



CRL.A.No.456 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.08.2024

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THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.456 of 2018

G.Prabhakaran : Appellant/Respondent/Complainant

Versus

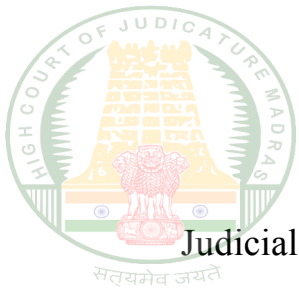
N.Jayaraaj : Respondent/Appellant/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal dated 23.03.2018 made in C.A.No.314 of 2017 on the file of the learned II Additional District and Sessions Judge, Erode reversing the order dated 16.09.2017 made in STC.No.176 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode.

For Appellant : Mrs.R.Vigneshwari
for Mr.M.Guruprasad
For Respondent : Mr.K.M.Subramaniam

ORDER

This Criminal Appeal had been filed to set aside the judgment of acquittal dated 23.03.2018 made in C.A.No.314 of 2017 on the file of the learned II Additional District and Sessions Judge, Erode, reversing the order dated 16.09.2017 made in STC.No.176 of 2015 on the file of the learned



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Judicial Magistrate (Fast Track Court No.II), Erode.

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2. The learned Counsel for the Appellant submitted that the Complaint had been filed by the Complainant before the learned Judicial Magistrate, Fast Track Court No.2, Erode. The learned Judicial Magistrate, Fast Track Court No.2, Erode by Judgment dated 16.09.2017 convicted the Accused to undergo the imprisonment of one year and to pay a fine of Rs.5,000/-. Aggrieved by the same, the Accused had preferred the Appeal before the learned II Additional District and Sessions Judge, Erode in C.A.No.314 of 2017. After hearing the arguments, the learned II Additional District and Sessions Judge, Erode by Judgment dated 23.03.2018 reversed the finding of guilt recorded by the learned Judicial Magistrate, Fast Track Court No.II, Erode in STC.No.176 of 2015. Aggrieved by the same, the Complainant before the learned Judicial Magistrate, Fast Track Court No.II, Erode, had approached this Court by filing this Appeal.

3. The learned Counsel appearing for the Appellant invited the attention of this Court to the stand taken by the Accused before the trial Court that the Complainant had issued statutory notice. The Accused having received the statutory notice, had offered an explanation as though he had



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received only a cover containing the address of the Counsel for the

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Complainant and the address of the Accused. On opening the cover, the notice was not found. The learned Judicial Magistrate, Fast Track Court No.II, Erode, had discussed the evidence of the Complainant as well as the Accused who was examined as D.W-2 had clearly stated that the Accused had not given any notice calling upon the Complainant that the notice alleged to have been sent was not received. It was only an empty cover and also the learned trial Judge had discussed the evidence. The defence of the Accused that the cheques were surreptitiously taken away by the Complainant for which, the Accused had not given any Complaint against the Complainant. The learned Counsel appearing for the Appellant invited the attention of this Court to the evidence of the Complainant/P.W-1 as well as the evidence of the Accused/D.W-2 before the trial Court which reads as follows:

Evidence of P.W-1:

“எதிரி எனக்கு எவ்வாறு பழக்கம் என்று கேட்டால் எதிரி என்னுடைய மூத்த சகோதரருடன் வேலை செய்து கொண்டிருந்தான். அதன்பிறகு என்னுடைய கடைக்கு வருவார். அதன்மூலம் எதிரி எனக்கு வழக்கம். நான் என்ன கடை வைத்துள்ளேன் என்று கேட்டால் முகாம்பிகை மெடிக்கல் ஏஜென்சீஸ் என்ற பெயரில் மருந்து கடை வைத்துள்ளேன். மேற்படி கடையை எந்த முகவரியில் எவ்வளவு நாட்களாக நடத்திவருகிறேன் என்று கேட்டால் நெம்பர் 14, எம்.கே.சி ரோடு, ஈரோடு என்ற முகவரியில் கடந்த 4 வருடங்களாக நடத்தி வருகிறேன். என்னுடைய மூத்த சகோதரரின் பெயர் உறிகரன். கடந்த 10 வருடங்களுக்கு முன்பு என்னுடைய மூத்த சகோதரர் ரிலையன்ஸ் கம்யூனிகேசன்ஸ் நிறுவனத்தில் வேலை செய்து கொண்டிருந்தார். அப்போது எதிரியும் அதே நிறுவனத்தில் என்னுடைய மூத்த சகோதரருடன்



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வேலை பார்த்துக் கொண்டிருந்தார். எதிரி மேற்படி நிறுவனத்தில் என்ன பதவியில் வேலை பார்த்தார் என்று கேட்டால் அதுபற்றி எனக்குத் தெரியாது. எதிரி மேற்படி நிறுவனத்தில் ஜோனல் மேனஜராக வேலை செய்து கொண்டிருந்தார் என்று சொன்னால் அதுபற்றி எனக்குத் தெரியாது. அதன்பிறகு எதிரி எங்கு வேலை செய்தார் என்று கேட்டால் அதன்பிறகு எதிரி எங்கு வேலை செய்தார் என்ற விபரம் எனக்குத் தெரியாது.....

..... எனக்கும் எதிரிக்கும் இடையே வேறு ஏதாவது வரவு செலவு உள்ளதா என்று கேட்டால் நானும் எதிரியும் மேலும் எதிரியின் நண்பர்கள் முன்று பேரும் ஒன்றாக சேர்ந்து பைனான்ஸ் நிறுவனம் ஆரம்பிக்கலாம் என்று என்னை எதிரி அழைத்திருந்தார். அதற்காக உள்ள ஆவணங்களில் கையெழுத்து போடச் சொன்னார். ஆனால் பைனான்ஸ் நிறுவனம் ஏதும் ஆரம்பிக்கவில்லை. எந்த தேதியில் மேற்படி பைனான்ஸ் நிறுவனம் ஆரம்பிக்க கையொப்பம் செய்தேன் என்று கேட்டால் தேதி நினைவில்லை. சுமார் 2 அல்லது 2½ வருடங்களுக்கு முன்னதாக ஒரு ஆட்டரின் முன்னிலையில் சில ஆவணங்களில் கையொப்பம் போட்டேன். அவ்வாறு ஆவணங்களில் கையொப்பம் செய்தபிறகு என்ன நடந்தது என்று கேட்டால் அதன்பிறகு பைனான்ஸ் நிறுவனம் ஏதும் தொடங்கவில்லை வேறு ஏதும் நடைபெறவில்லை. அதன்பிறகு எதிரியைப் பார்த்து அதுபற்றி நான் கேட்டேனா என்று கேட்டால் அதைப்பற்றி எதிரியை கேட்டபோது அதற்காக பணம் யாரும் கொடுக்காததால் அதைப் பற்றி நான் மேல் விவரங்களை கேட்டுத் தெரிந்து கொள்ளவில்லை.”

Evidence of D.W-2:

வாடகை ஒப்பந்தம் போட்ட பின் யார் யார் எவ்வளவு முதலீடு போட வேண்டும் என்று எழுதிக் கொண்டோம். அது பிரபாகரனிடம் உள்ளது. அதன் நகல் என்னிடம் இல்லை. அது பதிவு செய்யப்படவில்லை. அந்த ஒப்பந்தம் 16.09.13ல் கார்பன் பேப்பரில் எழுதப்பட்டது. அதில் சாட்சிகள் யாரும் கையொப்பம் இடவில்லை. தொழில் தொடங்குவதற்கான கட்டிடம் கட்ட ஆரம்பித்தபோது கட்டிடம் கட்ட அனுமதி மாநகராட்சியிடம் பெற்றோமா என்றால் மாநகராட்சியில் அனுமதி பெற்றோமா என்றால் இல்லை. வாடகை ஒப்பந்தத்தில் எவ்வளவு இடத்திற்கு கட்டிடம் கட்ட வேண்டும் என்ற விவரம் எழுதப்படவில்லை என்றால் சரிதான். நாங்கள் இருவரும் இணைந்து கூட்டாக எந்த வங்கியில் கணக்கு ஆரம்பித்தோம் என்றால் நிறுவனத்தின் பணி துவக்கப்படவில்லை ஆதலால் கணக்கு துவங்கவில்லை.

நிறுவனம் துவக்கப்படாததால் கூட்டாக வங்கி கணக்கு துவக்கப்படவில்லை. நான் கட்டிடம் கட்டியது ஆறுமுகம் என்ற மேஸ்திரியை வைத்து கட்டினேன். அந்த கட்டிடம் கட்டுவதற்கான பில்கள், ரசீதுகள். வரவு செலவு கணக்குகள் உள்ளனவா என்றால் உண்டு, அவை பிரபாகரனிடம்



உள்ளன. மேஸ்திரி ஆறுமுகத்தை எனக்கும் தெரியும், வாதிக்கும் தெரியும். நான் காசோலையை காணாமல் போனது குறித்து விளம்பரம், பொது அறிவிப்பு கொடுத்தேனா என்றால் இல்லை. பிரபாகரன் காசோலையை காணாமல் இடம் மாறி விட்டதால் வங்கியில் மட்டும் சென்று ஸ்டாப் பேமண்ட் கொடுத்திருந்தேன். வங்கியில் நான் காசோலை தொலைந்துவிட்டதாக கூறியிருந்தேன். வங்கியில் காசோலை எண் போட்டு கொடுத்துள்ளேன் என்றால் சரிதான். எ.ம.சா.ஆ.2 ஆவணம்தான் நான் வங்கியில் கொடுத்த கடிதம் என்றால் சரிதான். என்ன காரணத்திற்காக காசோலைகளுக்கு ஸ்டாப் பேமண்ட் கொடுக்கப்பட்ட விவரம் அதில் குறிப்பிடப்படவில்லை என்றால் சரிதான். ஆனால் வழக்குக்கு வந்த பின்தான் வழக்கு காசோலை காணாமல் போன விவரம் தெரிந்தது. வா.சா.ஆ.1 வழக்கு காசோலை என்னுடையதுதான். வழக்கறிஞர் அறிவிப்பு வந்த பின் நான் என்ன நடவடிக்கை எடுத்தேன் என்றால் எனக்கு வழக்கறிஞர் அறிவிப்பு வரவில்லை. அந்த கவரில் என்னுடைய பெயரும் வழக்கறிஞர் பெயரும் குறிப்பிட்டிருந்தது. வழக்கறிஞரிடமிருந்து வெறும் கவர் வந்ததாக கூறும் நான் அதன் விவரம் கேட்டு வழக்கறிஞருக்கு கடிதம் அனுப்பினேனா என்றால் இல்லை. வெறும் கவர் வந்ததாக கூறும் நான் அவர் உள்ளூர் முகவரி என்பதால் அவரை சந்தித்து விளக்கம் கேட்டேனா என்றால் இல்லை. ஸ்டாப் பேமண்ட் கொடுத்த மற்ற 3 காசோலைகள் மீது என்ன நடவடிக்கை எடுத்தேன் என்றால் நடவடிக்கை எடுக்கவில்லை. வழக்கு முடிந்தபின் நடவடிக்கை எடுக்கலாம் என இருந்தேன். நான் பல நபர்களிடம் பணம் வாங்கி காசோலை கொடுத்துள்ளேன் என்றால் சரியல்ல.

4. Therefore, the learned Counsel for the Appellant submits that the Judgment of acquittal recorded by the learned II Additional District and Sessions Judge, Erode is perverse in the light of the materials available before the trial Court. The Complainant had discharged the burden of proof as per the Indian Evidence Act.

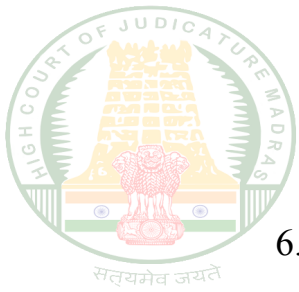
5. As per the Provisions of Section 138 of the Negotiable Instruments Act, 1881, the burden is shifted on the Accused who had to let in rebuttal evidence. Here, the Accused was examined as D.W-2. There are



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sufficient materials in the cross examination of D.W-2 to arrive at a conclusion

that the finding of guilt recorded by the learned Judicial Magistrate, Fast Track Court No.II, Erode is a well reasoned order. Instead the learned Appellate Judge had reversed the finding on the ground that the Complainant does not have the sufficient resources to advance such an amount. The said finding is not supported by evidence. The Complainant as P.W-1 had furnished all relevant documents regarding the defence of the Accused that the Complainant does not have the resources. Further, the learned Counsel for the Appellant submits that the Accused is in the habit of entering into new ventures of business and inviting the partners on the strength of those business seeking loans from the Banks and issuing cheques. Subsequently, issuing notice to the Banks requesting the Bank to stop payment of cheques issued by him. This portion of the evidence of the Complainant is available through the cross examination of D.W-2. Therefore, the learned Counsel for the Appellant seeking to set aside the Judgment of the acquittal recorded by the learned II Additional District and Sessions Judge, Erode in C.A.No.314 of 2017 and to restore the Judgment and conviction recorded by the learned Judicial Magistrate, Fast Track Court No.II, Erode in STC.No.176 of 2015, dated 16.09.2017.



6. In support of his contention, the learned Counsel for the Appellant

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(i) In **(2022) 6 SCC 735** in the case of **Tedhi Singh Vs. Narayan Dass**

Mahant the Hon'ble Supreme Court had held as follows:

“The Trial Court and the First Appellate Court have noted that in the case under [Section 138](#) of the N. I. Act the complainant need not show in the first instance that he had the capacity. The proceedings under [Section 138](#) of the N. I. Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent the Courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”

(ii) In **(2022) 1 SCC 742** in the case of **Triyambak S.Hegde Vs. Sripad**

the Hon'ble Supreme Court had held as follows:

“From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exhibits P-6 and P-2 is not disputed. Exhibit P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as



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noted by the courts below a presumption would arise under *Section 139* in favour of the appellant who was the holder of the cheque. *Section 139* of the N.I. Act reads as hereunder:

“139. Presumption in favour of holder It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

7. The learned Counsel for the Respondent submitted that the learned Judicial Magistrate, Fast Track Court – II, Erode had convicted the Accused in STC.No.176 of 2015 for the offence under Section 138 of the Negotiable Instruments Act, 1881. On Appeal by the Accused in C.A.No.314 of 2017, the learned II Additional District and Sessions Judge, Erode by Judgment dated 23.03.2018 dismissed the Complaint and set aside the Judgment of Conviction recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode in STC. No. 176 of 2015. Aggrieved by the same, the Complainant before the learned Judicial Magistrate and the Respondent in C.A.No.314 of 2017 had preferred this Criminal Appeal.

8. The cheque was presented on 20.02.2015. On the same date, it was returned as “insufficient funds”. The Respondent received the notice on 19.03.2015. It is the contention of the Complainant that the Accused had not complied with the condition insisted in the notice. It is the defence of the



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Accused that the notice was received in registered cover. The registered cover did not contain the notice. Therefore, the Accused was unable to understand the contents of the alleged notice. Only if the contents were there, he had the chance to send a reply. When the Accused was unable to respond to the notice, the cause of action itself had not arisen.

9. If the statutory notice for bouncing of cheque under Section 138 of the Negotiable Instruments Act, 1881, is issued, the person who issued a cheque after receipt of notice shall be granted sufficient time either to pay the amount or to reply. Only after 15 days time after the receipt of notice, if the person who had issued the cheque, has not sent any reply, then, the Complainant has the cause to lodge a Complaint within 30 days. Here, the cause of action had not arisen. Therefore, the Complaint itself is not maintainable.

10. The second defence of the Accused is that he had not received any amount from the Complainant. The cheque is to be supported with the prior liability. Here, there was no enforceable prior liability for the Accused to issue the cheque as stated by the Complainant. It is the further defence of the Accused that the Complainant does not have the resources to extend the loan



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for Rs.2,30,000/-. Based on the assessment of evidence, the learned Judicial

Magistrate had convicted the Accused. The learned Sessions Judge had reversed the finding of guilt recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode. It is the case of the Accused that the Complainant and the Accused are childhood friends. The Complainant who stealthy removed the cheque of the Accused from his house and filed this Complaint. Since the Accused found out the three blank cheque leaves duly signed were missing, he had issued notice calling upon the Bank not to honour the cheque (Stop payment). The Appellant and the Accused planned to set up a departmental store. For this, Appellant is alleged to have given three cheques. The trial Court convicted the Accused on the ground of borrowal and defence of the Accused had not been probablised. Therefore, the presumption is available to the Complainant. The presumption is available to the Complainant cannot be proved in a manner known to law. No document was obtained by the Respondent in support of the Bank transaction. The learned Sessions Judge reversed the finding. The learned Sessions Judge held that there is no evidence to arrive at a conclusion that the Appellant had wherewithal to extend the loan amount of Rs.2,30,000/-. Ex.P-8 was marked in support of the Complainant which is an Income Tax returns which was accepted by the trial Court. It was not accepted by the Appellate Court on the ground that it came

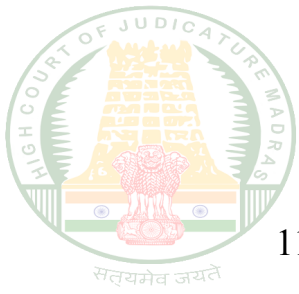


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into existence after lodging of the Complaint. Therefore, it was created for the purpose of the case. Therefore, it cannot be accepted. There is no proof of sufficient means on the part of the Complainant to extend the loan of Rs.2,30,000/- to the Accused. The Income Tax returns for the previous years only would show that he had income between Rs.2,00,000/- and Rs.2,50,000/- in previous years. When that be the case, the claim of the Complainant that he had extended the loan of Rs.2,30,000/- to the Accused is unbelievable. Therefore, the learned II Additional District and Sessions Judge, Erode, had reversed the finding recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode. The Judgment of the learned II Additional District and Sessions Judge, Erode is a well reasoned Order. It does not warrant any interference of this Court exercising the power of Appeal. The evidence of the Accused had probablised the defence of the Accused. In support of his contention, the learned Counsel for the Respondent had relied on the ruling reported in **CDJ 2005 SC 752** in the case of **G.Pankajakshi Amma & Others Vs. Mathai Mathew (D) Thr. Lrs. & Another.**

Point for consideration:

Whether the Judgment of the learned II Additional District and Sessions Judge, Erode in C.A.No.314 of 2017 dated 23.03.2018 is perverse and is to be set aside?



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11. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent. Perused the deposition of the Complainant as P.W-1 and the deposition of the Manager of State Bank of India, Moolapalayam Branch, who was examined as P.W-2, who states that both the Complainant and the Respondent have their accounts in Moolapalayam Branch. Perused the documents under Ex.P-1 to Ex.P-8 and the evidence of D.W-1 to D.W-3 and documents under Ex.D-1 to Ex.D-10. Also, perused the Judgment of the learned Judicial Magistrate, Fast Track Court – II, Erode and the Judgment of the learned II Additional District and Sessions Judge, Erode.

12. On perusal of the records, it is found that the Judgment of the learned Judicial Magistrate, Fast Track Court – II, Erode is found proper on assessment of evidence. The reason stated by the Accused that he had not received the notice and only the cover was received. Therefore he was unable to send a reply. Therefore, the cause of action does not arise was also rejected by the learned Judicial Magistrate, Fast Track Court – II, Erode, on the ground that if that had been so, what prevented the Accused from seeking a copy of the notice and informing the Complainant that he received only cover without notice. Further, regarding the defence of the Accused that the cheque was removed surreptitiously, the learned Judicial Magistrate had observed that no



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Police Complaint was given against the missing of the cheque leaves. The learned Judicial Magistrate also observed that the cheque for which the stop payment was given did not contain the Cheque Number in the hands of the Complainant. Therefore, the case of the Complainant in whose favour the presumption under Sections 139 and 118 of the Negotiable Instruments Act is available was considered favourably in favour of the Complainant.

13. The defence of the Accused probalising the case of the Accused that the Complainant did not have sufficient means to advance a loan of Rs.2,30,000/- was also rejected on the ground that when the Accused was cross-examined the Complainant regarding the resources of the Complainant, the Complainant had marked Ex.P-8-Income Tax returns. That shows he had enough resources. Therefore, the learned Judicial Magistrate, Fast Track Court –II, Erode on the basis of the reported rulings in (i) *AIR 2000 SC 954* in the case of *Kusam Ingots and Alloys Ltd., Vs. M/s.Pennar petitioner Securities Ltd and others*, (ii) *(2010) 3 MLJ (Crl.) 547 (SC)* in the case of *Rengappa Vs. Srimohan and* (iii) *2015 2 MLJ Crl. 605 SC* in the case of *T. Vasanthakumar Vs. Vijayakumari*, held that the case of the Complainant to be *bona fide*. The learned Judicial Magistrate had on the basis of assessment of evidence found that the case of the Complainant was acceptable and had thereby convicted the



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Accused for the offence under Section 138 of the Negotiable Instruments Act,

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14. The learned II Additional District and Sessions Judge, Erode, on Appeal reversed the finding of the learned Judicial Magistrate, Fast Track Court – II, Erode on the ground that Ex.P-8 regarding Income Tax returns of the Complainant was marked only after institution of the Complaint. Therefore, it is unacceptable and thereby rejected the claim of the Complainant. Further, the learned II Additional District and Sessions Judge, Erode, had observed that from the Income Tax returns filed in the previous years, the income of the Complainant is between Rs.1,00,000/- to Rs.2,00,000/-. Therefore, the case of the Complainant that he had advanced the amount of Rs.2,30,000/- to the Accused is found unacceptable. The learned II Additional District and Sessions Judge, Erode, had failed to consider the fact that the Accused had stated that only he had received registered cover without the copy of the notice. If that be so, it is for the Accused to address the Complainant seeking for copy of the notice. Also the Accused had stated three or four cheques signed by him were surreptitiously removed and therefore, he made a request to the Bank for stop payment, but the particulars of cheques were not mentioned in the stop payment notice sent by the Accused to his Bank. Also,



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he had not given a Police Complaint regarding missing of cheque leaves. Till

date of examination of the Accused as D.W-2, he had accepted the suggestion of the Complainant that he had not preferred Complaint regarding missing of cheque leaves with the Police. Under those circumstances, the presumption is available to the Complainant as per the reported ruling in ***Tedhi Singh's case and Triyambak's case***. The ruling relied on by the learned Counsel for the Respondent in ***Pankajakshi Amma's case*** will not support the case of the Accused. The strong presumption is available in favour of the Complainant till this Appeal. The probability created suspicion only and not sufficient proof as per the reported ruling of ***Pankajakshi Amma's case***. It is for the respective trial Judges either to accept or reject the defence of the Accused in the facts and circumstances of the individual case regarding the probability of the defence of the Accused. Here, except the fact that the learned II Additional District and Sessions Judge, Erode, had rejected Ex.P-8 filed by the Complainant regarding the payment of Income Tax by the Complainant regularly. Therefore, filing of Ex.P-8 only after the institution of the private Complaint is not acceptable. Therefore, rejected the claim of the Complainant is found unacceptable and perverse. The main ground raised by the Accused that he did not receive the copy of the statutory notice sent by the Complainant is found unacceptable from the point of view of an ordinary prudent man. If it



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is received as empty cover, it is for the Accused to seek details from the sender of the registered notice. Also, the learned Judicial Magistrate that he had not summoned the staff of the Postal Department who registered the postal cover regarding the weight of the cover and whether it contained any letter, notice or it was a minimum stamp for an empty cover. Therefore, the learned Judicial Magistrate had properly appreciated the evidence in the light of the provisions of the Indian Evidence Act and the Negotiable Instruments Act, 1881 and also the rulings relied by both the parties and rejected the arguments of the learned Counsel for the defence before the trial Court and accepted the ruling cited by the learned Counsel for the Complainant regarding the statutory notice and time for the response of the Accused within 15 days which creates a cause of action. Therefore, the cause of action was accepted by the learned Judicial Magistrate. In the light of the inaction on the part of the Accused who had received the registered cover and acknowledged receipt of registered cover but had not responded to the statutory notice, even otherwise under Section 114 of the Indian Evidence Act regarding presumption has to be drawn the registered post contained notice. It is for the Accused to prove his contention. When he remained silent, it gives presumption. He received the cover and acknowledged the registered cover, he has to prove his burden on him that he had not received statutory notice. When that be the case, he should have acted

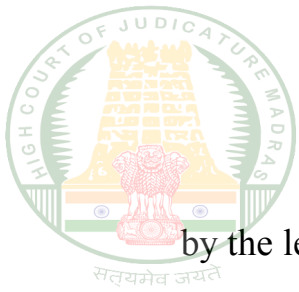


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on it but he remained silent. The adverse inference is drawn on the conduct of the Accused. From the point of view of an ordinary prudent man, the rejection of Ex.P-8 by the learned II Additional District and Sessions Judge is found unwarranted. Only during the evidence, to probablise the case of the Accused, he raised the question regarding the wherewithal of the Complainant. Therefore, the Complainant was forced to let in additional evidence. Under those circumstances, the ruling cited by the learned Counsel for the Appellant in *Tedhi Singh's case* is found acceptable to the facts of this case.

15. In the light of the above discussion, the point for consideration is answered in favour of the Appellant/Complainant and against the Respondent/Accused. The Judgment of conviction recorded by the learned Judicial Magistrate -II, Fast Track Court in STC No.176 of 2015, dated 16.09.2017 is to be restored. The Judgment dated 23.03.2018 passed in C.A.No.314 of 2017 by the learned II Additional District and Sessions Judge, Erode is to be set aside as perverse.

In the result, this ***Criminal Appeal is allowed.*** The Judgment dated 23.03.2018 passed in C.A.No.314 of 2017 by the learned II Additional District and Sessions Judge, Erode is set aside. The Judgment of conviction recorded



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by the learned Judicial Magistrate, Fast Track Court – II, Erode, is restored.

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The learned Judicial Magistrate, Fast Track Court – II, Erode, is directed to issue warrant through the jurisdictional Police to secure the Accused in continuation of the Judgment to undergo the sentence of imprisonment.

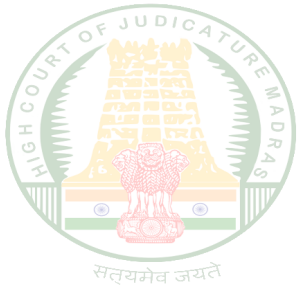
If the Accused is not secured, the Complainant is within his power to approach the learned Judicial Magistrate, Fast Track Court-II, Erode, to proclaim the Accused as absconding Accused. The learned Judicial Magistrate may pass appropriate Orders against absconding Accused as Proclaimed Offender so that the properties both movable and immovable in the name of the absconding Accused may be attached and brought to sale by public auction. The Respondent is directed to surrender before the learned Judicial Magistrate, Fast Track Court – II, Erode within a month from the date of receipt of a copy of this order.

02.08.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking order
dh



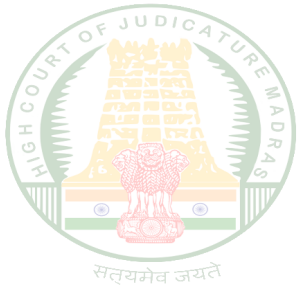
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To

1. The Judicial Magistrate,
Fast Track Court – II,
Erode.
2. The II Additional District and Sessions Judge,
Erode.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Judgment made in

CRL.A.No.456 of 2018

02.08.2024