

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. Appeal No.574 of 2008

Periyanayagam

... Appellant

Vs.

A.Peter

... Respondent

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the learned Judicial Magistrate, Panruti in C.C.No.143 of 2004 dated 26.05.2008 acquitting the accused/respondent herein under Section 255(i) Cr.P.C and finding him not guilty of the offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Ms.B.Sumana
for Mr.C.Prasanna Venkatesh

For Respondent : Ms.D.S.Thirumavalavan

JUDGMENT

The present appeal has been filed by the complainant against the order of acquittal passed in C.C.No.143 of 2004 dated 26.05.2008 by the learned Judicial Magistrate, Panruti under Section 138

of the Negotiable Instruments Act.

2. The case of the appellant/complainant is as follows:

(i)The complainant and the accused along with some other members formed an Educational Society in the name and style of Annai Velankanni Educational and Social Society at Kasthuribai Street, Panruti. After some years, the members of the said society along with other share holders started a Polytechnic in the name and style of 'Annai Velankanni Polytechnic' at Anguchetty Palayam, Panrutti Taluk. Subsequently, they have also started an Engineering College called as 'Annai Theresa Engineering College' at Thirunavalur village, Villupuram District.

(ii)The respondent/accused used to borrow money from the complainant and returned the same regularly. Similarly on 30.09.2003, the respondent borrowed a sum of Rs.5,00,000/- from the appellant and in order to discharge the debt, he issued a cheque bearing No.746772 dated 30.09.2003 for Rs.5,00,000/- drawn on the Federal Bank Limited. Despite several demands, the accused failed to repay the same. Hence, the complainant presented the cheque for collection on 13.10.2003 in the State Bank of India, Panruti Taluk and the same was returned on 29.10.2003, on the ground of "insufficient funds". Thereafter, the

<http://www.judis.nic.in> complainant issued a legal notice and the said notice was returned as

"the addressee not claimed". Since the accused failed to settle the payment, he filed a complaint under Section 138 of the Negotiable Instruments Act. The Court below after taking cognizance of the offence, taken the complaint on file.

(iii) In order to prove the case of the complainant, the complainant himself examined as P.W.1 and the Bank Manager was examined as P.W.2 and Exs.P.1 to P.5 were marked. The respondent/complainant examined himself as D.W.1 and marked seven exhibits namely, Exs.D.1 to D.7.

(iv) Having considered all the above materials, the trial Court acquitted the accused. Aggrieved by the acquittal of the accused, the present Criminal Appeal has been filed.

3. From the materials available on record, it could be seen that the complainant and the accused along with some other members formed an educational and Social Society. Subsequently, there was a misunderstanding between the appellant and the respondent, due to which, the respondent filed a suit before the Civil Court and the same was withdrawn with liberty to file a fresh suit. Thereafter, the appellant

herein filed a suit and the same was decreed wherein, an official

receiver was also appointed to manage the properties of the educational society, and the civil dispute went upto Supreme Court. In the said circumstances, all the members of the society except the appellant decided to dispose the Polytechnic to one St.Annes Institution at Trichy and they have also entered into an agreement. Based on the agreement, on 28.05.2003, the said society was handed over to St.Annes Institution. Hence, the respondent went to the appellant's house and he requested the appellant to accept the same.

4.However, the appellant demanded more money. Hence, the respondent agreed to give a sum of Rs.5,00,000/- to the appellant and for the same, he gave a blank cheque to the appellant for which, the appellant gave a receipt for acknowledging the blank cheque. But, in the said acknowledgment, the cheque number was mistakenly stated as 746774. Subsequently, on 28.5.2003, after selling the Polytechnic, the respondent paid entire amount of Rs.5,00,000/- in cash. When the respondent asked the appellant to return the blank cheque, he did not return the cheque. Ex.R.4 shows that the complainant received the cheque amount. Thereafter, the respondent went to Ooty for his children studies.

5.The trial Court after considering the evidence and materials available on record came to the conclusion that the entire amount has been paid by the respondent for the blank cheque No.746772 issued by the respondent, for which, the acknowledgment receipt was also issued by the appellant. But, the cheque number has been wrongly mentioned as 746774 instead of 746772. In order to prove the same, the respondent produced Ex.R.4, the acknowledgment slip issued by the appellant. The respondent produced Ex.R.5, the attested xerox copy of cheque No.746774 and Ex.R.6, the statement of accounts to show that the said cheque No.746774 was used by him for receipt of Rs.2,80,000/- for his own purpose. In view of the above, the trial Court held that under the cheque No.746772, entire cheque amount has been received and the liability has been discharged by the appellant and acquitted the accused as he is not guilty under Section 138 of the Negotiable Instruments Act.

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6.I have heard Mr.C.Sumana, learned counsel for the appellant and Mr.D.S.Thiruma Valavan, learned counsel for the respondent and I have also perused the records carefully.

7.It is the specific case of the complainant that he issued the

acknowledgment receipt for the cheque No.746774 to the respondent, but not for the cheque No.746672. But the respondent has submitted that cheque No.746774 has separate transaction and he submitted the said cheque was drawn "as self" for Rs.2,80,000/- for his own purpose. To substantiate the same, Ex.R.7 was produced before the trial Court. The respondent produced Ex.R.6 the acknowledgment receipt, which was given by the complainant to prove the fact that the number of the blank cheque is 746672.

8.From the materials available on record, it is seen that the respondent issued the cheque No.746772, dated 30.09.2003 for payment of Rs.5,00,000/-. It is further seen that Ex.R.4, the acknowledgment receipt issued by the appellant established that the appellant received the entire cheque amount. But, at the time of issuance of acknowledgment, due to oversight, the cheque number was mistakenly written as 746774 instead of 746772, The respondent has also established that the cheque No.746774 was not issued by him for his liability. The Court below, considering all the materials has rightly come to the conclusion that the entire cheque amount has been paid by the respondent. Hence, I find no illegality or irregularity or perversity in the judgment of the trial Court. In the above said circumstances, I find

<http://www.judis.nic.in> no reason to interfere with the order of acquittal passed by the trial

Court. Hence, the appeal fails and the same deserves to be dismissed.

9.In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the trial Court passed in C.C.No.143 of 2004, dated 26.05.2008 is hereby confirmed.

01.02.2017

Index:Yes/No
Internet:Yes/No
cla

To

1.The Judicial Magistrate,
Panruti,
Cuddalore District.

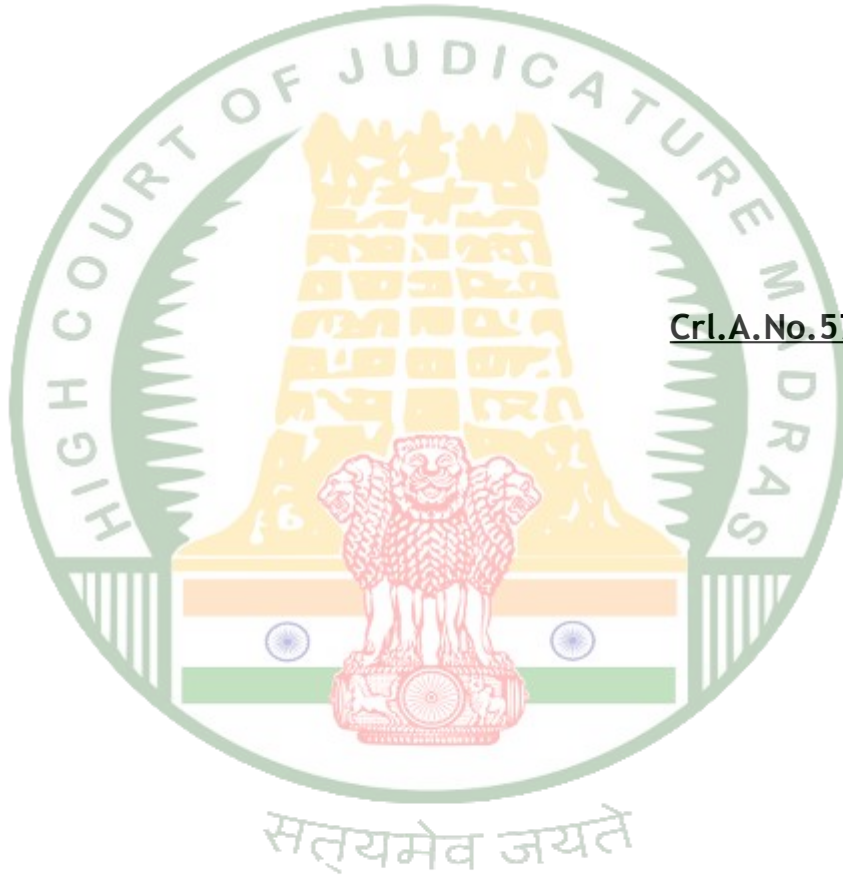
2.The Public Prosecutor,
High Court, Madras.



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V.BHARATHIDASAN, J.

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