

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Criminal Appeal No.433 of 2017

V.Palanisamy

... Appellant

versus

T.Srinivasan

... Respondent

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code to call for the records in C.C.No.270 of 2010 on the file of the Judicial Magistrate No.1, Salem dated 05.08.2016, and set aside the Judgment and allow this Criminal Appeal.

For Appellant : Mr.S.Panneerselvam

For Respondent : Mr.N.S.Sivakumar

JUDGMENT

The appellant/complainant has filed a complaint in C.C.No.270 of 2010 on the file of the learned Judicial Magistrate No.I, Salem, against the respondent for the alleged offence punishable under Section 138 of Negotiable Instruments Act, alleging that the accused/respondent borrowed a sum of Rs.2,00,000/- (Rupees Two lakhs only) from the complainant on 01.07.2008. He

agreed to pay interest at the rate of interest 24% per annum.

2. The respondent executed Ex.P.1 document dated 09.10.2009, wherein he has directed his tenant to discharge the loan amount payable to the complainant. According to the complainant, the tenant was asked to discharge by means of cash or cheque. The complainant further alleged that the said tenant vacated the rented premises, within two months and thereafter the respondent issued the cheques in question viz., Exs.P.2, 3 and 4 for the discharge of the said loan. The cheques when presented for collection were returned only on the ground "exceeds arrangement / funds insufficient" in the account of the respondent. Hence, the claimant has sent notice to the respondent calling upon him to pay the amount covered by the cheques. The respondent sent a reply denying his liability to pay the amount. Rejoinder has been sent by the complainant and thereafter the complaint has been filed.

3. The complaint in support of his case examined himself as P.W.1 and he has marked Ex.P.1 document, alleged to have been executed by the respondent.

4. The respondent had taken a plea that the complainant is his partner and they have jointly carried on real estate business, that he had asked the complainant to arrange for a loan of Rs.1,00,000/- (Rupees One Lakh

only) from a Finance Company, that the complainant on the promise of getting loan from a Financier obtained unfilled cheques from him, that subsequently misunderstanding arose between them and that thereafter the present complaint had been filed by him using one of the unfilled cheques handed over to the complainant for arranging loan. The respondent further pleaded that he has not borrowed any amount from the complainant and the cheques in question were not issued for the discharge of any enforceable debt or liability.

5. The Trial Court on the basis of the materials made available, acquitted the accused. Challenging the order of acquittal, the present Criminal Appeal has been filed.

6. The learned counsel for the appellant would contend that the learned Magistrate has wrongly placed the burden of proof on the complainant and that the learned Magistrate has not taken into account the acknowledgement made in Ex.P.1-document. According to him, the respondent has not rebutted the presumptions under Section 139 of the Negotiable Instruments Act.

7. The learned counsel for the respondent would submit that the respondent has raised a probable defence. The Trial Court was justified in

acquitting the accused.

8. Admittedly, the cheques Exs.A.2, A.3 and A.4 belong to the respondent and the cheques bore his signature. Therefore, in terms of Section 139 of the Negotiable Instruments Act, the Court can presume that the cheques were issued for the discharge of legally enforceable debt. However, the presumptions are rebuttable. It is to be seen that whether the respondent has rebutted the presumptions drawn against him. The definite case of the respondent is that he has requested the complainant who is known to him, to arrange for a loan of Rs.1,00,000/- (Rupees One Lakh) and that on the promise of arranging loan, the complainant collected from him unfilled Stamp Paper, unfilled Promissory Note and unfilled signed Cheques. He has given evidence in support of his case as D.W.2. He has examined one witness viz., D.W.1 -Rajendran, who deposed that complainant in his presence collected unfilled stamp papers from the respondent. In order to rebut the presumption, the respondent has to raise probable defence and for that purpose he can place reliance on the materials placed by the complainant also.

9. The learned counsel for the appellant would submit that as per Ex.P.1-document, the respondent has acknowledged his liability to pay a sum of Rs.2,00,000/- to the complainant. According to the complainant, this

document was handed over by the respondent to him. The respondent in his evidence, though admitted the signature and finger prints in the document has stated that he has handed over stamp papers only in blank form.

10. A careful perusal of Ex.P.1 would show that it was addressed to one Subash Ganapathi. Under Ex.P.1 a dyeing Factory was leased out to Subash Ganapathy on a monthly lent. The tenant was asked to discharge a loan of Rs.2,00,000/- (Rupees Two Lakhs) payable to the complainant by way of Cheque or cash. The execution of these documents was not admitted. The respondent admitted only his signatures. In order to prove the execution of this document, no one was examined. The monthly rent payable to the landlord was also not mentioned in the document. In such circumstances, no reliance can be placed to show that the complainant has advanced a sum of Rs.2,00,000/- to the respondent.

11. According to the complainant, the loan amount was given to the respondent on 01.07.2008. It is also his case that the respondent had agreed to pay interest at the rate of 24% per annum. Ex.P.1 is alleged to have been executed on 09.10.2009 whereas cheques for discharge of the loan according to the complainant were issued in the month of January 2010. It is impossible to believe that without any contemporaneous document, the

complainant lent a sum of Rs.2,00,000/-. There is no proof to show that the respondent agreed to pay interest at the rate of 24% per annum. The above mentioned circumstances, in my considered view are sufficient to hold that the respondent has rebutted the presumptions drawn against him as per Sections 118 and 139 of Negotiable Instruments Act.

12. As the presumptions have been rebutted by the respondent, it is for the complainant to prove that he has in fact lent Rs.2,00,000/- to the respondent. As already noticed, the complainant has not produced any dependable evidence to show that he has actually lent the money. As already noticed, the execution of Ex.P.1 has not been proved. Except the interested oral testimony of the complainant and for the disputed cheques there is no dependable evidence to show that he has lent a sum of Rs.2,00,000/- to the respondent.

13. It is an Appeal as against an order of acquittal. It is well settled that the appellate Court should be reluctant to interfere with the order of acquittal. The order of Trial Court does not suffer from any legal infirmity. The Trial Court has taken a reasonably possible view. I do not find any ground to interfere with the order of acquittal. Hence, this Appeal is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed and the judgment of acquittal dated 05.08.2016 passed by the learned Judicial Magistrate No.I, Salem, in C.C.No.270 of 2010 is hereby confirmed.

18.09.2017

Speaking order / Non Speaking order

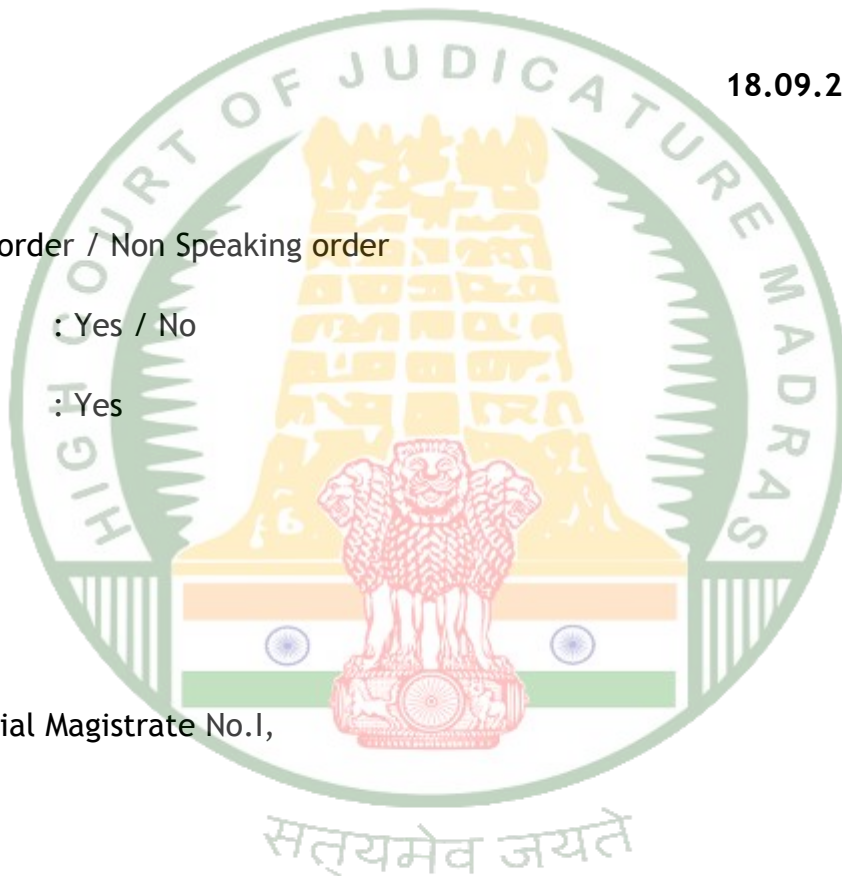
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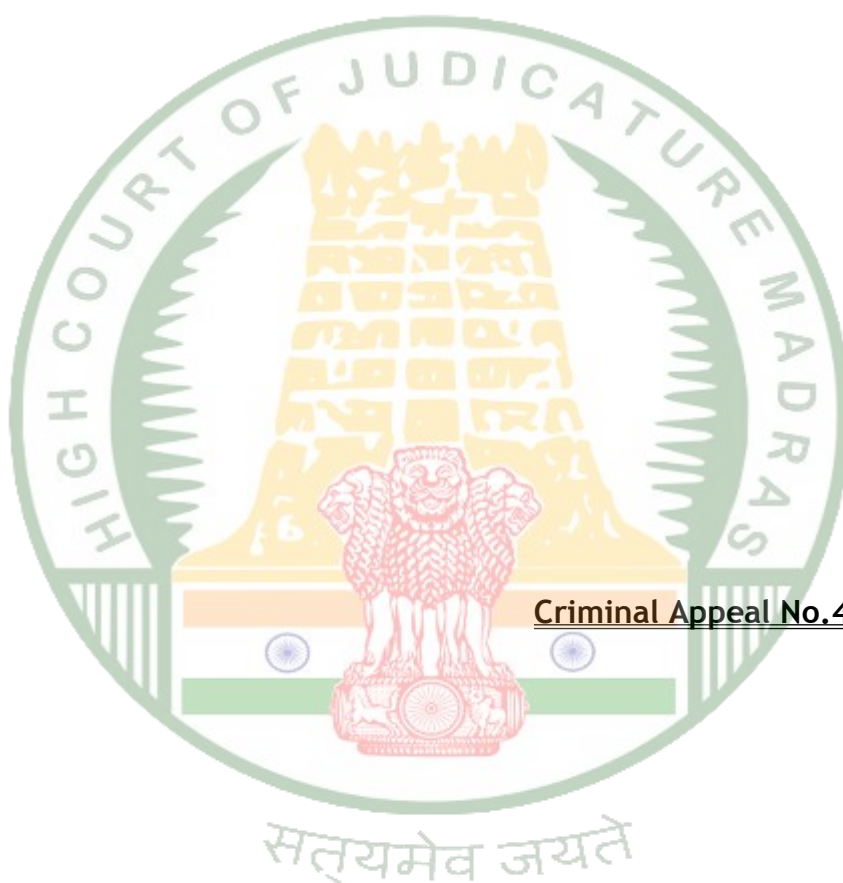
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N.AUTHINATHAN,J.

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