

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.139 of 2007

N.Govindasamy

.. Appellant

Vs

Thirumavalavan

.. Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal of the respondent passed by the learned District Munsif - Cum - Judicial Magistrate, Neyveli on 03.08.2006 in C.C.No.283 of 2002 and allow the appeal and convict the respondent for the offence under Section 138 of the N.I.Act and direct the respondent to pay compensation to this appellant.

For Appellant : Mr.R.Thirugnanam

For Respondent : Mr.M.Vivekanandan

JUDGEMENT

Challenging the order of acquittal , the present appeal has been filed by the complainant.

2. The case of the complainant in brief is as follows :

The appellant was working as a technician in the Neyveli Lignite Corporation and the respondent was known to him for nearly 7 years. On

24.11.2001, the respondent borrowed a sum of Rs.2 lakhs for his family expenses. On the date of borrowal, he had issued a post dated cheque drawn on Bharath Overseas Bank, Puthiracowndapalayam, Salem District. When the above cheque was presented for collection, it was returned on the ground of "Accounts closed". Thereafter, he issued a legal notice demanding money. Since the money was not paid, the present complaint has been filed.

3. In order to prove his case, the appellant examined himself as P.W.1 and one Anandhanadarajan, was examined as P.W.2 and marked 5 documents. After the closure of the prosecution case, the incriminating materials were put to the accused under

Section 313 Cr.P.C., he denied the same. He has examined as many as 3 witnesses and marked as many as 9 documents.

4. The case of the respondent/accused was that he did not borrow any amount from the appellant. In the year 1992, the complainant and the father of the accused Poovaragasami and one Sadhasivam have jointly subscribed a chit in the Sriram Chit Funds and the chit amount had been taken in the name of Sadasivam and the amount has been shared between Sadhasivam and the complainant. Subsequently the accused and his father demanded the money and there was a compromise. At that time, they asked the respondent and his father to pay the balance chit amount, and in the year 1995, they have issued the disputed cheque as security. Now, misusing the said cheque, which was given in the year 1992, the present complaint has been filed, and the complainant has no means to lend money to the tune of Rs.2 lakhs to the respondent. Considering all the materials, the trial Court acquitted the accused on the ground that the respondent/accused has proved that the cheque has been issued only in the year 1992 for some other transaction and it has been misused by the appellant/plaintiff and acquitted the accused. Now, challenging the order of acquittal, the present appeal has filed.

5. Heard, Mr. Heard, Mr.R.Thirugnanam, learned counsel appearing for the appellant and Mr..M.Vivekanandan, learned counsel appearing for the respondent. I have perused the records carefully.

6. The case of the complainant was that the respondent borrowed a sum of Rs.2 lakhs as hand loan and to discharge the same, the cheque has been given by the respondent. But the respondent dispute the same by stating that in the year 1992 for some other chit fund transaction, the present cheque has been given as a security. In order to prove his case he has examined 3 witnesses and also marked 5 exhibits to show that there was earlier chit fund transaction between the parties. For that purpose only, the cheque has been issued. To substantiate the same, the respondent also marked a notice sent by Sriram Chit funds against the complainant and accused and he has also examined his father and one Sadhasivam. From the above material, the respondent has created a doubt regarding the existence of the liability and thereby he raised initial presumption on him, but on the other hand the complainant failed to prove the liability, and absolutely there is no material available on record to show that he had advanced the loan of Rs.2 lakhs. Considering the above circumstances, the trial Court acquitted the accused.

7. I have also gone through the records and I find no

infirmity or irregularity in the order passed by the Court below. I find no reason to interfere with the well considered judgment of the trial Court. Hence, I find no merit in the appeal and the appeal deserves to be dismissed.

8. In the result, the Criminal Appeal is dismissed and the order of acquittal passed by the court below is hereby confirmed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dh/mrp

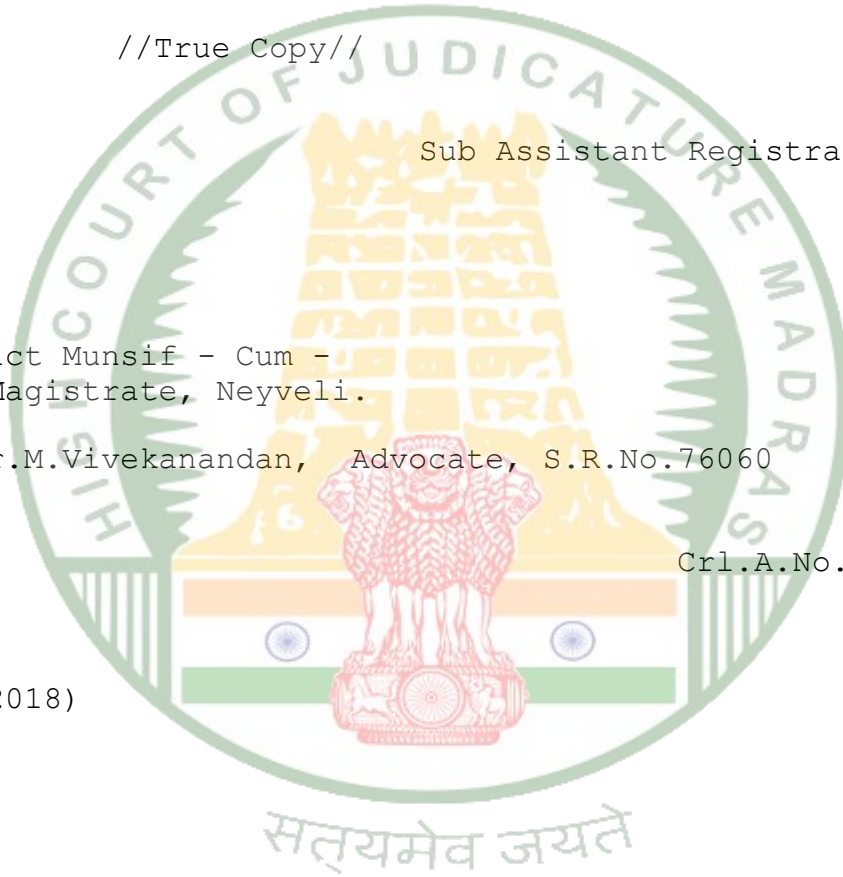
To

The District Munsif - Cum -
Judicial Magistrate, Neyveli.

+1cc to Mr.M.Vivekanandan, Advocate, S.R.No.76060

Crl.A.No.139 of 2007

KS (CO)
GN (27/09/2018)



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