

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.103 of 2008

K.Ramachandra

... Appellant/Complainant

vs.

P.Thirumoorthy

... Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment dated 1.11.2007 made in C.C.No.168 of 2007 on the file of Judicial Magistrate No.II, Udumalpet.

For appellant : Mr.Appasamy for
Mr.M.N.Balakrishnan

For Respondent : Mr.R.S.Anandan

JUDGMENT

Challenge in this Criminal Appeal is to the order dated 1.11.2007 passed in Calendar Case No.168 of 2007 by the Judicial Magistrate No.II, Udumalpet.

2. The appellant herein, as complainant, has filed the complaint in question under section 138 of Negotiable Instruments Act, 1881, wherein the present respondent has been shown as sole accused.

3. It is averred in the petition that on 26.12.2004, the accused has received a sum of Rs.85,000/- by way of loan from the complainant and on 26.12.2004, the accused has given a cheque in favour of the complainant and the same has been presented in Canara Bank, Uthukuli Branch. The cheque in question has been returned on 28.12.2004 stating that "funds insufficient" and thereafter, a statutory notice has been given on 11.1.2005 and even after receipt of the same, the accused has not discharged the liabilities. Under the said circumstances, the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

4. The Court below, after considering the evidence available on record, has dismissed the complaint mainly on the ground that the cheque in question has not been issued in connection with an enforceable debt. The order passed by the Court below is being challenged in the present Criminal Appeal.

5. The learned counsel appearing for the appellant/complainant has contended to the effect that on 26.12.2004, the accused has received a sum of Rs.85,000/- from the complainant so as to meet out his personal expenses and for the purpose of discharging the same, on 26.12.2004, he issued a cheque for the said sum in favour of the complainant and the same has been put into Bank and the concerned Bank has returned the same stating that "funds insufficient" and consequently, a statutory notice has been given to the accused and even after receipt of the same, he has not discharged his liability. Under the said circumstances, the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881 and for the purpose of proving the averments made in the petition, the complainant has been examined as P.W.1 and the Court below, without considering the evidence available on record, has erroneously dismissed the complaint and therefore, the dismissal order passed by the Court below is liable to be set aside.

6. The learned counsel appearing for the respondent/accused has sparingly contended that the Court below has given a clear finding to the effect that the cheque in question is not pertaining to the account of the accused and therefore, the same has not been issued in connection with an enforceable debt. Under the said circumstances, the dismissal order passed by the Court below is perfectly correct and the same does not call for any interference.

7. The cheque in question has been marked as Ex.P.1 and a copy of the statutory notice has been marked as Ex.P.3. The endorsement made by the concerned Bank has been marked as Ex.P.2.

8. In fact, this Court has perused the entire order passed by the Court below, wherein it has been clearly pointed out to the effect that Ex.P.1 Cheque has not been issued pertaining to the account of the accused. Since Ex.P.1 has not been given in respect of account of the accused, the Court cannot come to a conclusion that Ex.P.1 has been issued in connection with an enforceable debt.

9. It is a settled principle of law that as per Section 138 of Negotiable Instruments Act, 1881, the cheque in question should be given in connection with an enforceable debt. In the instant case, it has already been pointed out that Ex.P.1 has not been issued in respect of account of the accused and therefore, the Court can easily come to a conclusion that the same has not been issued in connection

with an enforceable debt. Under the said circumstances, the Court cannot come to a conclusion that the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

10. Since Ex.P.1 has not been given in connection with account of the accused and since the Court cannot come to a conclusion that the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, it is needless to state that the dismissal order passed by the Court below is perfectly correct and the same does not call for any interference.

In fine, this Criminal Appeal is dismissed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ajr
To :

- 1 Judicial Magistrate No.II, Udumalpet
 2. The Public Prosecutor, High Court, Chennai
- +1 cc to Mr.A.Baskaran, Advocate (sr.52779)

Crl.A.No.103 of 2008

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cp 08/10/2015

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