

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.516 of 2006

K.Prabhakar .. Appellant/Complainant

Vs

N.Balakrishnan .. Respondent/Accused

Prayer:- This Criminal Appeal has been filed under Section 378 of the Criminal Procedure Code, against the order of the Judicial Magistrate VII, Coimbatore, made in S.T.C.No.70 of 2005, dated 05.03.2006.

For Appellant : Mr. N.Anand Venkatesh

For Respondent : Mr. Suchit Anant Palande

JUDGMENT

This Criminal Appeal has been directed against the dismissal order passed in S.T.C.No.70 of 2005 by the Judicial Magistrate No.VII, Coimbatore.

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

3. It is averred in the complaint that the accused has received a sum of Rs.4,00,000/- by way of debt from the complainant and in order to discharge his liability, the cheque in question has been given on 28.10.2004 in favour of the complainant and the same has been put into concerned bank. The concerned bank has returned the same stating "no such account" and subsequently, a legal notice has been issued and even after receipt of the same, the accused has not discharged his liability. Under the said circumstances, the present complaint has been filed for getting the relief sought for therein.

4. The trial Court, after considering the available evidence on record, has dismissed the complaint by way of stating that the cheque in question has not been given in

favour of the complainant in respect of an existing account. Against the order of dismissal, the present Criminal Appeal has been preferred.

5. During the pendency of the appeal, on the side of the appellant/complainant M.P.No.1 of 2015 has been filed under Section 391 of the Criminal Procedure Code, wherein, a letter alleged to have been given by the concerned bank Manager has been annexed. In the said letter, it is stated that during the relevant period, the accused has had an account.

6. It has also been pointed out that the trial Court has dismissed the complaint by way of holding that the cheque in question has not been given in respect of an existing account. Considering the fact that the trial Court has dismissed the complaint for the reason mentioned supra and also considering the document filed along with M.P. No.1 of 2015, this Court is of the view that the document filed along with M.P.No.1 of 2015 is very much essential for the purpose of proving the contention raised on the side of the appellant/complainant and therefore, the order of dismissal passed by the trial Court is liable to be set aside and the matter is liable to be remitted to the file of the trial court.

In fine, this Criminal Appeal is allowed. The dismissal order passed on 05.03.2006 in S.T.C.No.70 of 2005 by the Judicial Magistrate-VII, Coimbatore, is set aside and S.T.C.No.70 of 2005 is remitted to the file of the trial Court. In the trial court, the appellant/complainant is directed to file the document filed along with M.P.No.1 of 2015 by way of examining proper witness. The respondent/accused is entitled to make relevant cross examination. The trial Court is directed to dispose of S.T.C.No.70 of 2005 before the end of March 2016 and report the same to the Registry without fail.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate VII,
Coimbatore.

2. -do-Thro'The Chief Judicial Magistrate
Coimbatore.

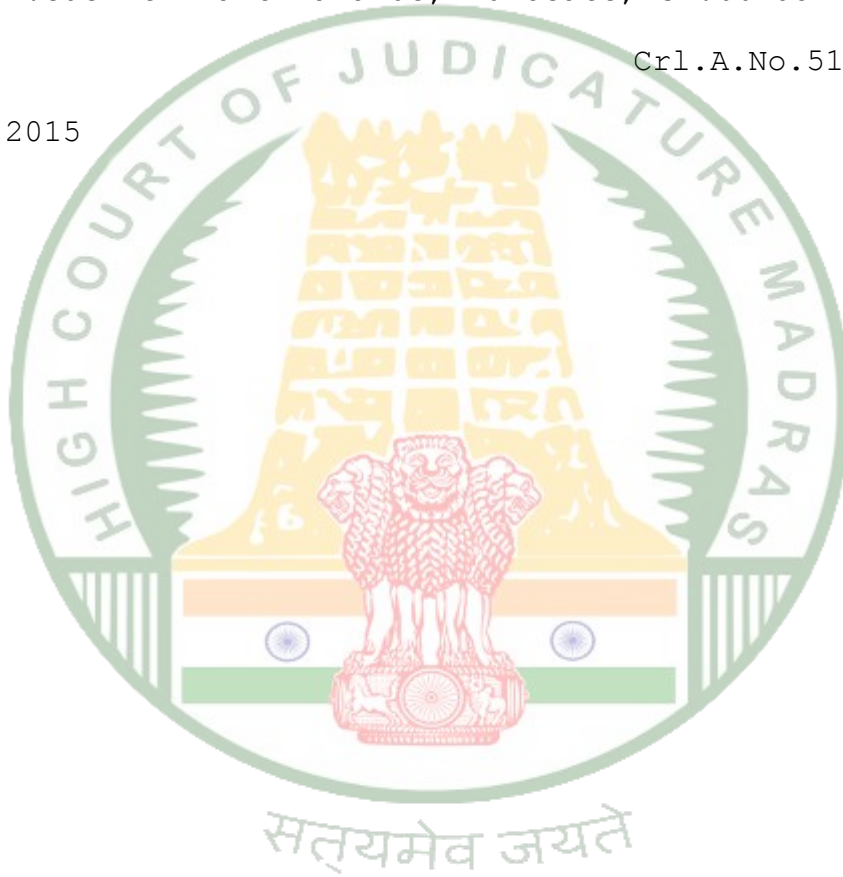
3.The Public Prosecutor,
High court, Madras.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.Suchit Anant Palande, Advocate, sr.66283

Cr1.A.No.516 of 2006

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kra 18.12.2015



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