

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.429 of 2006

V.Arumugam

..Appellant /Complainant

Vs

A.Jeenaselvam

..Respondent/Accused

Prayer:- This Criminal Appeal has been filed under Section 378 of the Criminal Procedure Code, to set aside the order of acquittal passed by the learned Judicial Magistrate, Arni, Thiruvannamalai District in C.C.No.368 of 2005, dated 13.03.2006.

For Appellant : Mr. R.John Sathyan

For Respondent : No appearance.

JUDGMENT

This Criminal Appeal has been directed against the dismissal order dated 13.03.2006 passed in Calendar Case No.368 of 2005 by the Judicial Magistrate, Arni.

2. The appellant as complainant has filed the complaint in question under Section 138 of the Negotiable Instruments Act, 1881, on the file of the trial court and the same has been taken on file in Calendar Case No.368 of 2005, wherein, the present respondent is shown as sole accused.

3. It is averred in the complaint that on 13.04.2005, the accused received a sum of Rs.4,00,000/- by way of debt from the complainant and in order to discharge the same, he has given the cheque in question and the same has been put into concerned bank and the concerned bank has returned the same stating "funds insufficient" and subsequently, a statutory notice has 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.

4. The trial court, after considering the available evidence on record, has dismissed the complaint. Against the dismissal order, the present Criminal Appeal has been preferred at the instance of the complainant as appellant.

5. The learned counsel appearing for the respondent is not present. Under the said circumstances, the present Criminal Appeal is disposed of on the basis of the contention put forth on the side of the appellant.

6. The learned counsel appearing for the appellant has contended that on 13.04.2005, the accused has received a sum of Rs. 4,00,000/- from the complainant and in order to discharge the same, he has given the cheque in question, but the same has been put into concerned bank and the concerned bank has returned the same as funds insufficient and a statutory notice has been given and even after receipt of the same, the accused has not discharged his liability. Under the said circumstances, he has committed an offence punishable under Section 138 of Negotiable Instruments Act, 1881 and in order to prove the averment made in the complaint, the complainant has been examined as PW.1 and the trial court without considering the evidence available on record on the side of the complainant has erroneously dismissed the complaint and therefore, the dismissal order passed by the trial court is liable to be set aside.

7. For considering the submissions made on the side of the appellant/complainant, the court has to look into the evidence given by the complainant. The complainant has been examined as PW.1 and during the course of cross examination, he has clearly admitted to the effect that the accused has not received debt from him at any point of time. Considering the clear admission made by the complainant to the effect that the accused has not received any debt from him, it is clear that the cheque in question has not been given in respect of an enforceable debt. Since, the cheque in question has not been given in connection with an enforceable debt, it is needless to say that the accused has not committed an offence punishable under section 138 of the Negotiable Instruments Act.

8. The trial court after considering the available evidence on record has rightly dismissed the complaint. In view of the discussion made earlier, this court has not found any acceptable force in the contentions put forth on the side of the appellant and altogether, the present Criminal Appeal is liable to be dismissed.

In fine, this Criminal Appeal is dismissed. The order of dismissal passed in Calender Case No.368 of 2005 by the Judicial Magistrate, Arni, is confirmed.

Sd/-
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

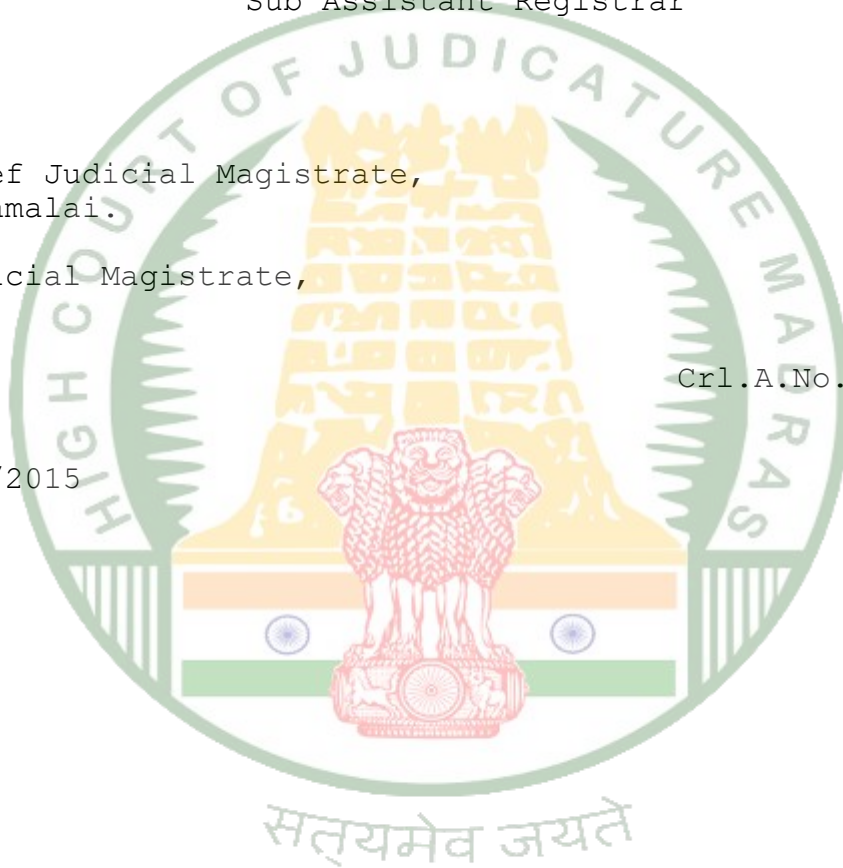
To

1.The Chief Judicial Magistrate,
Thiruvannamalai.

2.The Judicial Magistrate,
Arni.

Crl.A.No.429 of 2006

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srg 15/12/2015



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