

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.602 of 2008

N.Babuji

.. Appellant/Complainant

Vs.

K.Samraj

..Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C. praying to set aside the Judgment dated 30.05.2008 made in C.C.596/2006 on the file of the Judicial Magistrate No.III, Coimbatore and allow this Criminal Appeal.

For Appellant : Mr. J.Ramakrishnan
For Respondent : No appearance

JUDGMENT

Brief facts of the case of the appellant/complainant:

The respondent's wife Mrs. Punitha, was running a Fancy Stores as a tenant in the building belonging to the appellant/complainant at Door.No.265, Periya Kadai Veethi, Coimbatore dealing with Gold Covering

Jewellery. The respondent/accused borrowed a sum of Rs.1,00,000/- from the complainant on 05.12.2005 for improving the business run by his wife, and issued a post dated cheque dated 05.01.2006(Ex.P1) for a sum of Rs.1,00,000/- drawn on Karur Vysya Bank, Dr.Nanjappa Road, Coimbatore in favour of the complainant. As per the instructions of the respondent, the complainant presented the cheque before his Banker namely Indian Overseas Bank, District Court Branch, Coimbatore.

2.The cheque was returned for the reason that the account of the respondent was closed. The cheque return memo and the debit advice given by the bank are marked as Exhibit P2 and P3 respectively. Thereafter, the appellant issued a legal notice to the respondent on 29.05.2006(Ex.P4) which was returned as 'unclaimed' as evidenced by the returned cover Ex.P5. Therefore the appellant/complainant filed a complaint in C.C.No.596/2006 before the Judicial Magistrate, No.3, Coimbatore.

3.Before the trial Court, the appellant/complainant examined himself as PW1 and marked Exhibits P1 to P5. On behalf of the respondent, 3 witnesses were examined as Exhibits R1 to R3 were marked.

4. After full contest, the learned Judicial Magistrate, No.III, Coimbatore dismissed the complaint filed by the appellant/complainant and acquitted the respondent/accused under Section 255(1) Cr.P.C.

5. Aggrieved by the said Judgment dated 30.05.2008 passed by the learned Judicial Magistrate III, Coimbatore, the appellant has filed the present appeal on the following grounds:

(a). The trial Court has failed to appreciate the evidence adduced on the side of the complainant.

(b). The trial Court has failed to look into the fact that the respondent has not issued any reply to the statutory notice (Exhibit P4) dated 29.05.2008 issued by the appellant/complainant.

(c). The Trial Court ought to have discarded the oral evidence of RW2 as she is the wife of the accused and hence is an interested witness.

(d). There are contradictions in the oral evidence of RW2 and RW3 in material particulars. Though RW2 has deposed that 9 cheques were given as security, in cross examination, she has stated that only 3 cheques were given as security.

(f). The findings of the Trial Court are based on mere surmises and conjectures and is therefore liable to be set aside.

6.The point that arises for consideration is whether the order of acquittal passed by the learned Judicial Magistrate III, Coimbatore is liable to be set aside.

7.The wife of the respondent/accused was running a business in the name and style of M/s. Punitha Gold Covering in the building owned by the appellant/complainant and his two brothers and towards the rental advance of Rs.3,00,000/-,(Rs.1,00,000/-each for three brothers-Co-owners) 3 cheques were obtained by them, as security as early as in October 1997, when the shop was taken on rent. These nine cheques were given by the respondent/accused from his account, as his wife did not have a bank account then. Subsequently the property was sold by the brothers. Hence, the wife of the respondent/accused shifted the shop on 05.04.2006, to some other place.

8.The respondent/accused had issued a notice to the appellant/complainant, asking the appellant and his two brothers to return the three cheques taken from him and also the rental advance of Rs.1,00,000/-.Though the other two brothers of the appellant/complainant returned their share of Rs.1,00,000/- each of the rental advance and also the three cheques (Each) obtained by them

as a Security, the appellant/complainant did not oblige, and, instead, sent a reply - Ex.R2 to the notice issued by the respondent. But, in his reply notice, there was no mention about the return of the three cheques and the advance amount of Rs.1,00,000/- by the respondent/accused. There is also no mention about the Cheque no, date etc.. It is pertinent to mention that the Legal notice dated 05.04.2006, (Exhibit R1) was much before the presentation of the cheque by the appellant/complainant on 17.05.2006. The learned Judicial Magistrate No.III, Coimbatore also relied on the deposition of RW1, the Bank Officer, Karur Vysya Bank, who has clearly stated that the cheque which was returned unpaid was issued by the respondent/accused in the year 1997.

9.The learned Judicial Magistrate No.III, Coimbatore, had every reason to believe that this cheque was one of the three cheques given to the appellant/complainant as security for the premises taken on rent by the wife of the respondent/accused. According to the trial Court, the case of the respondent/accused was very clear and transparent and incidently, apprehending the misuse of the said cheques. The respondent/accused had closed his Account, even before the presentation of the cheque by the appellant/complainant.

10.The conclusion of the learned Judicial Magistrate No.III, Coimbatore is based on the evidence on record and she has also given cogent reasons for dismissing the complaint. Therefore, I do not see any ground to interfere with the findings of the learned Judicial No.III, Coimbatore and, accordingly I answer the point against the appellant/complaint.

In the result, the Criminal Appeal is dismissed.

12.12.2017

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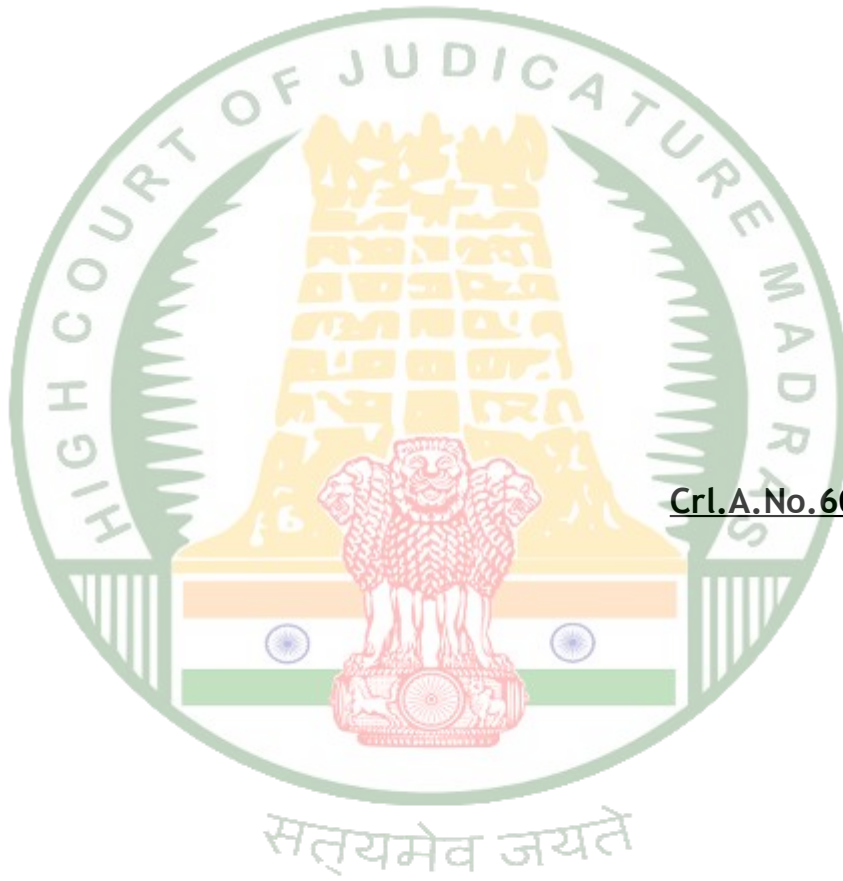
The Judicial Magistrate No.III, Coimbatore.



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R. HEMALATHA.J,

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