

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.383 of 2006

M/s.Godavari Leasing & Finance Ltd.,
represented by its
Power of Attorney,
P.Srinivasan,
Assistant Manager,
Creative Enclave, 2nd Floor, No.98/99,
Luz Church Road, (Oliver Road),
Mylapore, Chennai - 600 004. ... Appellant

Vs.

M.Kannan ... Respondent

Criminal Appeal preferred under Section 378 of Cr.P.C
against the judgment of acquittal passed by learned XVIII
Metropolitan Magistrate, Saidapet, Chennai, passed in
C.C.No.5383 of 2003 on 28.12.2005.

For Appellant : Mr.M.Deivanandam

For Respondent : Mr.Samuel Raja Pandian,
Legal Aid Counsel

J U D G M E N T

This appeal arises against the judgment of acquittal passed
by learned XVIII Metropolitan Magistrate, Saidapet, Chennai,
passed in C.C.No.5383 of 2003 on 28.12.2005.

2. Appellant/complainant has filed C.C.No.5383 of 2003 on
the file of learned XVIII Metropolitan Magistrate, Saidapet,
Chennai, u/s.138 of the Negotiable Instruments Act against
respondent herein informing that they are engaged in the
business of hire purchase and lease finance, that one K.Mansur
Ali entered into a hire purchase agreement towards purchase of
Ambassador Diesel Car bearing registration No.TN-09-T-6870 and
received a sum of Rs.2,70,000/- for which respondent stood as a
guarantor. As the hirer defaulted in payment, respondent issued
cheque bearing No.676928 dated 27.05.2003 in a sum of
Rs.1,10,000/- drawn on Indian Overseas Bank, Explanade Branch,

Chennai, towards part payment, which upon presentation was returned unpaid for the reason 'insufficient funds'. 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 1 witness and marked 10 exhibits. 1 witness was examined on behalf of defence and 1 exhibit was marked. On appreciation of materials before it, trial Court, under judgment dated 28.12.2005, acquitted respondent. There against, the present appeal has been filed.

4. Heard learned counsel for appellant and learned legal aid counsel for respondent.

5. In acquitting respondents, trial Court has found that the complainant himself has admitted the difference in ink in the subject cheque and in the course of re-examination, PW-1/complainant deposed that the same was filled only at the request of respondent. In response to the contention of complainant that no reply was issued to the statutory notice, respondent submitted that even according to complainant, respondent has approached him after seizure of vehicle and issued Ex.P6, cheque. The said position has not been found mention neither in the complaint nor in the statutory notice or in chief-examination. However, in cross, PW-1 himself has admitted that he has not stated the fact of respondent and hirer came to their office towards arriving at a compromise after seizure of vehicle, either in the complaint or in the statutory notice. Given such position, issuance of Ex.P6, cheque, towards part payment was unsustainable. One other contention of respondent that complainant has received four blank cheques from him and DW-1, hirer, at the time of entering the Hire Purchase Agreement and therefore, it was not reliable that respondent voluntarily approached complainant and issued Ex.P6, cheque, when admittedly the vehicle belonged to DW-1 and complainant has misused one of the cheques issued earlier, found acceptance at the hands of Court below. DW-1 has admitted that the original R.C. Book was with him and marked the same as Ex.D1, which clearly revealed that entire amount has been paid. While it was the case of complainant that DW-1 defaulted in payment, then it was not known how respondent was in possession of original R.C.Book. For the aforesaid reasons and for other reasons, trial Court found that complainant has not proved its case beyond reasonable doubt and accordingly, acquitted respondent. This Court finds no reason to interfere with the judgment under challenge.

The Criminal Appeal shall stand dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gm

To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

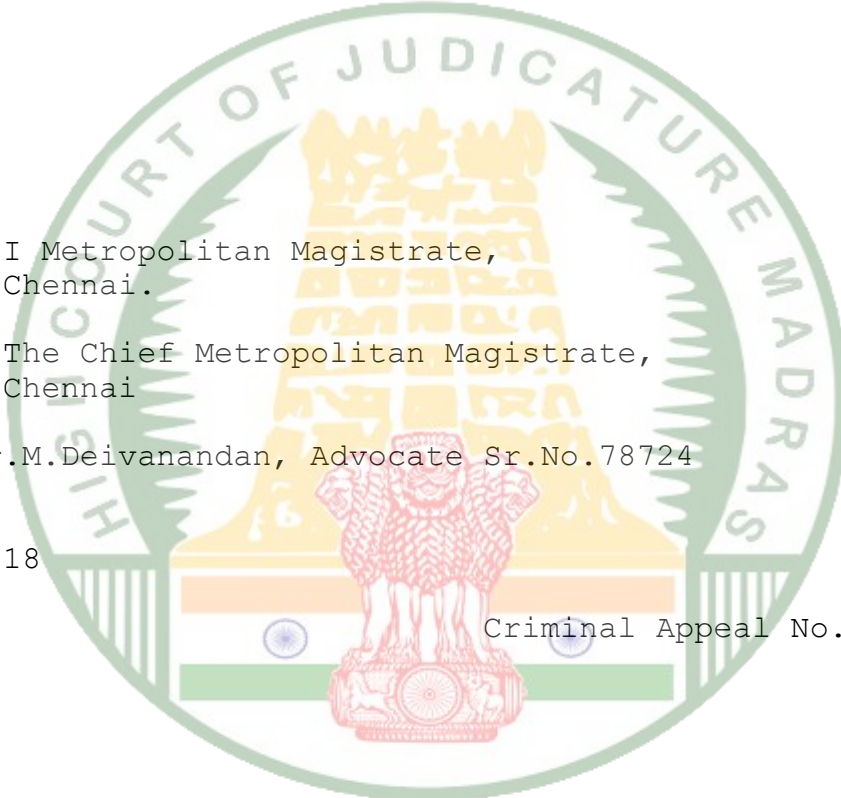
2.Do thro The Chief Metropolitan Magistrate,
Egmore, Chennai

+1cc to Mr.M.Deivanandan, Advocate Sr.No.78724

VD(CO)

sm:13.3.2018

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