IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2017

CORAM :

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl. A. No. 305 of 2007

M/s.GMAC-TCFC Finance Limited,
(Now known as GMAC Financial
Services Indian Ltd.,)
Rep. By its Power of Attorney Agent,
Mr.Subash Chandra Bose
Arihant 'E' Park, II Floor,
No.117/1, L.B.Road,
Adyar, Chennai – 600 020. .. Appellant

/Vs/

I.Sabastian,
Munuswamy Goundar Street,
Kolathur, Mettur Taluk,
Salem 626 303. .. Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure as against the Order of acquittal dated 11.01.2007 passed in C.C.No.5077 of 2003 on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Madras.

For Appellant : M/s.Suchit Anant Palande

JUDGMENT

1. Brief case of the appelant M/s.GMAC-TCFC Finance Limited represented by its power of attorney Mr.Subash Chandra Bose is as follows :-

The appellant is doing business of finance for purchase of motor vehicles. The respondent/accused I.Sabastian residing at Munuswamy Goundar Street, Kolathur, Mettur Taluk, Salem 626 303 entered into a hire purchase agreement with the appellant through an agreement dated 21.09.2000 for purchase of an Ambassdor car and the appellant sanctioned a loan of Rs.3,86,400/-(Rupees Three Lakhs Eighty Six Thousand Four Hundred Only) to the respondent on the equated monthly instalments at Rs.7796/-. The respondent committed default in paying the monthly instalments and therefore the appellant seized the car and sold the same after giving due intimation to the respondent. The accused, thereafter issued three cheques which are extracted hereunder,

Sl.No	Cheque No.	Date	Amount (in rupees)
1.	811377	15.01.2003	7796/-
2.	811378	15.02.2003	7796/-
3.	811379	15.03.2003	7796/-

2. When the above cheques were presented by the appellant with his bankers namely City Bank, Anna Salai Branch, Chennai the cheques were returned for the reason “insufficient funds”. The appellant issued a demand notice dated 22.04.2003 (Ex.P.6) and the same was received by the respondent as evidenced by the postal acknowledgment card (Ex.P.7). Inspite of receipt of the said notice,

the respondent did not come forward to make good the payment and did not also issue any reply notice.

3. The appellant, therefore, filed a complaint U/s 200 Code of Criminal Procedure, before the learned XVIII Metropolitan Magistrate Court, Saidapet, Madras against the respodent for an offence U/s 138 of Negotiable Instruments Act. One witness was examined on the side of the appellant and Ex.P.1 to Ex.P.7 were marked. No oral and documentary evidence was adduced on the side of the respondent. The learned XVIII Metropolitan Magistrate, Saidapet, Madras after appraising the oral and documentary evidence, acquitted the accused U/s 255(1) of the Code of Criminal Procedure, aggrieved by which the appellant has filed the present appeal on the following grounds:

1. Though the respondent did not deny the execution of the cheques and did not make any attempt to rebut the presumption. The trial Court had acquitted the respondent which is contrary to the well established principles of law.
2. The lower Court had failed to appreciate the fact that even after the repossession and sale of the vehicle, the respondent has to pay the balance amount to the appellant.
3. The accused did not bother to send reply to the statutory notice issued by the appellant and the trial Court had dismissed the complaint merely based on surmises and conjuctures.

4. At the outset, it may be observed that the appellant had admitted that he had received post dated cheques from the respondent towards the equated monthly instalments. The specific case of the appellant is that he had sanctioned loan of Rs.3,86,400/-which shall be repaid at the rate of Rs.7796/-p.m. The three cheques which the appellant had presented before his bankers namely, City Bank, Anna Salai Branch, Chennai bear the cheque nos.811377, 811378 and 811379. These cheques are dated 15.01.2003, 15.02.2003 and 15.03.2003 respectively for a sum of Rs.7,796/-(for each cheque). The cheques are marked as Ex.P.2 to Ex.P.4. It is the admitted case of the appellant, that the cheques were presented after the vehicle was seized from the respondent and sold in auction.

5. The learned XVIII Metropolitan Magistrate Court, Saidapet, Madras had observed that once the vehicle was repossessed and sold by the finance company the hire purchase agreement comes to an end and the complainant cannot present any of the post dated cheques for acknowledgment. The complainant's contention that these three cheques were issued by the respondent only for repayment of balance amount towards the loan amount has not been substantiated by adducing acceptable evidence. A mere perusal of the cheques would clearly reveal that these cheques were issued by the respondent towards equated monthly instalments. The observation of the learned

XVIII Metropolitan Magistrate, Saidapet, Madras that the cheques were issued only at the time of execution of hire purchase agreement is based on the evidence on record.

6. The learned XVIII Metropolitan Magistrate Court, Saidapet, Madras had given cogent reasons for acquitting the respondent U/s 255(1) code of Criminal Procedure and I do not find any reason to interfere with the findings of the learned XVIII Metropolitan Magistrate, Saidapet, Madras.

7. Accordingly, the order of acquittal passed in favour of the respondent is confirmed and the appal is dismissed.

8. In the result, Criminal Appeal No.305 of 2007 is dismissed.

08.12.2017

R. HEMALATHA, J.

ksa

Speaking/Non speaking order
Index : Yes/No

Internet : Yes/No

ksa

To

1. The XVIII Metropolitan Magistrate, Saidapet, Madras .
2. The Principal Sessions Judge, Chennai.
3. The Public Prosecutor, Madras High Court, Chennai.

Crl. A. No. 305 of 2007