

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.116 of 2008

Jayamoorthy

... Appellant

vs.

R.Vivekanandan

...Respondent

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973 against the judgment dated 23.10.2007 passed in S.T.C.No.126 of 2003, by the Judicial Magistrate, Panruti.

For appellant : Mr.S.Kaithaimalai Kumaran

For respondent : Mr.S.Senthilmurugan

JUDGMENT

The order of acquittal dated 23.10.2007 passed in S.T.C.No.126 of 2005, by the Judicial Magistrate, Panruti, is being challenged in the present criminal appeal.

2. The appellant herein, as complainant, has filed the complaint in question under Section 138 of the Negotiable Instruments Act, 1881 and the same has been taken on file in STC No.126 of 2003, on the file of the Judicial Magistrate, Panruti, wherein the present respondent has been shown as sole accused.

3. It is averred in the complaint that on 15.7.2002, the accused has given a cheque for a sum of Rs.4 lakhs in favour of the complainant and the same has been presented on three occasions, but the concerned bank has returned the same stating 'funds insufficient' and subsequently, legal notices have been issued and even after receipt of the same, the accused has not discharged his liability and thereby committed an offence

punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. The trial Court, after considering the available evidence on record, has dismissed the complaint and thereby acquitted the accused. Against the order of acquittal, the present criminal appeal has been preferred at the instance of the complainant, as appellant.

5. The learned counsel appearing for the appellant/complainant has contended that the trial Court has assigned so many reasons and one of the reasons for dismissing the complaint is that a complaint cannot be filed on the basis of subsequent cause of action and the same is totally erroneous in view of the recent decision of the Honourable Supreme Court and therefore, the order of acquittal passed by the trial Court is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondent/accused has contended that the cheque in question has been issued by one 'Sri Krishna Engineering College' and the same has not been shown as accused and therefore, the complaint itself is not legally maintainable. Under the said circumstances, the order of acquittal passed by the trial Court is perfectly correct and the same does not call for any interference.

7. For considering the divergent submissions made on either side, the Court has to necessarily look into Ex.P1, the cheque in question, wherein it has been clearly stated that the present accused has issued the cheque in question as a Chairman of the said College. Therefore, it goes without saying that the said college must be shown as an accused. But in the instant case, an individual has been shown as an accused and therefore, it is very clear that the complaint itself is not legally maintainable.

8. The trial Court, after considering the various reasons, has also considered the maintainability of the complaint and rightly dismissed the same. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellant and therefore, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The order of acquittal passed in STC No.126 of 2003, by the Judicial Magistrate, Panruti, is confirmed.

Sd/
ASSISTANT REGISTRAR (CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

msk

To

1.The Judicial Magistrate, Panruti.

2.Do Thro The Chief Judicial Magistrate,
Cuddalore.

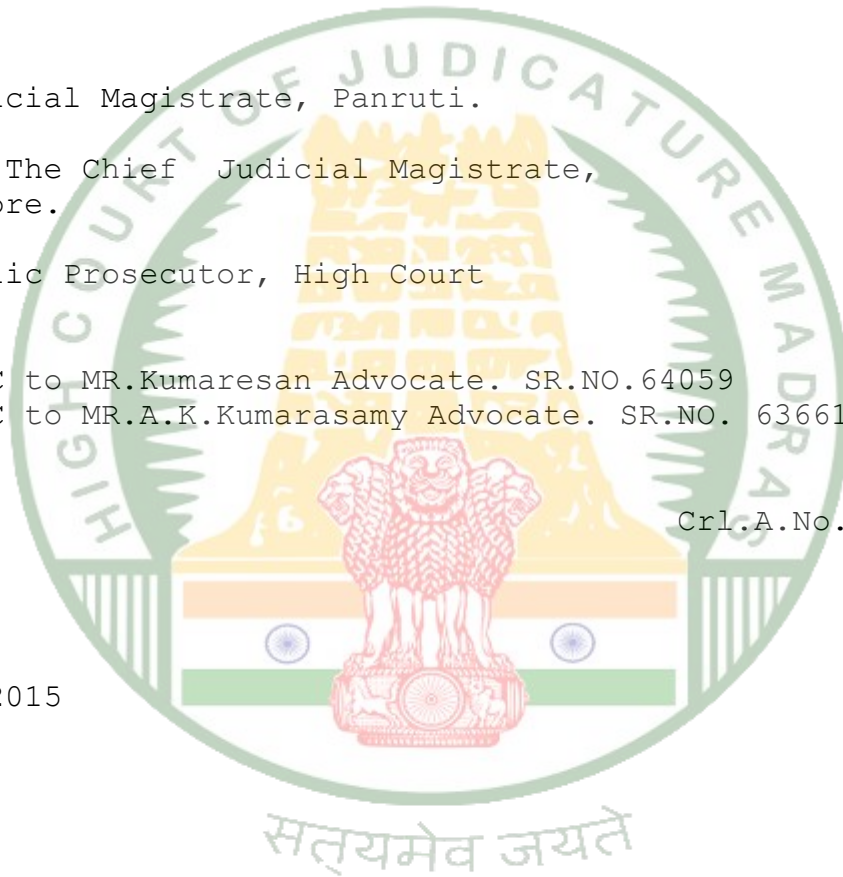
3.The Public Prosecutor, High Court
Madras.

+1 CC to MR.Kumaresan Advocate. SR.NO.64059

+1 CC to MR.A.K.Kumarasamy Advocate. SR.NO. 63661

Crl.A.No.116 of 2008

CO-MG
JD 08/12/2015



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