

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.302 of 2009

P.Mahaveer
S/o.Premraj

.. Appellant

Vs.

1.Kandan Metal Works,
represented by its Proprietor,
G.Sekar,
No.199, T.H.Road,
New Washermenpet,
Chennai - 600 081.

2.G.Sekar (Proprietor)
Kandan Metal Works,
No.199, T.H.Road,
New Washermenpet,
Chennai - 600 081.

... Respondents

Criminal Appeal preferred under Section 378 of Cr.P.C
against the judgment of acquittal passed by learned XV
Metropolitan Magistrate, George Town, Chennai, passed in
C.C.No.3137 of 2005 on 28.04.2009.

For Appellant : Mr.V.Krishnamoorthy

For Respondents: Mr.A.Subramani

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J U D G M E N T

This appeal arises against the judgment of acquittal passed
by learned XV Metropolitan Magistrate, George Town, Chennai,
passed in C.C.No.3137 of 2005 on 28.04.2009.

2. Appellant/complainant moved a prosecution informing that
respondents borrowed a sum of Rs.8,50,000/- from him for

business purposes, issued two cheques in a sum of Rs.2,75,000/- each and another in a sum of Rs.3,00,000/-, of even date i.e., 17.01.2005, drawn on Canara Bank, Washermenpet, towards repayment, which upon presentation was returned unpaid for the reason 'insufficient funds'. Appellant/complainant caused statutory notice in keeping with section 138 of the Negotiable Instruments Act and preferred the complaint.

3. Before the trial Court, appellant/complainant examined himself and marked 9 exhibits. 2 witnesses were examined on behalf of defence and 5 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 28.04.2009, acquitted respondent. There against, the present appeal has been filed.

4. Heard learned counsel for appellant and learned counsel for respondent.

5. In acquitting respondents, trial Court found that it was the contention of respondents that complainant conducted a chit transaction in the year 1998, that they joined as a member and at the time of receiving amount, issued blanks cheques towards security which have been misused by complainant. While complainant, in cross, admitted that he has not conducted any chit transaction, that another person who conducted the same has died, that the transactions were done through complainant and that respondents totally have to pay a sum of Rs.8,50,000/- towards borrowal from him and chit transaction, he, neither in the complaint nor in the statutory notice or in chief-examination has stated such things. Further, there was no reply on the side of complainant to Ex.D1, demand notice issued by complainant to respondents to pay chit amount of Rs.2,00,000/-. Likewise, for Ex.D2, account statement issued by complainant. More over, it was unbelievable that a financier has given a sum of Rs.8,50,000/- towards borrowing without obtaining any security and without insisting for interest. The evidence of DW-2, Manager, Canara Bank, Washermenpet Branch, that subject cheques were issued by his bank prior to 2002 and since 2002, Washermenpet Branch was merged with Tondiarpet Branch, strengthens the respondents' case that subject cheques were issued only towards security in the year 1998. A perusal of Exs.D1 and D2 revealed that respondents have paid amounts in instalments. While so, it was unbelievable that they issued three even date cheques in a sum of Rs.8,50,000/-. For the aforesaid reasons and for other reasons, trial Court found that complainant has not proved its case beyond reasonable doubt and accordingly, acquitted respondents. This Court finds no reason to interfere with the judgment under challenge.

The Criminal Appeal shall stand dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gm

To
The XV Metropolitan Magistrate,
George Town,
Chennai.

-do- Thro, The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.A.Subramani, Advocate sr.68580

Criminal Appeal No.302 of 2009

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nr 14/03/2018



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