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CRL.A.No.13 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2023

DELIVERED ON : 08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CrI.A.No. 13 of 2018

P.Selvaraj

: Petitioner

Vs.

U.S.Gowrilakshmi

: Respondent

PRAYER: Criminal Revision filed under Section 378 of Criminal Procedure Code, to set aside the Order of acquittal dated 20.07.2017 made in C.A.No.204 of 2016 on the file of the learned II Additional District and Sessions Judge, Erode reversing the Order dated 05.11.2016 made in S.T.C.No.313 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court – I) Erode.

For Petitioner

: Ms.R.Vigneshwari

for Mr.M.Guruprasad

For Respondent

: Mr.A.Sundaravadhanam

ORDER

This Criminal Revision Petition has been filed to set aside the Order of acquittal dated 20.07.2017 made in C.A.No.204 of 2016 on the file of the

<https://www.mhc.tn.gov.in/> learned II Additional District and Sessions Judge, Erode reversing the Order



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dated 05.11.2016 made in S.T.C.No.313 of 2015 on the file of the learned

Judicial Magistrate (Fast Track Court – I) Erode.

2. The learned Counsel for the Appellant submitted that the learned Judicial Magistrate (Fast Track Court-I), Erode had after conducting the trial, on appreciation of evidence by Judgment dated 05.11.2016 in S.T.C.No.313 of 2015, convicted the Accused, sentencing her to undergo Simple Imprisonment for six months and to pay compensation of Rs.5,60,000/-.

3. Aggrieved by the same, the Accused had preferred Criminal Appeal before the learned Principal Sessions Judge, Erode. The case was subsequently made over to the learned II Additional District and Sessions Judge, Erode in Crl.A.No.204 of 2016.

4. After hearing the arguments of both the Appellant and the Respondent, the learned II Additional District and Sessions Judge, Erode by Judgment dated 20.07.2017 in Crl.A.No.204 of 2016, reversed the finding of guilt recorded by the learned Judicial Magistrate (Fast Track Court-I), Erode in S.T.C.No.313 of 2015 and acquitted the Accused for the offence under Section 138 of the Negotiable Instruments Act, 1881. Therefore, the



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Complainant before the learned Judicial Magistrate (Fast Track Court – I),

Erode had preferred this Appeal.

5. The learned Counsel for the Appellant contended that the loan was granted by the Firm, M/s.Pandian and Co. The Complaint was filed by one of the partners of M/s.Pandian and Co. The learned II Additional District and Sessions Judge, Erode, in the Appeal had reversed the finding on the ground that the Complaint was filed in an individual capacity and the evidence available before the trial Court was based on the fact that the loan was granted to the individual and cheque received by them. Therefore, the learned II Additional District and Sessions Judge, Erode had reversed the finding.

6. The learned Counsel for the Appellant submitted that the finding recorded by the learned Appellate Judge is against the Provision of law, particularly with regard to Sections 141 and 142 of the Negotiable Instruments Act, 1881, and Sections 2 (d) and 190 of Cr.P.C., Therefore, the learned Counsel for the Appellant seeks to set aside the Judgment of acquittal recorded by the learned II Additional District and Sessions Judge, Erode in Crl.A.No.204 of 2016 and to restore the Judgment of Conviction recorded by the learned Judicial Magistrate (Fast Track Court – I), Erode in



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S.T.C.No.313 of 2015.

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7. The learned Counsel for the Respondent by way of reply submitted that in the statutory notice, the Complainant had stated that the firm had extended the loan and cheque issued by the Respondent was received by the firm. It is the contention of the P.W-1 that he had extended the loan and received the cheque. The learned Judicial Magistrate (Fast Track Court – I), Erode failed to appreciate the law regarding partnership firms and had mechanically convicted the Accused based on presumptions available under Section 138 of the Negotiable Instruments Act, 1881.

8. It is the contention of the learned Counsel for the Respondent that the Appellate Court had reversed the finding on three grounds:

- a) There was no made over from the firm to the individual.
- b) No authorisation from the partnership firm to the individual.
- c) In the course of the trial, during the cross-examination, the defence of the Accused was that the I.P was filed and in which the 17th Respondent is M/s.Pandian and Co. was put to the P.W-1.

9. The learned Judicial Magistrate (Fast Track Court-I), Erode had rejected the defence of the Accused on the ground that in I.P.No.27 of 2013,



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the 17th Respondent was “M/s.Pandian and Co.” represented by the partner, namely, Arogyaswamy, whereas this Complaint had been filed by M/s.Pandian and Co. represented by partner, P.Selvaraj.

10. It is the further submission of the learned Counsel for the Respondent that Section 141 of the Negotiable Instruments Act, 1881 is not applicable to the partnership concerned. The loan was availed on 07.09.2013. I.P was filed on 23.09.2014. As per the submission of the learned Counsel for the Respondent that Section 141 of the Negotiable Instruments Act, 1881 is applicable only if the offence was committed. Thiru.P.Selvaraj was not the Power of Attorney holder or holder in due course. No sufficient material was furnished before the trial Court to establish that the Complainant, P.Selvaraj, was the partner of the firm M/s.Pandian and Co. As per the statutory notice, it is stated that M/s.Pandian and Co. had extended the loan. In the evidence, it is stated that Thiru.P.Selvaraj had extended the loan. Therefore, on proper appreciation of evidence, based on the technicalities of law, the learned II Additional District and Sessions Judge, Erode had on proper application of law, rejected the contention of the Complainant before the trial Court and therefore reversed the finding of guilt recorded by the learned Judicial Magistrate (Fast Track Court-I), Erode in S.T.C.No.313 of 2015.



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11. It is the further submission of the learned Counsel for the Respondent that the Judgment of the learned II Additional District and Sessions Judge, Erode in Crl.A.No.204 of 2016 on proper appreciation of fact and law does not warrant any interference by this Court by exercising the power of the Appellate Court. Therefore, this Appeal lacks merit and is to be dismissed.

12. The learned Counsel for the Respondent relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Milind Shripad Chandurkar Vs. Kalim M.Khan and another*** reported in ***AIR 2011 SCC 1588***.

13. Point for Consideration:

Whether the Judgment of acquittal recorded by the learned II Additional District and Sessions Judge, Erode in C.A.No.204 of 2016 dated 20.07.2017 reversing the Order of the learned Judicial Magistrate (Fast Track Court – I) Erode in S.T.C.No.313 of 2015 dated 05.11.2016 is to be set aside as perverse?

14. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent. Perused the Judgment of the learned Judicial Magistrate in S.T.C.No.313 of 2015 and the Judgment of the learned Second



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Additional Sub Judge in C.A.No.204 of 2016 and the evidence of P.W-1.

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15. On perusal of the Judgment of the learned Judicial Magistrate in S.T.C.No.313 of 2015 and the Judgment of the learned Second Additional Sessions Judge, Erode in C.A.No.204/2016, it is found that the Judgment of acquittal recorded by the learned Second Additional Sessions Judge is found acceptable in the light of the law regarding partnership firm.

16. The Complaint was filed by one Selvaraj who is a partner of M/s.Pandian & Co. In the course of cross-examination of the Complainant as P.W-1, a specific question was put to him as to whether he had produced any document to show that he is one of the partners of M/s.Pandian & Co. For which, he had replied that he had produced partnership deed as Ex.P-7 and the Income Tax assessment as Ex.P-10. To the specific question that is, Is there any document to show that he is the partner of M/s.Pandian & Co. or had he produced any document authorising him to prefer the Complaint, he had given evasive reply. Also, he was confronted regarding filing of Insolvency Petition by the husband of the Accused, in which, the names of the creditors as Respondents had been mentioned among which one of the creditors mentioned in the Insolvency Petition filed by the husband of the Accused is M/s.Pandian & Co. for which also he denied in cross-



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examination. At the earliest, before filing of the Complaint, when statutory notice was issued by the Complainant, the Accused had issued reply to the statutory notice denying the liability to pay the amount to the Complainant firm. In the reply he had stated that there is no enforceable liability against the Accused. As already pointed out that the husband of the Accused had filed Insolvency Petition in I.P.No.27/2013 on the file of the learned Second Additional Sub Judge, Erode. In short, the defence of the Accused was that (i) there is no enforceable liability with the Complainant/Selvaraj for the Accused. (ii) The husband of the Accused had already filed I.P.No.27/2013 and the same is pending before the learned Second Additional Sub Judge, Erode on the date of filing of the Complaint. (iii) There is no document to prove that the Complainant/Selvaraj in STC.No.313/2015 is a Partner of M/s.Pandian & Co. or the Partnership Firm, M/s.Pandian & Co. had authorized Thiru.Selvaraj as Power of Attorney on behalf of the Partnership Firm to prefer the Complaint. When there is no document linking the Complainant/Selvaraj to Partnership Firm of M/s. Pandian & Co. the Complaint is not maintainable.

17. The learned Judicial Magistrate, Fast Track Court, Magisterial level, Erode in Judgment in S.T.C.No.313/2015 dated 05.11.2016 had ignored the technicalities in law raised by the Accused in the cross-



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examination of the Complainant as P.W-1 and had convicted the Accused based on the facts that the cheque was issued by her. The signature on the cheque was not denied. Therefore, the burden to let in rebuttal evidence is on the Accused. The presumption is in favour of the Complainant. Therefore, the learned Judicial Magistrate-I, Fast Track Court, Erode had convicted the Accused.

18. In the Appeal preferred by the Accused in C.A.No.204/2016, the grounds raised in the memorandum of Appeal was that the learned Judicial Magistrate failed to consider that there was no document linking the Complainant with Partnership Firm. Therefore, the evidence of the Complainant as P.W-1, as an individual, and not on behalf of the Partnership Firm cannot be considered. The Complaint filed by the individual in his capacity, as individual capacity, is not maintainable was raised before the learned Second Additional Sessions Judge. The learned Second Additional Sessions Judge accepted those grounds to be in the light of the Provisions of law governing the Partnership Firm governing trial of cases under Section 138 of Negotiable Instruments Act. Therefore, the finding of guilt recorded by the learned Judicial Magistrate, Fast Track Court, Magisterial level was reversed on the legal grounds, technical plea of the Appellant and technicalities of law.



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19. When I.P.No.27/2013 is pending and in which the name of M/s.Pandian & Co. had been mentioned as one of the Respondents/creditors, the filing of the Complaint under Section 138 of Negotiable Instruments Act is against the wife of the Petitioner in the Insolvency Petition, as though she had parted with the amount and not filing the document showing the name of Selvaraj as one of the partners of partnership firm M/s.Pandian Co. is a valid point raised in the Appeal and the same was considered by the learned Second Additional Sessions Judge in reversing the finding of guilt. Therefore, the Judgment of the acquittal recorded by the learned Second Additional Sessions Judge is a well-reasoned Judgment which does not warrant any interference by this Court.

20. The rulings relied by the learned Counsel for the Respondent/Accused in *Milind Shripad Chandurkar Vs. Kalim M.Khan and another* reported in *AIR 2011 SCC 1588*, is also found acceptable in the factual matrix of the case. The facts of the reported Judgment is also similar in nature. Therefore, the reliance placed by the learned Counsel for the Respondent in the reported decision is accepted in this case also. In the light of the reported decision, the finding of acquittal recorded by the learned Second Additional Sessions Judge is found acceptable. There is no



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ground to interfere with the Judgment of the learned Second Additional Sessions Judge which is a well-reasoned Judgment that does not warrant any interference. The Appeal against acquittal has no merits and hence rejected.

21. In the light of the above discussion, the point for consideration is answered in favour of the Respondent and against the Appellant. The Judgment of acquittal recorded by the learned II Additional District and Sessions Judge, Erode in C.A.No.204 of 2016 dated 20.07.2017 reversing the Order of the learned Judicial Magistrate (Fast Track Court – I) Erode in S.T.C.No.313 of 2015 dated 05.11.2016 is not perverse.

In the result, this ***Criminal Appeal is dismissed.*** The Judgment of acquittal recorded by the learned II Additional District and Sessions Judge, Erode in C.A.No.204 of 2016 dated 20.07.2017 reversing the Order of the learned Judicial Magistrate (Fast Track Court – I) Erode in S.T.C.No.313 of 2015 dated 05.11.2016 is confirmed.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

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To
<https://www.mhc.tn.gov.in/judis>



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1. The Judicial Magistrate,
(Fast Track Court – I),
Erode.

2. The II Additional District and Sessions Judge,
Erode.

3. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery judgment made in

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