

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.546 of 2007

C.C.Philips
Appellant/Complainant

vs.

M.Dharmaraj ... Respondent/accused

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 14.05.2007 passed by the learned
Judicial Magistrate, Uthagamandalam, The Nilgiris District in
S.T.C.No.209 of 2006.

For Appellant : Mr.K.V.Sridharan

For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal, the present appeal has
been filed by the complainant. The complainant has filed a private
complaint before the Judicial Magistrate Court for the offence under
Section 138(b) of Negotiable Instrument Act, on the ground that
the respondent/accused borrowed a sum of Rs.3,70,000/- and to
discharge the same he issued three cheques, one for a sum of

<http://www.judis.nic.in> Rs.2,00,000/- dated 08.03.2001 and subsequently on 16.03.2001,

he issued another cheque for a sum of Rs.1,00,000/- and on 27.03.2001 he issued another cheque for a sum of Rs.70,000/-. All the three cheques were drawn on State Bank of India, Kotagiri. When the appellant presented the cheque dated 08.03.2001, issued for a sum of Rs.2,00,000/-, the said cheque has been dishonoured on the ground that there is no sufficient funds available in his account. Hence, after completing the legal formalities, the appellant filed the present complaint.

2. In order to prove the case, the appellant/complainant examined herself as P.W.1 and 7 documents were exhibited.

3. The respondent/accused contested the complaint on the ground that the respondent/accused already paid a sum of Rs.2,00,000/- and he has also made an endorsement to that effect in the legal notice sent by the complainant. He has also marked the said legal notice as Ex.D1. The trial Court, after considering all the material, acquitted the accused on the ground that as per the endorsement made by the appellant/complainant, the amount has been discharged and there is no liability on the part of the accused. Challenging the said order of acquittal, the present appeal has been filed.

4. The learned counsel appearing for the appellant would contend that even though the appellant has not dispute the endorsement made by him, the amount has been paid in respect of some other transaction, and not related to cheque amount. The trial Court erroneously considered that the amount received by the appellant/complainant is only to discharge the liability related to the cheque.

5. I have carefully considered the submissions of the learned counsel appearing for the appellant and perused the material available on record.

6. Admittedly, a legal notice was issued by the complainant to the respondent for demanding a total sum of Rs.3,70,000/- in respect of three cheques, and in his cross examination, he already admitted that he has received a sum of Rs.1,70,000/- and for remaining amount of Rs.2,00,000/-, he presented the cheque and he also admitted the endorsement made in the legal notice[Ex.D1]. In the above circumstances, by producing the endorsement for the receipt of Rs.2,00,000/-, the accused has rebutted the initial presumption under Section 139 of the Negotiable Instrument Act, and it is the duty of the complainant to prove that the amount has been received not

related towards liability related to the cheque, but for some other transaction. But, absolutely there is no evidence on the part of the appellant/complainant that the amount has been received for some other transaction. In the above circumstances, the trial Court rightly considered the case and also material available on record and acquitted the accused and I do not find any illegality or perversity in the order passed by the trial Court.

7. In the result, the criminal appeal is dismissed. The order of acquittal dated 14.05.2007 passed in S.T.C.No.209 of 2006 on the file of the learned Judicial Magistrate, Uthagamandalam, The Nilgiris District, stands confirmed.

19.01.2017

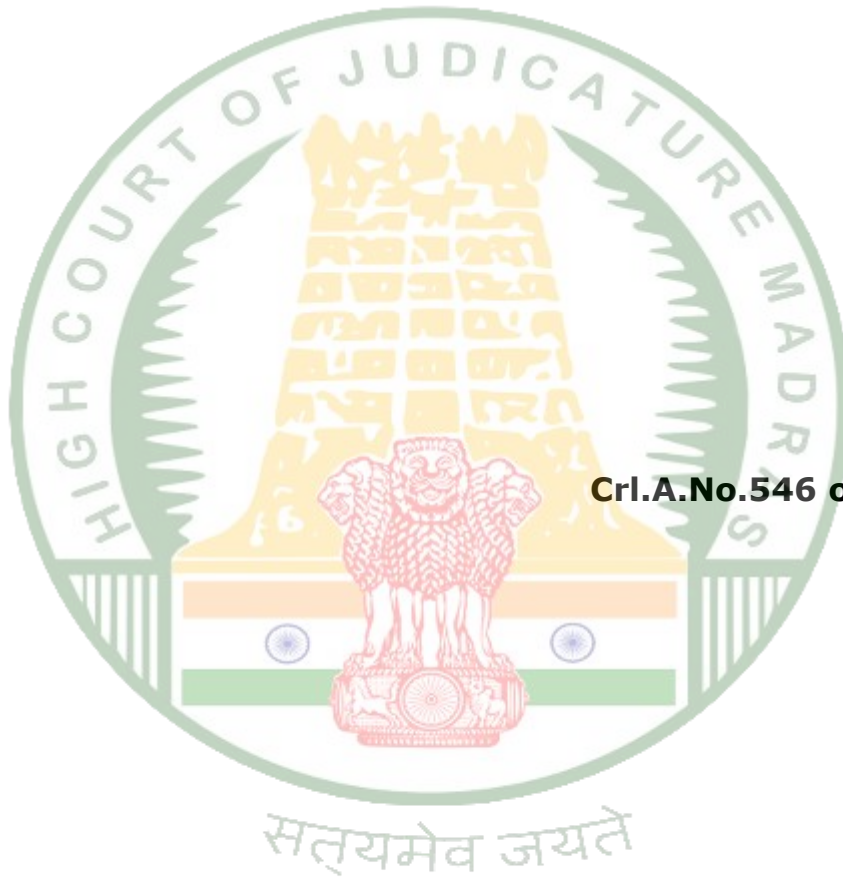
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To

1.The Judicial Magistrate,
Uthagamandalam.

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V.BHARATHIDASAN.J.,

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