IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.387 of 2016
and Crl.M.P.No.5798 of 2016

A.Kuppuraj ... Appellant

vs.

1.M/s. Bavin Garments
Old No.25, New No.50,
Thiruvalluvar Nagar, 1st Street,
60 feet Road, Tiruppur – 641602

2.R.P.Duraisamy

3.D.Vanitha

4.S.Mohan Kumar ... Respondents

PRAYER: Criminal Appeal filed under Section 378 (4) Criminal Procedure Code, 1973, against the judgment and orders dated 30.11.2015 passed in C.C.No.36 of 2014 by the Judicial Magistrate, Fast Track Court, Tiruppur.

For Appellant : Mr.N.Sivaprakash

For R1 to R4 : Mr.K.S.Karthik Raja

J U D G M E N T

Challenging the order of acquittal dated 30.11.2015 passed by the learned Judicial Magistrate, Fast Track Court, Tiruppur, in C.C.No.36 of 2014 (previously C.C.No.232 of 2013 on the file of the Judicial Magistrate No.II, Tiruppur), the present criminal appeal is filed by the appellant/complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present criminal appeal would also be indicated.

3. The case of the complainant in a nutshell is as follows:

The accused 1 to 4 are partners in the 1st accused firm M/s.Bavin Garments, Tiruppur. According to the complainant, the 2nd accused on behalf of the 1st accused firm, borrowed a sum of Rs.3,00,000/- on 23.12.2010 from the complainant by way of a Cheque bearing No.396550 drawn on Tamil Nadu Mercantile Bank, Tiruppur Branch. The accused also promised the repay the same with interest at the rate of 18% per annum on demand by the complainant or to his order and executed a Promissory Note in favour of the complainant. The accused did not pay any amount either towards principal or interest and after much persuasion, the 2nd accused handed over a cheque (Ex.P1) bearing number 009795, dated 13.02.2013 drawn on Bank of India, Avinashi Branch, for a sum of Rs.4,15,000/- in favour of the complainant at his residence at Door No.151-A, Kuppanna Chettiyar Street, Tiruppur. When the cheque was presented by the complainant on 13.02.2013 for collection through his bankers, viz., Tamil Nadu Mercantile Bank Limited, Tiruppur, the same was returned for the reason "Funds Insufficient', as is seen from the cheque return memo dated 14.02.2013 (Ex.P3). Thereafter, the complainant issued a statutory notice dated 22.02.2013 (Ex.P4) through his counsel to the accused calling upon them to pay the amount due under the Cheque (Ex.P1) within fifteen days from the date of receipt of the notice. The accused received the said notice, as is evidenced by the postal acknowledgment cards (Ex.P6 and Ex.P7) and sent a reply notice dated 08.03.2013 (Ex.P9), which according to the complainant contained false allegations. Therefore, the complainant issued a rejoinder dated 16.03.2013 (Ex.P10) to the accused. The contention of the complainant is that though the accused were in receipt of the rejoinder, they did not come forward to make good the payment due under the cheque.

4. Therefore, the complainant filed a private complaint under Section 200 Criminal Procedure Code before the Judicial Magistrate

No.II, Tiruppur, in C.C.No.232 of 2013 against the accused for the offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act, 1881. It was subsequently transferred to the file of Judicial Magistrate, Fast Track Court, Tiruppur and renumbered as C.C.No.36 of 2014. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the learned Judicial Magistrate furnished copies of the records to them under Section 207 Criminal Procedure Code. When the accused were questioned with regard to the substance of accusation made against them, they pleaded not guilty. Therefore, the case was posted for trial.

5. On the side of the complainant, the complainant examined himself as PW.1 and marked Ex.P1 to Ex.P10. The accused, when questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, they denied of having committed any offence. On the side of the accused, one witness was examined and Ex.D1 to Ex.D20 were marked.

6. The learned Judicial Magistrate, Fast Track Court, Tirppur, after analysing the oral and documentary evidence on record, concluded that the accused are not guilty of the offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act on the following grounds:

(i) The complainant though had stated in his complaint that the accused executed a Promissory Note on 23.12.2010, the same has not been marked as a document.

(ii) The amount borrowed from the complainant during 2010 was repaid by the accused during 2012.

(iii) The accused had proved that the cheque (Ex.P1) was issued only as a security for the loan obtained by them during 2010.

Aggrieved over the order of acquittal, the present criminal appeal is filed.

7. Heard Mr.N.Sivaprakash, learned counsel appearing for the appellant and Mr.K.S.Karthik Raja, learned counsel appearing for the respondents.

8. Since the Trial Court Judge had observed that the Promissory Note has not been adduced as an exhibit, the complainant had filed a

petition in Crl.M.P.No.5798 of 2016 along with the present appeal for receiving the following documents:

(i) Original Promissory Note executed by the 2nd accused on behalf of the 1st accused-firm on 23.12.2010.

(ii) Statement of accounts of the complainant's bank for the period from 01.12.2010 to 24.12.2010.

(iii) Income Tax Returns for the assessment year 2011-2012 of the complainant.

9. In the counter affidavit dated 13.06.2017, the execution of the promissory note has not been specifically denied by the respondents in their counter affidavit. However, it was contended that all three documents sought to be marked by the present appellant/complainant would not be of any help to him. Since no serious objections are raised, the above documents are marked as Ex.P11 to Ex.P13.

10. The Statement of Accounts filed by the complainant shows that

the complainant had paid a sum of Rs.3,00,000/- by way of a Cheque bearing No.396550. The said amount was credited to the account of the 1st accused firm on 24.12.2010. Therefore, it is clear that the 1st accused firm had borrowed a sum of Rs.3,00,000/- from the complainant on 23.12.2010 and in addition to that a promissory note dated 23.12.2010 was also executed by the II accused on behalf of the It accused firm.

11. Furthermore, the II accused admitted his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved.

12. The contention of the accused was that there were various agreements of sale between the complainant and the accused as evidenced from Ex.R1 to Ex.R19 through which the complainant and his family members wanted to purchase lands and in this regard there were several transactions between the complainant and the accused. Their specific contention was that the amount borrowed during 2010 from the complainant was repaid in the year 2012 and the cheque (Ex.P1), was issued only as a security.

13. All the above contentions of the respondents/accused have not been substantiated. In fact, the accused did not get into the witness box to prove their allegations in the reply notice (Ex.P9). The Trial Court Judge even without an iota of evidence had concluded that the accused had repaid the loan amount borrowed by them in the year 2010. If really the accused had repaid the entire loan amount borrowed by them, they would not have kept quiet. They did not take any steps to get back the cheque (Ex.P1) from the complainant for the reasons best known to them. Moreover, the Promissory Note and the Statement of Accounts of the complainant, clearly would go to show that the accused had borrowed a sum of Rs.3,00,000/- on 23.12.2010 by way of a cheque and executed a Promissory Note, and subsequently they issued a cheque on 13.02.2013 (Ex.P1). Therefore, the order of acquittal passed by the Trial Court Judge is totally perverse and the same is liable to be set aside.

14. As regards the sentence, since the borrowal of the amount was during 2010, the 1st accused is directed to pay a sum of Rs.4,15,000/- towards compensation under Section 357 Cr.P.C., to the complainant and the other accused 2 to 4 shall undergo Simple Imprisonment for a period

of six months and to pay a sum of Rs.1,00,000/- each towards compensation in default to undergo Simple Imprisonment for a period of two weeks. The additional documents filed by the complainant in Crl.M.P.No.5798 of 2016 are marked as Ex.P11 to Ex.P13.

15. **In the result**,

(i) The Criminal Appeal is allowed. Consequently, the Crl.M.P.No.5798 of 2016 is also allowed.

(ii) The judgment and orders dated 30.11.2015 passed by the Judicial Magistrate, Fast Track Court, Tiruppur in C.C.No.36 of 2014, is set aside.

(iii) The accused 1 to 4 are convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and the 1st accused is directed to pay a sum of Rs.4,15,000/- towards compensation under Section 357 Cr.P.C., to the complainant and sentenced the other accused 2 to 4 to undergo Simple Imprisonment for a period of six months and to pay a sum of Rs.1,00,000/- each towards compensation in default to undergo Simple Imprisonment for a period of two weeks.

(iv) The accused 2 to 4 shall surrender before the learned Judicial Magistrate, Fast Track Court, Tiruppur, within 15 days from the date of receipt of a copy of the order, failing which, the Trial Court shall take steps to secure their presence for undergoing the sentence.

26.06.2024

Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm

To

1.The Judicial Magistrate,
Fast Track Court, Tiruppur.

2.The Section Officer, Criminal Section,
High Court, Madras.

R.HEMALATHA, J.

dm

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