

(2002) 08 MAD CK 0191

Madras High Court

Case No: Criminal Appeal No. 549 of 1995

Manoharlal

APPELLANT

Vs

R. Sundararajan and Others

RESPONDENT

Date of Decision: Aug. 19, 2002

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2003) 1 BC 507

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Single Bench

Advocate: Kaithamalaikumaran, for A.K. Kumaraswamy, for the Appellant; M. Venkateswaran, for the Respondent

Final Decision: Dismissed

Judgement

M. Karpagavinayagam, J.

Manoharlal, the appellant herein filed the complaint for the offence u/s 138 of the Negotiable Instruments Act against the respondents 1 and 2. The case ended in acquittal. Hence, the appeal against the acquittal.

2. The case of the complainant is as follows:

"The complainant is running a finance company by name "Anand Finance". Sundararajan (A1), the first respondent herein is the Partner of the firm Sri Kalaivani Polymers (A2), the second respondent herein. On 27.7.1994, the first respondent on behalf of the second respondent received a loan of Rs. 50,000/- and issued a cheque dated 12.8.1994 for the said sum. On 12.9.1994, the cheque was presented. But, the same was returned on 16.9.1994 with the endorsement "Exceeds Arrangement". On 29.9.1994, the lawyer notice was sent to the respondents demanding the cheque amount. After receipt of this notice, the respondent/accused sent a reply on 6.10.1994 (stating that the respondents are not liable to pay any amount. Hence, the complainant filed the above complaint."

3. On behalf of the complainant, the complainant examined himself as P.W. 1 and also examined the Manager of the Bank, who returned the cheque, as P.W. 2. When the accused were questioned u/s 313, Cr. P.C., it was submitted on their behalf that there is no connection whatsoever with the complainant and neither any amount was received from him nor any cheque was issued in favour of him. On their behalf, the first accused was examined -as D.W. 1 and one Arasendran was examined as D.W. 2.

4. According to D.W.1, on the request of Arasendran (D.W.2), he gave a cheque to Arasendran as a security cheque for helping him to get loan amount from one Ashok Kumar and even though the loan amount obtained by the said Arasendran was discharged at the intervention of the police, the cheque which was issued by the first respondent has been misused by the present complainant Manoharlal, who is the brother of the said Ashok Kumar. This was reiterated by D.W.2.

5. The Trial Court on conclusion of the trial, disbelieved the evidence of the complainant and believed the testimony of D.Ws. 1 and 2 and acquitted the accused. Hence, this appeal by the complainant.

6. Mr. Kaithamalaikumaran, the learned Counsel for the appellant would submit that the reasonings given by the Trial Court for acquitting the accused are not sound and when Ex. PI, the cheque had been admittedly issued by the first accused on behalf of the second accused, which was subsequently dishonoured for want of funds, the Trial Court ought to have convicted the accused and, as such, the Trial Court committed a grave illegality in acquitting the accused.

7. Arguing contra, Mr. Venkateswaran, the learned Counsel appearing for the respondents would submit that the findings given by the Trial Court are correct and the defence evidence, oral and documentary, would show that a false complaint has been filed by the complainant and as such, the appeal has to be dismissed.

8. I have carefully considered the submissions made by the Counsel on either side and perused the records.

9. According to the complainant, he gave a loan of Rs. 50,000/- on 27.7.1994 to the first accused and the first accused gave a cheque for Rs. 50,000/- on 12.8.1994 on behalf of the second accused and the same was dishonoured on 16.9.1994 and in spite of the receipt of notice, the cheque amount was not paid back.

10. On the other hand, it is the case of the accused that the cheque signed by the first accused on behalf of the second accused was never issued to the complainant and no amount was received as a loan by him from the complainant and the cheque which was issued by him as a security for helping one Arasendran was handed over to one Ashok Kumar and the same has been misused by the complainant, who is the brother of the said Ashok Kumar.

11. On the side of the complainant, besides examining P. Ws. 1 and 2, Exs. P1 to P11 were marked to show that the loan was given to the accused, who in turn, issued the cheque which was ultimately dishonoured.

12. On the side of the accused, besides examining D.Ws. 1 and 2, Exs. D1 to D8 were marked to show that the cheque was given only to Ashok Kumar as a security cheque and since there was misunderstanding between the said Arasendran and Ashok Kumar, the accused sent intimation Ex. D7 requesting the Bank to stop the payment and that there was no transaction with the complainant.

13. On considering these materials, the Trial Court acquitted the accused on the following reasons:

"(1) According to P. W. 1, the first accused received the loan of Rs. 50,000/- and issued a cheque on 12.8.1994 and the same has been entered into Exs. P8 and P9, the Daily Register of the finance company. But, the entries in Exs. P8 and P9 would not show that datewise entries have been made. Regarding the commission discounted, the entry has been made on the wrong date. So many entries written in Ex. P8 were found to be inserted on a later date. Therefore, these documents have been created in order to support the case of the complainant for having issued the loan and received the cheque.

(2) There is a money transaction between Ashok Kumar, the brother of the complainant and Arasendran, D.W.2, On the intervention of the Superintendent of Police, the matter has been settled. The amount due to be paid to Ashok Kumar was paid on 29.8.1994 by the said Arasendran in the presence of the Superintendent of Police. To this effect, D.W.2 sent a lawyer notice to Ashok Kumar as well as to the complainant on 7.10.1994 through Ex. D4. Through Exs. D2 and D5, it has been established that the amount of Rs. 65,000/- which was due to be paid by D.W. 2 to Ashok Kumar was already paid. On 29.9.1994, the complainant sent a notice to D.W. 2 with reference to the dishonour of the cheque for Rs. 50,000/- on 16.9.1994 through Ex. D3. Despite that, no complaint was filed by the complainant against the said Arasendran. These documents along with the evidence of D.Ws. 1 and 2 would show that the matter was settled in the police station at the intervention of the Superintendent of Police and without getting satisfied over the same, the complainant who is the brother of Ashok Kumar was set up to file a false complaint against the accused by misusing the cheque given as a security to Ashok Kumar.

(3) Though P.W.2, the Bank Manager would state that the cheque bearing No. 14404 was returned as "Exceeds Arrangement" on 16.9.1994, he admitted that prior to this date, the accused sent an intimation Exs. D1 and D7 on 8.1.1993 asking the Bank to stop the payment in respect of this cheque number. When the same was intimated to the Bank by the accused on 8.1.1993 to stop the payment, there is no necessity for the accused to issue the cheque in question on 27.7.1994 by putting the date 12.8.1994 towards discharge of the loan of Rs. 50,000/-. Therefore, the accusation in

the complaint cannot be true.

(4) The defence theory has been clearly mentioned in the reply notice Ex. P7 immediately after receipt of the notice sent by the complainant. Therefore, the case of the accused is more probable and as such, the case of the complainant cannot be accepted."

14. On these reasonings, the Trial Court has rejected the prosecution case and acquitted the accused.

15. The Counsel for the appellant is not able to say as to how these findings acquitting the accused can be said to be wrong.

16. Apart from these reasonings, it is also seen from the evidence of D.W. 2 that immediately on coming to know of the dishonour of the cheque in question on 16.9.1994, on inquiry with the Bank, the accused sent a notice to both the complainant Manoharlal and his brother Ashok Kumar stating that he never issued such a cheque in favour of Manoharlal. On receipt of this notice, it is seen from the records that Manoharlal sent two notices in respect of the dishonour of the cheque on 29.9.1994 both to D.W. 1 and D.W. 2 separately. But, there is no reason as to why no complaint has been filed against the said Arasendran.

17. The fact remains, as admitted by P.W. 2, that D.W. 1, the first accused sent intimation as early as 8.1.1993 requesting the Bank to stop the payment of the cheque bearing No. 14404 through Exs. D1 and D7. When such is the case put forward by the defence which has been established through the admission of P.W. 2, the Bank Manager, the case of the complainant cannot be said to be true or genuine.

18. As discussed by the Trial Court in detail, there is no difficulty in holding that the complainant Manoharlal was set up to file a false complainant against the accused, the respondents herein for the offence u/s 138 of the Negotiable Instruments Act by producing the false records. Consequently, the appeal is liable to be dismissed as devoid of merits and the same is dismissed accordingly.

19. Since both the Trial Court as well as this Court has taken the view that a false complaint has been filed against the respondents, the respondents are at liberty to initiate appropriate proceedings in the Court of law against the appellant for claiming damages.