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CrI.A(MD)No.68 of 2014



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.A.(MD)No.68 of 2014

K.Ramesh

... Appellant/Complainant

vs.

D.Saravanakumar

... Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378 Cr.P.C., to call for the records and set aside the order passed by the Fast Track Judicial Magistrate Court, Srivilliputtur in C.C.No.27 of 2013, dated 18.09.2013.

For Appellant : Mr.M.Jothi Basu

JUDGMENT

This Criminal Appeal is filed against the order of passed in C.C.No.27 of 2013, on the file of the Fast Track Judicial Magistrate Court, Srivilliputtur, dated 18.09.2013.



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2.The appellant is the complainant and the respondent is the accused.

3.The crux of the complaint is that on 30.12.2012, the respondent borrowed a sum of Rs.5 lakhs and also assured that he will repay the same within a period of one month. When the appellant requested a demand to repay the said loan amount, the respondent issued a cheque for the said sum. It was presented for collection and the same was returned as dishonored for the reason “funds insufficient”. Hence, the complaint.

4.On the side of the appellant, he had examined P.W.1 and exhibited 5 documents as Ex.P.1 to Ex.P.5. On the side of the respondent, he had examined D.W.1 to D.W.3 and exhibited 6 documents as Ex.D.1 to Ex.D.6.

5.A perusal of the oral and documentary evidence, the trial Court found that the respondent not guilty of the offence and acquitted him. Aggrieved by the same, the present appeal has been filed.



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6.The appellant raised grounds that the respondent has categorically admitted his signature and issuance of cheque and as such, the appellant discharged his initial burden as contemplated under Section 138 of the N.I. Act. The respondent has also failed to rebut the presumption as contemplated under Section 139 of the N.I Act. Even then, the trial Court acquitted the respondent for the offence under Section 138 of N.I Act. The appellant and the respondent are friends and both are having shops and they are known to each other for the past several years. Therefore, without any security, the appellant had lend a sum of Rs.5 lakhs as loan to the respondent. Therefore, the respondent has no right to question the financial capacity of the appellant herein. Therefore, the trial Court ought not to have acquitted the respondent for the offence under Section 138 of the N.I Act.

7. Heard. Perused the materials available on record.

8.According to the appellant, the respondent borrowed a sum of Rs.5 lakhs and issued a cheque in order to repay the said loan. It was presented for collection and the same was returned as dishonored for the reason “funds insufficient”. The cheque was marked as Ex.P.1. The



statutory notice was marked as Ex.P.4. In order to rebut the same, the respondent had examined D.W.1 to D.W.3.

9.A perusal of the records revealed that the respondent was doing vending business and he had not acquaintance with the appellant. There was no business transaction between them. In the month of June 2012, the respondent had borrowed a sum of Rs.30,000/- as loan from Durgayamman Finance. For the said loan, the respondent has issued a cheque and pro-note. As per the conditions, the respondent ought to have pay interest at the rate of 12% per annum. Accordingly, daily the respondent had paid a sum of Rs.300/- for 100 days. Thereafter, on the very same cheque and pro-note, he borrowed another sum of Rs.40,000/-, in which, he returned only a sum of Rs.26,000/- and there was balance of Rs.14,000/-. Since he fell illness and as such, he could not able to pay the same. Therefore, the said cheque was handed over to the appellant and the same was misused by him and initiated proceedings under Section 138 of the N.I Act. Therefore, the respondent had also lodged a complaint and the same was marked as Ex.D.1. In fact on the said complaint, an enquiry was conducted and the counter-party had categorically admitted that he had received two cheques from the respondent for the loan availed by the respondent herein. D.W.2 also deposed as follows:



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“..எ.சா.2 ஆக பாலமுருகன் விசாரிக்கப்பட்டுள்ளார். ஆவர் புளியங்குடி வீராச்செட்டியார் பாலிடெக்னிக் கல்லூரியில் படித்து வருவதாகவும் தனது தந்தையான குற்றஞ்சாட்டப்பட்ட நபருக்கும் துர்க்கையம்மன் பைனான்ஸ் பாரதிக்கும் கணக்கு வழக்கு இருந்தது. 2013ஆம் ஆண்டு பிப்ரவரி மாதம் 2வது வாரம் தன் தந்தை சென்றிருந்ததாகவும் எனக்கு தொலைபேசி மூலம் ரூ.2,800/- துர்க்கையம்மன் பைனான்சில் கொடுத்துவிட்டு கடன் சிட்டையையும் கொடுத்துவிட்டு வருமாறு சொன்னார் என்றும் காசோலை எண்கள்.100028, 1002913 ஆகும். மேலும் தான் பணத்தை கொடுத்தவுடன் துர்க்கையம்மன் பைனான்சில் பாரதி கணக்கு வழக்கு முடிந்துவிட்டது என்றும் 2 நாட்கள் கழித்து வாங்கள் என சொன்னார் என்றும் தனது தந்தையிடம் விவரங்கள் சொன்னதாகவும் அவர் தான் வந்து காசோலைகளை வாங்கி கொள்வதாக கூறினார் என்றும் அதில் உள்ள காசோலையில் ஒன்றை வைத்து வழக்கு போட்டுள்ளார் என்று சாட்சியம் அளித்துள்ளார்.”

10.In that record, D.W.3 conducted an enquiry and the summons issued by him, which was marked as Ex.D.4. Therefore, the respondent has categorically rebutted the presumption by reasonable defence. Therefore, the trial Court has rightly dismissed the complaint and this Court finds no infirmity or illegality in the order passed by the Court below. Hence, the appeal is liable to be dismissed.



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11. Accordingly, the Criminal Appeal stands dismissed.

27.04.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The Judicial Magistrate,
Fast Track Court, Srivilliputtur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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