

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.184 of 2008

S.M.Loganathan ... Appellant/Complainant

N.Shanmugham vs. ... Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., against the order dated 4.12.2007 passed in C.C.No.78 of 2006 by the Judicial Magistrate, Sathyamangalam.

For appellant : Mr.Kamadevan

For Respondent : Mr.N.Manoharan

JUDGMENT

The dismissal order dated 4th day of December, 2007 passed in Calendar Case No.78 of 2006 by the Judicial Magistrate, Sathyamangalam is being challenged in the present Criminal Appeal.

2. The appellant herein, as complainant, has filed a complaint under section 138 of Negotiable Instruments Act, 1881 on the file of the trial court and the same has been taken on file in Calendar Case No.78 of 2006, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that both the complainant and respondent are doing same business. The accused has received a sum of Rs.1,85,000/- by way of debt from the complainant in connection with his business and in order to discharge the same, he has given the cheques in question for a sum of Rs.1,00,000/- and Rs.85,000/- in favour of the complainant and the same have been put into the concerned bank. The concerned Bank has returned the same and consequently statutory notice has been given and after receipt of the same, the accused has given a reply notice. Since the accused has not discharged his liability, he has committed an offence punishable

under section 138 of Negotiable Instruments Act, 1881 and therefore, the present complaint has been filed.

4. The trial court, after considering the divergent contentions raised on either side, has given a finding to the effect that the cheques in question have not been issued by the accused and ultimately dismissed the complaint. Against the dismissal order, 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 solely relied upon the evidence given by D.W.2 coupled with Ex.D.3 and in fact D.W.2 is not a competent witness to compare the admitted signatures of the accused with the disputed signatures and therefore, the approach made by the trial court is totally erroneous and under such circumstances, the dismissal order passed by the trial court is liable to be set aside and the accused has to be mulcted with liability under section 138 of Negotiable Instruments Act, 1881.

6. Per contra, the learned counsel appearing for the respondent/accused has contended that in the instant case, a specific defence has been taken on the side of the accused that the accused has not borrowed a sum of Rs.1,85,000/- from the complainant and he never issued the cheques in question and further, the signatures found in the cheques in question have been forged and in order to disprove the case of the complainant and also for the purpose of establishing defence, service of D.W.2 has been utilized and her specific evidence is that the signatures found in the cheques in question are not signatures of the accused and the trial court, after considering the nature of the defence put forth on the side of the accused, has rightly dismissed the complaint and therefore, the dismissal order passed by the trial court does not call for any interference.

7. Basing upon the divergent submissions made on either side, the Court has to look into as to whether the cheques in question have been issued by the accused in connection with an enforceable debt, in favour of the complainant.

8. On the side of the complainant, the cheques in question have been marked as Exs.P.1 and P.2. A copy of the statutory notice has been marked as Ex.P.5 and the reply notice given by the accused has been marked as Ex.P.7. In Ex.P.7, it has been clearly stated that the accused has not received a sum of Rs.1,85,000/- from the complainant and he has not issued the cheques in question. Further, the signatures found in the cheques in question are nothing but forged signatures.

9. As rightly pointed out on the side of the appellant/accused, the trial court has utilized the service of D.W.2, a finger print expert. In fact, D.W.2 has compared the admitted signatures of the accused with the disputed signatures found in the cheques in question and ultimately given a finding that the signatures found in the cheques in question are not signatures of the accused.

10. Even assuming without conceding that D.W.2 is not a competent witness to make such kind of comparison, the Court is having unfettered power of comparing the disputed signatures with the admitted signatures as per Section 73 of the Indian Evidence Act, 1872.

11. In fact, this Court has seen the signatures found in Ex.P.1 and P.2, cheques in question and ultimately found that the signature found in Ex.P.1 is different from the signature found in Ex.P.2. Since both the signatures are mutually incongruous, one can easily come to a conclusion that the signatures found in Ex.P.1 and P.2 are nothing but forged signatures. Since the signatures found in Ex.P.1 and Ex.P.2 are nothing but forged signatures, the Court can very well come to a conclusion that Exs.P.1 and P.2 have not been given in connection with an enforceable debt. Since Exs.P.1 and P.2 have not been given in connection with an enforceable debt, the accused cannot be mulcted with liability under section 138 of Negotiable Instruments Act, 1881.

12. The trial court, after considering the divergent contentions raised on either side, has rightly dismissed the complaint and in view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/complainant and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The dismissal order dated 4.12.2007 passed by the trial court in Calendar Case No.78 of 2006 is confirmed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

ajr

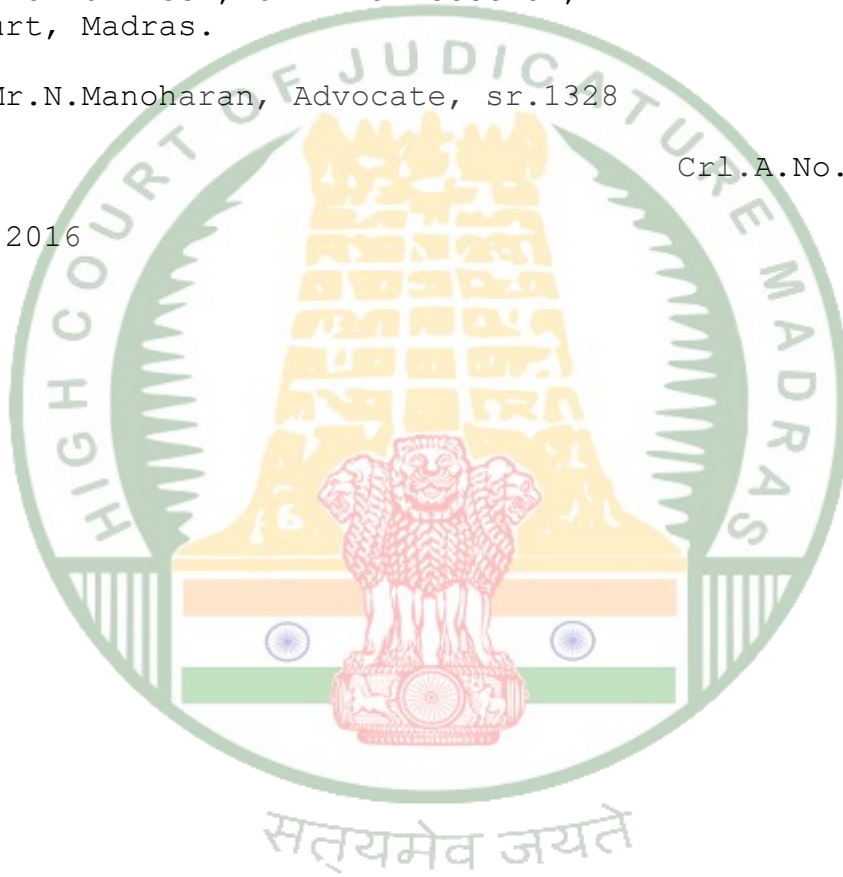
To :

1. Judicial Magistrate, Sathyamangalam.
2. The Chief Judicial Magistrate,
Erode.
3. The Public Prosecutor, High Court, Chennai
4. The Section Officer, Criminal Section,
High Court, Madras.

+1 cc to Mr.N.Manoharan, Advocate, sr.1328

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