

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.624 of 2010

B.Magesh

S/o.T.H.Bhojan

.. Appellant/Complainant

Vs.

S.K.Raman

S/o.Late Katty

... Respondent/Accused

Criminal Appeal preferred under Section 378 of Cr.P.C against the order of acquittal passed by learned Sessions Judge of the Nilgiris at Udhagamandalam by Judgement dated 28.04.2010 in C.A.No.6 of 2010, to set aside the order of Conviction and Sentence of one year imprisonment and imposing a fine of Rs.4,000/- in default to undergo 6 months Simple Imprisonment passed by the learned Judicial Magistrate, Kotagiri by judgement dated 04.12.2009 in C.C.No.134 of 2004.

For Appellant : Mr.L.Mouli

For Respondent : Mr.V.Chinnasamy

J U D G M E N T

This appeal arises against the judgement of acquittal passed by learned Sessions Judge of the Nilgiris at Udhagamandalam by Judgement dated 28.04.2010 in C.A.No.6 of 2010.

2. Appellant/complainant has filed C.C.No.134 of 2004 on the file of learned Judicial Magistrate, Kotagiri, under Section 138 of the Negotiable Instruments Act against respondent herein informing that the respondent/accused issued a cheque bearing No.574068 dated 02.07.2004 in a sum of Rs.4,50,000/- towards repayment of borrowing, which upon presentation, returned unpaid for the reason "Cheque did not bear proper account number". 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 as PW-1 and the Assistant Manager of ICICI Bank, Coimbatore was examined as PW-2 and marked 9 exhibits. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgement dated 04.12.2009, convicted the respondent/accused for offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year imprisonment and fine of Rs.4,000/- i/d 6 months S.I. There against, the respondent/accused moved C.A.No.6 of 2010, on the file of learned Sessions Judge, Nilgiris, Udhagamandalam. Appellate Court, under judgement dated 28.04.2010, rendered a finding of acquittal. Challenging the same, appellant/complainant has preferred the present appeal.

4. Observations are to be made on strict reading of penal provisions. Though learned counsel for appellant relied on decision of Apex Court in the case of NEPC MICON LTD., AND OTHERS Vs. MAGMA LEASING LTD., [(1999) 4 SCC 253] dealing with the case of account closure and reasoned that monies in the group of accounts stand withdrawn at the time of closure of account and therefore, the requirement of Section 138 of Negotiable Instruments Act, on return of the cheque unpaid for the reason that the money standing to the credit of the account, was insufficient to honour the same, was met. In the instant case, the return of the cheque was for the reason "Account Number is not properly mentioned". Though the appellant, has, through examination of the Manager of the respondent's Bank, been able to establish that such return arose owing to the merger of the Bank of Madura Limited with ICICI Bank and since the numeral which connected the savings Bank account was not specifically informed in the cheque, which was presented for payment, Section 138 of Negotiable Instruments Act is penal provision and the same has to be construed strictly. The specific requirement of Section 138 is that the cheque must be returned unpaid either because the amount of money standing to the credit of the account, is insufficient to honour the cheque or that exceeds agreement made with that bank. Such, is not the position in the instant case.

5. Hence, this Court is unable to interfere with the findings of acquittal arrived at by the Appellate Court.

6. The Criminal Appeal shall stand dismissed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Sessions Judge of the Nilgiris,
Udhagamandalam.

2. The Judicial Magistrate,
Kotagiri.

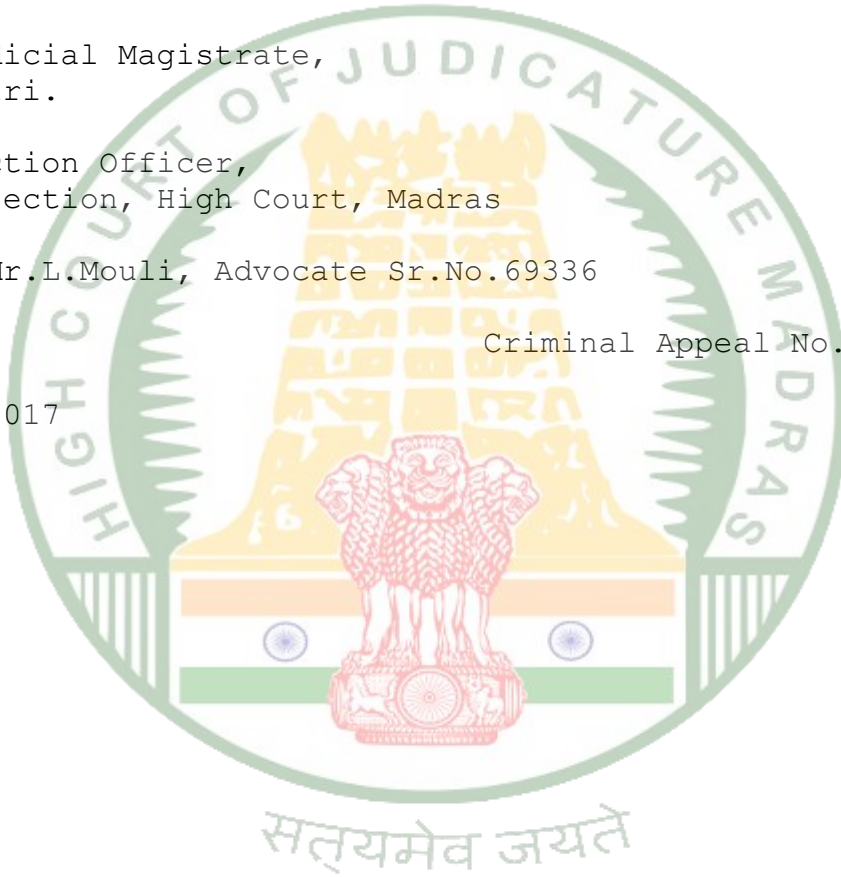
3. The Section Officer,
Criminal Section, High Court, Madras

+ 1cc to Mr.L.Mouli, Advocate Sr.No.69336

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CO(MR)]

VS 15/11/2017



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