

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.64 of 2008

S.Sigamani

S/o.Sundarasamy

.. Appellant/Complainant

Vs.

K.Murugananathan

S/o.Late Kesavan

.. Respondent/Accused

Criminal Appeal preferred under Section 378 of Cr.P.C against the judgment of acquittal passed by learned Judicial Magistrate, Coonoor, The Nilgiris, passed in STR No.125 of 2004 on 13.11.2007.

For Appellant : Mr.M.L.Ramesh

For Respondent : No appearance

J U D G M E N T

This appeal arises against the judgment of acquittal passed by learned Judicial Magistrate, Coonoor, The Nilgiris, passed in STR No.125 of 2004 on 13.11.2007.

2. Appellant/complainant moved a prosecution informing that respondent/accused borrowed a sum of Rs.75,000/- from him and issued a cheque bearing No.512474 dated 23.07.2003 drawn on Indian Bank, Coonoor Branch, towards repayment thereof, which on presentation was returned unpaid for the reason 'insufficient funds'. Following the procedure envisaged u/s.138 of the Negotiable Instruments Act, appellant/complainant has preferred a complaint and the same was taken on file in STR No.125 of 2004 on the file of learned Judicial Magistrate, Coonoor, The Nilgiris.

3. Before trial Court, appellant/complainant examined himself and marked 4 exhibits. None were examined on the side of defence and 1 exhibit was marked. On appreciation of materials before it, trial Court, under judgment dated 13.11.2007, acquitted respondent. There against, the present appeal has been filed.

4. Heard learned counsel for appellant. There is no appearance for respondent.

5. In acquitting respondent, Court below has reasoned that respondent has caused a reply to the statutory notice well before preference of the complaint. In the reply notice, respondent has stated that he has borrowed a sum of Rs.20,000/- from appellant in 1997 and repaid with interest in 1997 itself and at the time of borrowal, appellant has received ten blank cheques towards security and failed to return the same on repayment. Respondent has further stated that appellant has misused one of the cheques given towards security and foisted a false case. Appellant has not chosen to cause a rejoinder to the reply. Appellant has not established his case through oral and documentary evidence. Further, it was the case of appellant that he has filed two other cases against respondent for offence u/s.138 of the Negotiable Instruments Act. In Ex.D1, statutory notice dated 02.03.2007, issued by appellant demanding payment of two cheques bearing Nos.512467 and 512468 dated 24.12.2006 in a sum of Rs.15,000/- each, appellant has stated that the said cheques were issued towards partial payment of the sum due in this case. Once a cheque already issued by respondent has been returned unpaid, the contention of appellant that he has received other two cheques towards partial payment was not acceptable. Once a cheque was dishonoured and if the parties were willing to settle the issue, the normal approach would be to receive payment either by cash or Demand Draft. Further, all cheques pertain to the same cheque book, which would further falsify the case of appellant. On the above reasoning, Court below has held that appellant has failed to establish his case and accordingly, acquitted the respondent. This Court finds no error in the judgment under challenge.

The Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar(CS-vi)

//True Copy//

Sub Assistant Registrar

gm

To
The Judicial Magistrate,
Coonoor, The Nilgiris.

Copy to

The Section Officer,
Criminal Section, High Court, Madras. (2 copies)

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PA(CO)
TR(07/02/2018)