

(2007) 05 MAD CK 0008

Madras High Court

Case No: Criminal Appeal No. 1394 of 2002

Mathai

APPELLANT

Vs

Seenivasan

RESPONDENT

Date of Decision: May 23, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 313
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: M. Veluswami, for the Appellant; T.S. Gopalan and Co., for the Respondent

Final Decision: Dismissed

Judgement

P.R. Shivakumar, J.

The complainant, whose complaint u/s 200 Cr.P.C preferred for an offence punishable u/s 138 of Negotiable Instruments Act was dismissed, has come forward with this present appeal against the judgment of acquittal passed by the learned Judicial Magistrate No. IV, Vellore on 17.8.1994 in C.C. No. 138 of 1994.

2. According to the complainant, the respondent herein owed a sum of Rs. 25,000/- towards tyre retreading charges and he issued a cheque for the said sum on 31.1.1994 drawn on Indian Overseas Bank, Allapuram Branch, Allapuram, Vellore. The said cheque, when the same was presented for collection through the banker of the appellant/complainant, was returned on 2.2.1994 with an endorsement "Funds insufficient", Even after the said fact was brought to the notice of the respondent/accused, and a demand for payment was made by serving a notice in writing, he did not make payment within the statutory period of fifteen days and hence the offence punishable u/s 138 of Negotiable Instruments Act has been committed by the respondent/accused. Such complaint was lodged before the said Magistrate u/s 200 Cr.P.C.

3. After recording the sworn statement of the complainant, the same was taken on file as C.C. No. 138 of 1994. After service of process, the respondent/accused entered appearance, denied the allegations constituting the above said charge and pleaded not guilty.

4. In the trial, two witnesses were examined and Exs.P.1 to P.6 were marked on the side of the complainant. The incriminating circumstances found in the evidence adduced on the side of the prosecution (complainant) were explained to the respondent/accused and his explanation for the said parts of evidence were recorded u/s 313 Cr.P.C. No witness was examined and no document was marked on the side of the respondent/accused.

5. The learned Judicial Magistrate, after going through the evidence, came to the conclusion that the appellant/complainant had not proved the charge beyond reasonable doubt and hence acquitted the respondent/accused by her judgment dated 17.8.1994. Aggrieved by the said judgment of acquittal, the appellant herein, originally preferred a revision before the learned Principal Sessions Judge in CrI.R.C. No. 42 of 1994 and the same came to be dismissed holding that the revision was not competent and an appeal alone would lie. Hence the present appeal has been preferred by the appellant/complainant, challenging the correctness of the judgment of acquittal passed by the learned Judicial Magistrate No. IV, Vellore.

6. This Court heard the submissions of the learned Counsel for the appellant and the learned Counsel for the respondent and also perused the materials available on record.

7. The mere fact that the cheque issued for the discharge of a debt or other liability has been returned by the bank for the reason that there was insufficiency of funds in the account on which the cheque was drawn or that the amount covered by the cheque exceeded the arrangements made by the drawer with the bank concerned, will not be enough to constitute an offence punishable u/s 138 of Negotiable Instruments Act. The same is one of several ingredients of the said offence. The offence becomes complete only on the failure of the drawer to make payment within 15 days after the receipt of statutory notice u/s 138 of the Act informing him of the fact of dishonour of cheque and demanding payment. In this case, admittedly, intimation regarding dishonour of cheque was received by the appellant/complainant on 2.2.1994. It is contended on behalf of the appellant/complainant that the same was informed to the respondent/accused by a telegram on the very same day, which according to him, was served by the respondent/accused on 3.2.1994.

8. Section 138(b) which deals with the nature of demand to be made for prosecuting the drawer of the cheque reads as follows:

138(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in

writing, to the drawer of the cheque (within thirty days (previously 15 days during the relevant period) of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

9. A single Judge of this Court in "M. Murugan v. Queen Jhansi Vetrikodi" reported in 2004 2 L.W(Crl) 600 has held that a telegram intimating the dishonour is not proper compliance of the requirement of demand by Notice in writing u/s 138(b) of Negotiable Instruments Act. On that short point itself, the appeal is bound to fail.

10. Therefore, this Court comes to the conclusion that there is no error or infirmity in the finding of the trial Court holding that the offence punishable u/s 138 of Negotiable Instruments Act has not been proved beyond reasonable doubt and that the respondent/accused is entitled to be acquitted. There is no merit in the appeal and no scope for interference with the judgment of the trial court.

Hence the appeal deserves to be dismissed. Accordingly, the appeal shall stand dismissed.