

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.02.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.A.No.697 of 2008

Manickam

...Appellant/Complainant

Vs.

Ganesan and Co. by partner
S.Ganesan

(Amended as per order dated
07.08.2007 made in M.P.No.2 of 2007)

...Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C.,
against the judgment of acquittal dated 12.02.2007 in C.C.No.39 of
2005 on the file of the Judicial Magistrate's Court, Rasipuram.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.C.D.Johnson

सत्यमेव जयते
J U D G M E N T

This Criminal Appeal arises out of the judgment of acquittal
dated 12.02.2007 in C.C.No.39 of 2005 on the file of the Judicial
Magistrate's Court, Rasipuram.

2.Heard the learned counsel for the appellant as well as learned counsel for the respondent.

3.The appellant as the complainant preferred a complaint against the respondent/accused stating that the respondent had borrowed a sum of Rs.1,50,000/- during 2004 for his business purpose agreeing to repay the same within ten days. Since the respondent/accused had not repaid the same, he issued Ex.P1 cheque dated 25.08.2004 for Rs.1,50,000/-. When Ex.P1 cheque was presented for encashment on 08.10.2004, it was returned as "insufficient funds" as per Ex.P2 return memo. Therefore, the appellant/complainant issued Ex.P3 statutory notice on 19.10.2004 and the acknowledgment card was marked as Ex.P4. After receiving the same, the respondent neither sent any reply nor repaid the amount. Therefore, the appellant/complainant had filed a private complaint against the respondent/accused under Sections 138, 141 and 142 of Negotiable Instruments Act.

4.The trial Court has taken cognizance of an offence, after following the procedure and recording sworn statement. Since the accused pleaded not guilty, the trial Court examined P.W.1 and Exs.P1 to P4 on the side of the complainant. No oral and documentary evidence were let in on the side of the respondent. The trial Court after considering the oral and documentary evidence, acquitted the accused stating that no notice under Section 138(b) of Negotiable Instruments Act was issued and notice was issued only to the individual capacity, not to the partner of the firm namely, M/S.Ganesan and Co., but Ex.P1 cheque was issued only by the company and not by any individual/Ganesan.

5.On perusal of the records, it is seen that Ex.P1 cheque has been issued by the partner Ganesan on behalf of the firm M/S.Ganesan and Co., but the appellant/complainant has issued notice to S.Ganesan under Section 138 of Negotiable Instruments Act and he preferred the complaint against the firm namely, M/S.Ganesan and Co., by partner S.Ganesan. Under the aforesaid circumstances, I am of the view, the trial Court has rightly held that issuance of notice is not contemplated under Section 138(b) of Negotiable Instruments Act and since the partnership is the registered firm, as to why other partners were not impleaded by the appellant and the appellant has failed to follow the provision under Section 141 of Negotiable Instruments Act. So the order passed by the trial Court does not warrant any interference and hence, it is hereby confirmed. I do not find any merits in this appeal and the appeal deserves to be

dismissed and it is hereby dismissed.

6.In the result, this Criminal Appeal is dismissed by confirming the judgment of acquittal dated 12.02.2007 in C.C.No.39 of 2005 on the file of the Judicial Magistrate's Court, Rasipuram.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Kj

To

1. The Judicial Magistrate's Court,
Rasipuram.
 2. -Do- Through The Chief Judicial Magistrate,
Namakkal.
 3. The Record Keeper, Criminal Section,
High Court, Chennai.
- 1 CC to Mr.D.Shivakumaran, Advocate SR.No. 5949

Crl.A.No.697 of 2008

JP (CO)
PSI (26.02.2015)

सत्यमेव जयते

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