

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM

The Hon'ble Thiru Justice A. SELVAM

Criminal Appeal No.658 of 2007

J. Murali

...Appellant/Respondent/Complainant

vs.

P. Ravichandran

... Respondent/Appellant/Accused

Criminal Appeal filed under Sec.378 of Criminal Procedure Code against the order of Acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court, Thirupathur in C.A.No.4 of 2006 dated 13.12.2006 against the order of the learned Judicial Magistrate No.I, Thirupathur in C.C.No.220 of 2003 dated 07.02.2006.

For appellant : Mr.S. V. Karthikeyan

For respondent: Mr.Karthik for
M/s T.S. Gopalan & Co

JUDGMENT

This Criminal Appeal has been directed against the judgment passed in Criminal Appeal No.4 of 2006 by the Additional District and Sessions Court/Fast Track Court, Thirupathur, wherein, the conviction and sentence passed in Calendar Case No.220 of 2003 by the Judicial Magistrate No.I, Thirupathur are reversed.

2. The appellant herein, as complainant, has filed the complaint, in question, under Sec.138 read with 142 of Negotiable Instruments Act 1881, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that the accused has received a sum of Rs.5,00,000/- from the complainant and in order to discharge the same, he has given a cheque, in question, on 10.03.2003 and the same has been presented in the concerned bank and the concerned bank has returned the same stating that "funds insufficient" and subsequently on 11.7.2003, a notice has been issued and ever after the receipt of the notice, the accused has failed to

discharge his liability and under such circumstances, the present complaint is filed for getting the relief sought for.

4. The trial Court, after considering the available evidence on record, has found the accused guilty for the offence under Sec.138 of Negotiable Instruments Act and sentenced him to undergo Imprisonment as mentioned in the judgment. Against the conviction and sentence passed by the trial Court, the accused as appellant has preferred an appeal in Criminal Appeal No.4 of 2006 on the file of first appellate Court/Additional District and Sessions Court/Fast Track Court, Thirupathur.

5. The first Appellate Court, after hearing the arguments of both sides, upon reappraising the evidence available on record, has allowed the appeal and thereby set aside the conviction and sentence passed by the trial court in C.C.No.220 of 2003 and consequently acquitted the accused. Against the order of acquittal passed by the first appellate court, the present criminal appeal has been filed at the instance of the complainant as appellant.

6. The learned counsel appearing for the appellant has fairly conceded that the cheque, in question, has been issued on 10.3.2003 by the accused in favour of the complainant. The cheque, in question, has been presented in the concerned bank on 23.6.2003 and on the same day, the cheque, in question, has been returned and subsequently on 11.7.2003, a legal notice has been issued and on 24.7.2003, the complaint, in question, has been filed in the court and therefore, 15 days time has not become expired and under such circumstances, the complaint itself is not legally maintainable.

7. In support of the contention put forth on the side of the appellant, the decision reported in 2014 (10) SCC 713 (Yogendra Pratap Singh vs Savitri Pandey and another) is relied upon, wherein, the Hon'ble Supreme Court has held that if the complaint is filed before the expiry of 15 days, the same is not legally maintainable.

8. In the instant case, as fairly conceded by the appellant, a statutory notice has been given on 11.7.2003, but before the expiry of the statutory period of 15 days, the complaint, in question, has been filed on 24.7.2003. Therefore, it is needless to say that the complaint, in question, is not legally maintainable and on that score alone, the present criminal appeal deserves to be dismissed.

9. In fine, this criminal appeal is dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

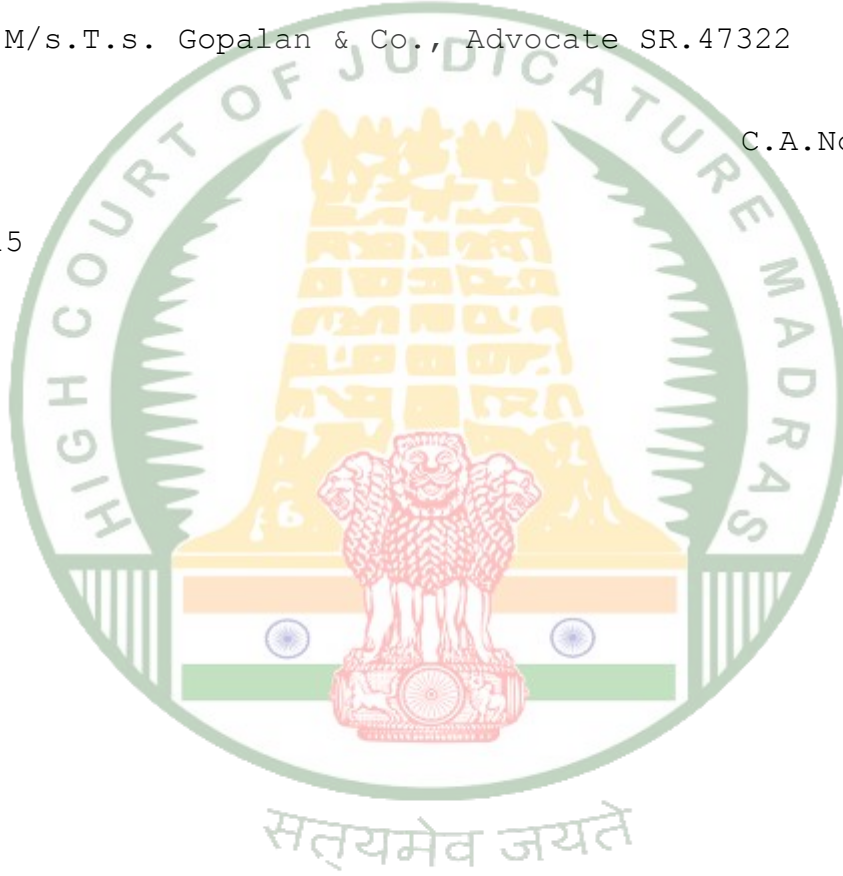
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To

1. The Judicial Magistrate No.I,
Thirupathur
 2. The Additional District and Sessions Judge,
Fast Track Court, Thirupathur
 3. The Section Officer, Crl. Section,
High Court, Madras.
- + 1 cc to M/s.T.s. Gopalan & Co., Advocate SR.47322

C.A.No.658 of 2007

GR(CO)
EU 18.09.15



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