

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

CrL.A.No.338 of 2017

Tn.Nitiyananda Rahavan @
T.N.Nitiyanandan Rahavan

... Appellant

Vs.

Amudhavel Moulding Works
rep by its Proprietor Rajendran S
S/o Subramani Naicker
G.67, Sidco Industrial Estate
Kakklur, Thiruvallur District 602 003.

... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C. against the order of acquittal dated 18.07.2016 passed in C.C.No.163 of 2009 by the Metropolitan Magistrate (Fast Track Court-2), Egmore, Chennai acquitting the accused herein for the alleged offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.K.Manikandan
For Respondent : Mr.K.S.Giriraj

JUDGMENT

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For the sake of convenience, the appellant and the respondent will be referred to as complainant and accused.

2. The complainant is the appellant before this Court. It is the case of the complainant that the accused had borrowed Rs.1,40,000/- from him sometime in the year 2006 and in discharge of the said liability, the accused had issued a cheque dated 05.10.2007 drawn on State Bank of India, Ambattur Branch and when the said cheque was presented for clearance, the same was returned with the endorsement "account closed". It may be apposite to quote the chronology of events from the body of the complaint, which is as under:

"(a) Date of cheque	05.10.2007
(b) Deposited the cheque to the complainant's bank on	07.12.2007
(c) Complainant's bank sent for collection	07.12.2007
(d) accused bank dishonored and returned the cheque	10.12.2007
(e) complainant's bank received the dishonored cheque	12.12.2007
(f) Complainant received the cheque from his Bank	13.12.2007
(g) Legal notice dated 29.12.2007 sent through lawyer on	31.12.2007
(h) accused refused to receive, cover returned back on	07.01.2008"

3. The complainant initiated prosecution in C.C.No.163 of 2009 before the II Metropolitan Magistrate, Egmore against the accused for an offence under Section 138 of the Negotiable Instruments Act, 1881. On summons, the accused appeared before the trial Court and denied the accusations.

4. On the side of the complainant, two witnesses were examined and seven exhibits were marked. On behalf of the accused, three exhibits were marked in the cross-examination of the complainant. After considering the evidence adduced by both the parties, the trial Court, by judgment dated 18.07.2016 in

before this Court.

5. Heard Mr.K.Manikandan, learned counsel for complainant and Mr.K.S.Giriraj, learned counsel for accused.

6. Mr.Manikandan submitted that the trial Court had acquitted the accused not on the facts of the case, but on an erroneous legal premise. He submitted that the trial Court had relied upon the judgment of the Supreme Court in **Sadanandan Bhadran v. Madhavan Sunil Kumar [(1998) 6 SCC 514]** in holding that a complaint based on re-presentation of a cheque cannot be maintained, whereas, the trial Court had failed to take note of the fact that **Sadanandan Bhadran (supra)** was overruled by a three Judge Bench of the Supreme Court in **MSR Leathers v. S.Palaniappan & another [2012 (6) CTC 101]**.

7. The learned counsel for the accused refuted the contentions.

8. This Court carefully perused the records.

9. On a reading of the trial Court judgment, it is seen that the trial Court had placed strong reliance on **Sadanandan Bhadran (supra)** to hold that a prosecution under Section 138 of the Negotiable Instruments Act cannot be maintained on a re-presented cheque. In other words, in **Sadanandan Bhadran**

(supra), it was held that if a statutory notice had already been issued based on a dishonoured cheque, the complainant cannot re-present the cheque and create a fresh cause of action. However, as rightly pointed out by Mr.Manikandan, the said proposition has been overruled by the three Judge Bench of the Supreme Court in **MSR Leathers** (supra). However, the trial Judge has not acquitted the accused only on this aspect. A reading of the trial Court judgment shows that the complainant had first presented the cheque that was issued by the accused and it was dishonoured. Thereafter, the complainant had issued a statutory notice dated 15.10.2007 [Ex.D.1] to the residential address of the accused and the same was received by the accused. Thereafter, the complainant has re-presented the same cheque on 07.12.2007 and it was dishonoured on 10.12.2007, for which, the complainant had issued a second notice dated 29.12.2007, which was not served on the accused.

10. Mr.Manikandan, learned counsel contended that the complainant cannot be faulted with for non-service of the notice dated 29.12.2007, because the said notice was sent to the business premises of the accused. However, it is seen that the complainant has completely suppressed the factum of having presented the cheque earlier and the issuance of the first statutory notice dated 15.10.2007 [Ex.D.1] in his complaint. Had the complainant disclosed the said fact and launched the prosecution, then, the issue can be looked differently. In this case, the first notice dated 15.10.2007 [Ex.D.1] was sent to one address and the second

notice dated 29.12.2007 has been sent to a different address and the same was not served on the accused. Thus, in an appeal against acquittal, it is trite law that, this Court should be slow in interfering with the judgment of acquittal in the absence of perversity or illegally writ large in the judgment of the trial Court. As observed by the trial Court, the complainant had buried the earlier presentation of the cheque and issuance of statutory notice dated 15.10.2007 [Ex.D.1] and only in the cross-examination of the complainant, the accused established this fact. In such view of the matter, this Court is of the view that this is not a fit case to interfere with the judgment of the trial Court.

Accordingly, the judgment dated 18.07.2016 passed by the Metropolitan Magistrate (Fast Track Court-2), Egmore, Chennai in C.C.No.163 of 2009 is confirmed and this appeal stands dismissed.

03.10.2017

Index by : Yes/No

Speaking/Non-speaking order

gms

To

- 1.The Metropolitan Magistrate, Fast Track Court-2, Egmore, Chennai.
- 2.The Public Prosecutor, High Court, Madras.

P.N.PRAKASH, J

gms



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