

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal Nos.315 and 323 of 2008

Sushil R.Bhatia .. Appellant in Crl.A.No.315/2008/
Complainant

Radhakishan C.Bhatia ... Appellant in Crl.A.No.323/2008/do

Vs.

Ramanathan .. Respondent in both Crl.Appeals/Accused

Criminal Appeals preferred under Section 378 (1) of Cr.P.C.
against the judgment dated 4.12.2007 made in C.C.Nos.160 and 161
of 2005 passed by learned Judicial Magistrate No.1, Salem.

For Appellant : Mr.G.V.Sridharan

For Respondent : No Appearance

COMMON JUDGMENT

These appeals arise against the judgment dated
4.12.2007 passed in C.C.Nos.160 and 161 of 2005 passed by
learned Judicial Magistrate I, Salem.

2. Appellants/complainants have filed C.C.Nos.160 and
161 of 2005 on the file of learned Judicial Magistrate No.1,
Salem, under Section 138 of the Negotiable Instruments Act
against respondent herein informing that they had issued cheques
bearing Nos.132928 dated 27.08.2004, 132920 dated 03.09.2004 and
132927 dated 20.08.2004 drawn on Indian Overseas Bank, Salem, in
sums of Rs.5,00,000/-, Rs.5,00,000/- and Rs.2,00,000/- towards
repayment of borrowing, which upon presentation were returned
unpaid for the reason 'Insufficient Funds'.
Appellants/complainants caused statutory notice in keeping with
section 138 of the Negotiable Instruments Act and preferred
complaints.

3. Before trial Court, appellant in Crl.A.No.315/2008
has been examined as PW-1 in both cases and nine exhibits in

C.C.No.160 of 2015 and 8 exhibits in C.C.No.161 of 2005 were marked. On the side of defence, one witness was marked and 7 exhibits were marked in both cases. On appreciation of materials before it, trial Court, under judgment dated 04.12.2007, acquitted the respondent. There against, the present appeals have been filed.

4. Heard learned counsel for appellants. There is no appearance for respondent. Perused the materials on record.

5. In acquitting respondent, trial Court has found that appellants/complainants have contended that the accused has borrowed a sum of Rs.7,00,000/- from the appellant in Crl.A.No.315/2008 and Rs.5,00,000/- from the appellant in Crl.A.No.323/2008. To substantiate such contention, no document has been produced except marking of subject cheques. Further, PW-1 has admitted that they have not obtained any security from respondent/accused. Though they maintained accounts they have not produced the same before Court. The contention of respondent/accused was that he has given power to the brother of PW-1 towards selling his properties; that the brother of appellant has sold plots and when respondent/accused demanded accounts for the same, appellants/complainants have filled the subject cheques and foisted false complaints against him. This contention has not been refused by appellants/complainants by way of reply. PW-1 has also admitted the power given by respondent/accused to his brother. Though appellants have marked Ex.P9 in Crl.A.No.315/2008 and Ex.P8 in Crl.A.No.323/2008, income tax documents, they have failed to produce the account books maintained by them. While it was the case of appellants/complainants that they are doing business for 20 years, the contention of appellants/complainants that they have not received any document at the time of lending money was untenable. For the above reasons and for other reasons, Court below has held that appellants/ complainants have failed to prove their case. This Court finds that a well-reasoned approach has been adopted by Court below in acquitting the respondent.

The Criminal Revision Cases shall stand dismissed.

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

kmi

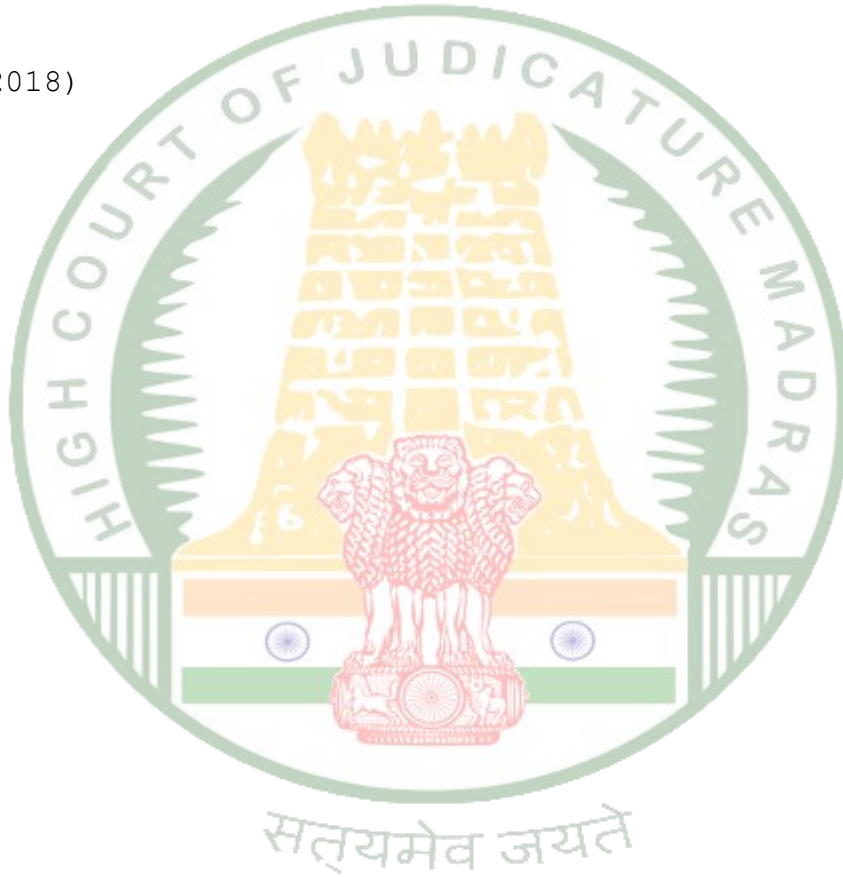
To

1.The Judicial Magistrate No.1,
Salem.

2.do Thro Chief Judicial Magistrate,
Salem.

Criminal Appeal Nos.315 and
323 of 2008

KJ (CO)
GN(22/03/2018)



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