1 to Ex.A9 . On the side of the respondent/ accused, one witness was examined as DW1 and no documentary evidence was adduced. The Trial Court, after perusing the oral and

documentary evidence, acquitted the respondent/ accused from the offence under Section 138 of Negotiable Instruments Act. Challenging the above order, the present Criminal Appeal has been filed.

4. The learned counsel for the appellant submitted that the Trial Court has failed to consider the fact that the respondent has not denied the issuance of cheques as well as his signature found in the cheques and he has not adduced any evidence to prove that the signatures found in the cheques are not belonged to him. He also submitted that the legal notice Ex.P7 was mistakenly sent in the name of S.Shanmugasundaram, instead of T.Shanmugasundaram, however, there is no dispute with regard to the address mentioned in the legal notice, sent to the respondent is not himself. But the above fact was not considered by the Trial Court.

5. The learned counsel for the appellant further contended that once the signatures found in the cheques were admitted, the presumption envisaged in Section 118 of Negotiable Instruments Act can legally be inferred that the chques were drawn for consideration, on the date, which the cheques bear

and Section 139 of Negotiable Instruments Act, enjoins on the Court to presume that the holder of the cheque received it for discharge of any debt or liability. But, the Trial Court has failed to appreciate the above legal aspect, and hence, the judgment of acquittal passed by the Trial Court is against the law as well as facts. As such, the above order passed by the Trial Court is liable to be set aside and the respondent/ accused has to be convicted.

6. The learned counsel for the respondent/accused argued the matter, supporting the judgment passed by the Trial Court and further contended that the Trial Court, in its judgment para 21, 22, and 23, recorded the reason for acquitting the accused/ respondent. But the appellant/complainant failed to prove that the petitioner is the proprietor of " Sri Adhi Tex". According to the respondent, he is S.Shanmugasundaram, s/o K.S.Subramanian and not T.Shanmugasundaram and the appellant/complainant has failed to adduce any sufficient evidence for payment of Rs.9,00,000/- to the respondent/accused.

7. The learned counsel for the respondent also submitted that, before Trial Court, during cross examination, the appellant/ complainant admitted

that the respondent/accused was working as labour in " Adavan Textiles" and hence, it is not possible to pay such a huge amount of Rs.9,00,000/- to the respondent/accused by the appellant, without any interest, only by receiving the cheques. Further, the appellant/ complainant was specifically cross examined by the respondent/ accused about the proprietorship of "Aadi Tex" and no documents was filed to prove the proprietorship of "Aadi Tex". According to the respondent/accused, he is K.S.Shanmugasundaram, but the complaint was prosecuted the case against T.Shanmugasundaram and hence, the Trial Court has rightly found the respondent/accused not guilty of the offence punishable under Section 138 of Negotiable Instruments Act and it does not warrant any interference by this Court and pleaded to dismiss the appeal.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent and I have perused the materials on record.

9. A perusal of the records shows that, the appellant/complainant filed a complaint under Section 138 of Negotiable Instruments Act against the

respondent, alleging that the respondent/accused borrowed a sum of Rs.9,00,000/- from him and to repay the same, he issued three cheques bearing Nos.258061 dated 31.10.2003, 258062 dated 28.11.2003 and 258063 dated 26.12.2003, each for a sum of Rs.3,00,000/-, drawn on Katholic Siriyan Bank, Erode Branch. Subsequently, when the cheques were presented for collection, the same were returned as " Account closed " by his banker viz.,Oriental Bank of Commerce, Erode on 27.4.2004. Hence, after issuing statutory notice to the respondent/accused, he filed the complaint before the Trial Court.

10. The Trial Court dismissed the complaint filed by the appellant/ complainant on the grounds that i) the complaint was given against T.Shanmugaundaram, but legal notice was sent to S.Shanmugasundaram; ii) the appellant has not proved the fact that the cheques were issued and signed by the respondent/accused and are pertaining to his bank account; and iii) no evidence was adduced for payment of Rs.9,00,000/- to the respondent by the appellant/complainant.

11. During cross examination, the appellant admitted that, he is an income tax assessee, but, he has not shown the payment of Rs.9,00,000/- to the respondent/accused in his income tax account. Further, the appellant/ complainant not filed any material to prove that the respondent was the proprietor of " Shri Aathi Tex". It reveals from the records that the PW1 during his cross examination admitted that he prosecuted the case against T.Shanmugasundaram and also admitted that the respondent/accused was working as Labour at "Adavan Textiles". It is the contention of the appellant that the respondent/accused had run " Adi Tex". In the cheques Ex.P1, Ex.P3 and Ex.P5, issued by the respondent/ accused also, the Seal of "Shri Aathi Tex" is found. But the above contention of the appellant is denied by the respondent/accused that, he is not proprietor of " Shri Aathi Tex" and the above cheques are not pertaining to his bank account. Under these circumstances, the appellant ought to have produced sufficient materials to show that the disputed cheques were issued by the respondent and he is the proprietor of " Shri Aathi Tex".

12. Admittedly, the cheques Ex.P1, Ex.P3 and Ex.P5 were not signed under the capacity of proprietor of "Shri Aathi Tex" by one Shanmugasundaram, whereas, it was signed "For Shri Aathi Tex". In such circumstances, it is for the appellant/ complainant to prove that the respondent/accused was the proprietor of " Shri Aathi Tex". Besides, it is mandatory requirement to prove that the cheques issued had been maintained in the bank account of the drawer. But, in this case, the respondent denied that the above cheques not belonged to him and it is not pertaining to his bank account. Further, there is no material to show that the cheques are pertaining to the bank account maintained by the respondent. Therefore, the Appellant/complainant failed to prove the above legal aspect.

13. Apart from this, the appellant, while deposing evidence as PW1, admitted in the cross examination that he is maintaining income tax account and other accounts. When the respondent denied the borrowal of the amount of Rs.9,00,000/- from the appellant, it is for the appellant to produce some materials to show that he lend Rs.9,00,000/- on a particular date, to the respondent for his business purpose. In the absence of any material to prove

the payment of Rs.9,00,000/-, Section 139 of Negotiable Instruments Act will not come to aid, to support the appellant/complainant.

14. Therefore, the Trial Court, after considering the evidence adduced by the parties, has come to the conclusion that the appellant/ complainant has not made out a case against the respondent and has rightly acquitted the respondent from the offence under Section 138 of Negotiable Instruments Act. Therefore, I find no reason to interfere with the findings of the Trial Court and there is no merit in the Criminal Appeal.

15. Accordingly, this Criminal Appeal is dismissed, confirming the judgment passed by the Trial Court in STC No.111/2017 dated 19.11.2019.

25.01.2023

Internet: Yes/No
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To:

The Judicial Magistrate, Fast Track Court No.2, Erode.

V.SIVAGNANAM, J.
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