

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 17.08.2017****CORAM****THE HONOURABLE MR.JUSTICE C.T.SELVAM****Criminal Appeal No.488 of 2007**

R.Palanisamy
S/o.Ramasamy Gounder

.. Appellant

Vs.

1. M/s.Luxury Garments
rep. By its partners
Varathottam, Pudupalayam Post,
Avinashi Taluk,
Coimbatore District.
2. Mr.Natarajan
S/o.Rangasamy Gounder
3. Mr.Loganathan
S/o.Rangasamy Gounder

.. Respondents

Criminal Appeal preferred under Section 378 of Cr.P.C. against the judgement of learned Judicial Magistrate-I, Tiruppur in S.T.C.No.5358/2006 dated 12.03.2007, acquitting the respondents herein from an offence under Section 138 of Negotiable Instruments Act, 1881.

For Appellant : Mr.S.Sathiachandran

For Respondents : Mr.A.Rajarajn

J U D G M E N T

This appeal arises against the judgment of acquittal passed by learned Judicial Magistrate-I, Tiruppur, passed in S.T.C.No.5358 of 2006 on 12.03.2007.

2. Appellant/complainant has filed S.T.C.No.5358 of 2006 on the file of learned Judicial Magistrate I, Tiruppur, under Section 138 of the Negotiable Instruments Act against the respondents herein informing that they had issued a cheque bearing No.397735 dated 24.11.2003 drawn on State Bank of India, Thennampalayam Branch, in a sum of Rs.5,00,000/- towards repayment of borrowing, which upon presentation, was returned unpaid for the reason 'Account closed'. 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 besides that, PWs-2 and 3 were examined and marked thirteen exhibits. One witness was examined on behalf of the defence and seven exhibits were marked. On appreciation of materials before it, trial Court, under judgement dated 12.03.2007, acquitted the respondents. There against, the present appeal has been filed.

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

5. In acquitting respondents, Trial Court has reasoned as follows:-

- (a)"In this case, the notice was sent to the first respondent/A1 Luxury Garments to Pudhukkadu, Avinasi Taluk instead of the address to Erukkadu, Tiruppur has been sent. Hence, this Court finds that the contention of the accused that the act of the petitioner shows that in the year 2001 itself, the first respondent's business has been stopped, has to be accepted.
- (b)From Ex.-D2, it is clear that first respondent's Bank account has been closed in the year 1997 itself, more particularly i.e., on 03.12.1997 itself.
- (c)From the Evidence of DW-2, it is seen that the cheque in question in this case viz., cheque bearing no.397735 and prior and after to the said number, have all been issued in the year 1997 itself in the name of Luxury Garments.
- (d)From Ex.D3, it is clear that first respondent's organisation viz., Luxury Garments's Bank Account was closed by 03.12.1997 itself. Hence, this Court comes to conclusion that the argument of the petitioner that in the year 1997 itself, most of the cheques have been issued, out of which one cheque relating to the case on hand, was issued to him in the year 2003, could not be countenanced.
- (e)This cheque was issued after the reply notice dated 04.12.2003 and the criminal case was launched on 06.01.2004. On the same date, the case was taken on file by this Court, which is

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clear from the Court documents. Hence, this case was filed under the provisions of Negotiable Instruments Act on 06.01.2004 before which the accused in this case have replied on 04.12.2003 and the petitioner Palanisamy's business relationship has been mentioned. Taking the same into consideration, this Court finds that the petitioner's contention about the loan amount has not been availed of by the accused.

(f) This Court finds that the signature in the cheque in this case is of himself, has been accepted by A2, whose act is in favour of the petitioner as per Section 139 of Negotiable Instruments Act, which is averted based on the believable evidence."

6. This Court finds that a well-reasoned approach has been adopted by Trial Court in acquitting the respondents.

Hence, the Criminal Appeal shall stand dismissed.

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Index : Yes/No

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To

<http://www.judis.nic.in> The Judicial Magistrate-I,
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