

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE C.T. SELVAM

Criminal Appeal No.148 of 2008

G.Sridhar Babu .. Appellant/Complainant

-Vs-

P.Narappa Raju Respondent/Accused

Criminal Appeal under Section 378 of Cr. P.C. against judgement of learned Judicial Magistrate, Tiruttani, passed in C.C.No.138 of 2004 on 23.10.2007.

For Appellant :: Mr.S.Namasivayam
For Respondent :: Mr. V.Raghavachari

J U D G M E N T

Appellant, who is the complainant, filed a private complaint against the respondent, for offences under Sections 138 and 142 of the Negotiable Instruments Act, 1881 and the same was taken on file in C.C.No.138 of 2004 on the file of learned Judicial Magistrate, Tiruttani.

2. The case of the prosecution is that the accused borrowed a sum of Rs.2,00,000/- from the complainant in April 2003, agreeing to repay with interest before March 2004. Since the accused did not keep up the promise and kept postponing payment, the complainant insisted the repayment of the said amount. The accused issued cheque bearing No.860732 dated 02.02.2004 drawn on Indian Overseas Bank, Kanakamma Chatram Branch for a sum of Rs.2,40,000/- being the loan amount along with interest. The complainant presented the cheque on 03.04.2004, whereupon the cheque was returned as dishonoured for "insufficient funds". Thereafter, the complainant caused issuance of legal notice dated 05.04.2004 demanding repayment in 15 days. Though the accused received the said legal notice on 10.04.2004, he neither complied with the demand nor even replied the notice, thereby committing offence under Section 138 of the Negotiable Instruments Act.

Hence, the complaint was registered against the respondent and the case was taken on file in C.C.No.138 of 2004 on the file of learned Judicial Magistrate, Tiruttani.

3. In support of its case, prosecution examined 2 witnesses, marked 5 exhibits. Defence examined one witness, marked 6 exhibits. Upon his questioning u/s.313 Cr.P.C. the appellant/accused denied guilt. On appreciation of evidence, oral and documentary, trial Court acquitted the accused u/s.255(1) Cr.P.C., of the offence under Section 138 of Negotiable Instruments Act. Hence, this appeal.

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

5. In acquitting the accused, the trial Court has held that the complainant has not proved the issuance of the Cheque in Ex.P1 by the accused as alleged and that the complainant has not availed himself of the presumptions under Section 118 and 139 of Negotiable Instruments Act and that in totality of the evidence and circumstances of the case, the defence version is more probable than that the version of the prosecution. The determination is therefore that the prosecution has not established the guilt of the accused under Section 138 of Negotiable Instruments Act.

6. Finding no reason to interfere in the judgement of the Court below, the Criminal Appeal shall stand dismissed.

kmi

-sd/-

Assistant Registrar

True Copy

सत्यमेव जयते

Sub-Assistant Registrar

To
The Judicial Magistrate,
Tiruttani.

+1 C.C. to MR.V.Raghavachari Advocate SR.NO.50269

Criminal Appeal No.148 of 2008

GMR (CO)

VS 10.11.2017