

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CRL.A.No.460 of 2016

R.Rajendran

... Appellant

versus

P.Vijayaraj

... Respondent

PRAYER : Criminal Appeal filed under Section 378(2) of the Code of Criminal Procedure, to admit this appeal and call for the records from the Trial Court, namely, the Judicial Magistrate No.1, Coimbatore, duly quash and set aside the judgment of the lower court by convicting the respondent/accused in C.C.No.187 of 2011 on the file of Judicial Magistrate No.I [Fast Track Court], Coimbatore dated 26.02.2016.

For Appellant : Mr.A.Thiyagarajan

For Respondent : Mr.R.Ganeshbabu

JUDGMENT

The complainant in C.C.No.187 of 2011 on the file of the Judicial Magistrate No.I [Fast Track Court], Coimbatore is the appellant herein. He has filed the complaint for the offence under Section 138 of Negotiable Instruments Act. He has alleged in the complaint that the respondent has borrowed Rs.75,000/- as hand loan on 15.07.2007, that he has promised to repay the same within a month, that he for the discharge of the said debt, issued three post dated cheques, namely, cheque

No.168334 dated 10.06.2008, cheque No.168335 dated 15.06.2008 and cheque No.168336 dated 18.06.2008 each for Rs.25,000/-, that the cheques when presented for encashment were dishonored with remarks "insufficient funds", that he was called upon to pay the amounts covered by the cheques by notice dated 25.06.2008 and that despite receipt of notice, he has failed to pay the amount.

2. In support of the complaint, the appellant/complainant examined himself as P.W.1 and marked 8 documents, including the cheques in question. The defence of the respondent is that he purchased a house site from a firm run by the complainant and his partner one Jamel, that he has entrusted the construction work on the said site to the complainant, that he made initial payment of Rs.2,50,000/- by means of a cheque No.168337 dated 19.08.2006 and 2nd installment of Rs.3,22,000/- by means of cheque No.168339 dated 09.09.2006 and that for the purpose of purchasing building materials, the complainant has obtained three undated cheques for Rs.75,000/- in his favour from him. His further case is that, as he was unable to repay the building loan payable to the Corporation bank, steps were taken by the bank to sell the property by public auction and that therefore, he sold the property, before completion of construction work and discharged the bank loan. Thereafter, the complainant misused the said three undated cheques, handed over to him for purchasing building materials and filed the present complaint. In support of his case, the respondent has examined himself as D.W.3 and his Bank Officials as D.W.2.

3. The learned Trial Judge, accepted the defence of the respondent and acquitted the respondent on the ground that the complainant has failed to prove his case, beyond reasonable doubt. Assailing the said order of acquittal, the present Appeal has been filed.

4. The learned counsel appearing for the appellant would submit that Trial court has failed to take note that the respondent has not sent any reply to the legal notice, sent by the complainant and that the respondent has never asked for return of the cheques. It is also his contention that the Trial Court has erroneously placed reliance on Ex.D.4 to Ex.D.6 i.e. bank statement of the respondent and the paper advertisement.

5. The learned counsel appearing for the respondent has submitted that the respondent has discharged his initial onus by placing acceptable evidence and that therefore, the Trial Court was justified in acquitting the accused.

6. The cheques in question have been marked as Ex.P.1 to Ex.P.3. It is not in dispute that they were returned by the Bank, citing "insufficient funds". It is also not in dispute that the cheques belong to the respondent and they bore his signature. Therefore, it can be presumed that the cheques were issued for the discharge of legally enforceable debt, in terms of Sections 118 and 139 of Negotiable Instruments Act. The presumptions drawn under Sections 118 and 139 of Negotiable

Instruments are rebuttable. Therefore, it is to be seen, whether the respondent has rebutted the presumptions.

7. It is the definite case of the respondent that signed undated cheques for Rs.75,000/- were handed over to the complainant, as he has entrusted the work of construction of house, on the house site, purchased from the complainant's firm "Global Associates".

8. The complainant, P.W.1 in his evidence would admit that the respondent has issued a cheque bearing No.168337 dated 19.08.2006 for Rs.2,50,000/- when the building was under construction. He has also admitted that he has constructed a house for the respondent. He also admitted that he has constructed a house for the respondent. However, according to him, the construction work was over in the year 2007. Ex.D.3 is a Bank Account issued by the Corporation Bank for the period 02.04.2006 to 28.02.2007 and it relates to Account No. SB/01/003210 and Ex.D.4 Bank Statement is for the period 01.04.2006 to 31.03.2007 and it relates to Account No.:Home/01/060058. A perusal of Ex.D.3 would show that Rs.2,50,000/- was paid to Jamel by means of cheque bearing No.168337. On 19.08.2006, Rs.3,20,000/- was paid to Rajendran [complainant] by means of cheque bearing No.168339 dated 09.09.2006. Ex.P.1 cheque bears No.168334 and it is dated 10.06.2008, Ex.P.2 cheque bears No.168335 dated 15.06.2008 and Ex.P.3 is cheque No.168336 dated 18.06.2008.

9. It is significant to note that in the normal course, the cheques in question bearing Nos.168334, 168335, 168336 must have been issued, prior to the above mentioned cheques bearing No.168337 and 168339. It is well settled that the respondent can discharge his onus by preponderance of probability. He need not be proved his case beyond reasonable doubt. Therefore, simply because he has not issued any reply to the notice sent by the complainant, his defence cannot be brushed aside. In order to discharge his initial burden, he can place reliance on the materials furnished by the complainant.

10. The specific case of the complainant is that the respondent has borrowed Rs.75,000/- on 15.07.2007. The cheques are dated 10.06.2008, 15.06.2008 and 18.06.2008. It is significant to note that the complainant did not charge any interest. There is no explanation for the same. Issuance of cheque would clearly show that there was no mutual confidence between the parties. It is impossible to believe that the complainant lend money to the tune of Rs.75,000/-, without obtaining any documentary evidence. The respondent has given evidence that he has already sold the house, before the completion of construction, since the bank has taken action to sell the property, as there was default in repayment of the loan. The evidence of D.W.1, Bank Manager would show that the bank has taken possession of the house and thereafter, the respondent's loan amount was closed on 07.03.2008.

11. In my considered view, the circumstances notice above are sufficient to hold that the respondent has discharged his onus.

12. Once, the presumptions have been rebutted, it is for the complainant to prove that he has in fact lent Rs.75,000/- to the respondent. Admittedly, except the oral testimony of the complainant, there is no acceptable evidence to hold that he has actually lent Rs.75,000/- to the respondent. The present Appeal is against the order of acquittal. It is well settled, in an Appeal against an order of acquittal, if two views are possible, the Appellate Court should not reverse the judgment of acquittal, merely because another view is possible to be taken. The Trial Court has taken a reasonably possible view. I do not find any ground to hold a different view. The Appeal is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the learned Judicial Magistrate No.I [Fast Track Court], Coimbatore, in C.C.No.187 of 2011 dated 26.02.2016 is hereby confirmed.

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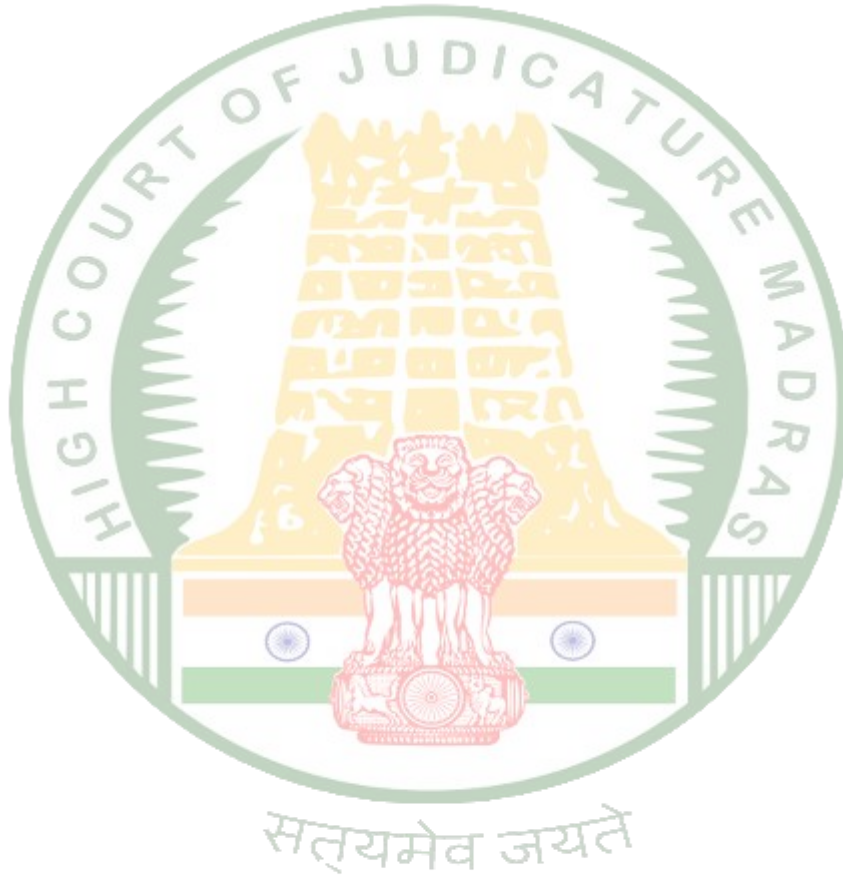
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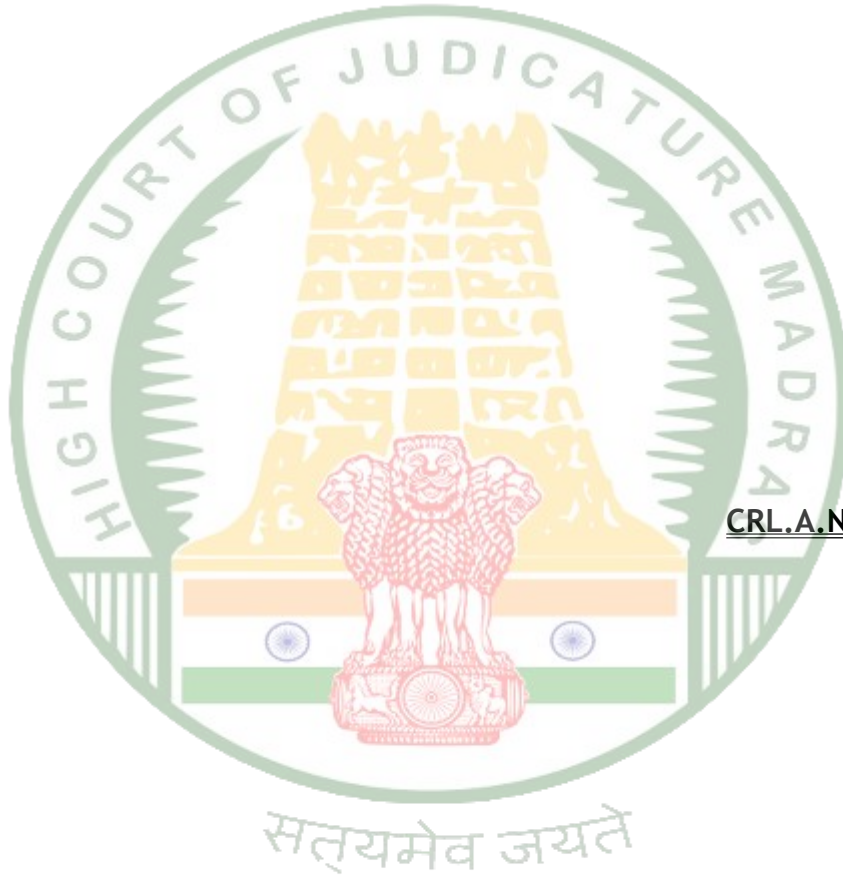
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N.AUTHINATHAN, J

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