

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.505 of 2016

N.Thirugnanasambandam

... Appellant

versus

E.Ananthi

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 21.07.2015 made in S.T.C.No.227 of 2013, on the file of the learned Fast Track Judicial Magistrate No.I, Erode.

For Appellant : Mr.R.Prabakar

For Respondent : Mr.K.Sudhakar
for Mr.N.Chinnaraj

JUDGMENT

The complainant in S.T.C.No.227 of 2013 is the appellant herein.

It is a private complaint filed under Section 138 of the Negotiable Instruments Act. The complaint has been filed on the allegations that the respondent herein on 27.02.2013 borrowed a sum of Rs.2,00,000/- from him. For the

discharge of the said liability, she has handed over three post-dated cheques [Ex.S.1 to Ex.S.3] dated 27.03.2013 [one cheque for Rs.1,00,000/- and another two cheques for Rs.50,000/- each]. Those cheques were dishonoured when presented for collection through Union Bank of India, Erode, due to “funds insufficient” in the account of the respondent.

2. The complainant issued legal notice dated 06.05.2013 calling upon the respondent to pay the cheque amount. It was returned on 16.05.2013, as the respondent failed to receive the notice despite intimation by the postal authorities. The present complaint was filed on 30.05.2013. The complainant examined himself in support of his case.

3. The respondent denied that she has borrowed Rs.2,00,000/- on 27.02.2013 from the complainant. It is her case that, the cheques were given as security for the loan obtained by one Mallika and that cheques were misused and the present complaint has been lodged.

4. The Trial Court has accepted the plea of the respondent. The Trial Court held that the complainant has failed to prove his case beyond reasonable doubt and acquitted the accused. It has also observed that the complaint was premature and not maintainable, as it has been filed before the

expiry of the notice period of 15 days for payment, from the date of return of notice on 16.05.2013. Aggrieved by the order of acquittal, the appellant filed the present appeal after obtaining leave.

5. The learned counsel appearing for the appellant would contend that the Trial Court was not justified in acquitting the accused on the ground that the complaint was premature, inasmuch as it has taken cognizance on the basis of the complaint. He has also contend that in the absence of any evidence on the side of the respondent, the Trial Court was not justified in recording a finding that the respondent has rebutted the presumptions drawn against him in terms of Section 139 of Negotiable Instruments Act.

6. The learned counsel appearing for the respondent advanced his arguments in support of the judgment. According to him, there are enough materials to show that the respondent has rebutted the presumptions and there is no evidence to show that the cheques were issued for the discharge of any legally enforceable debt.

7. I have perused the grounds of appeal and the judgment of the Trial Court.

8. It is not in dispute that the cheques belong to the respondent and they bear the signatures of the respondent. Therefore, it can be presumed that the cheques were issued for the discharge of legally enforceable debt. It is to be seen whether the respondent has rebutted the said presumptions. The definite case of the complainant is that the respondent borrowed Rs.2,00,000/- on 27.02.2013. However, in his evidence as P.W.1, he has stated that the respondent did not directly borrow any money from him. According to him, her husband, Easwaramoorthy, borrowed Rs.2,00,000/-. His evidence is sufficient to hold that the respondent has discharged her onus.

9. Therefore, as the presumption drawn in terms of Section 139 of the Negotiable Instruments Act has been rebutted by the respondent, it is for the complainant to prove that he has in fact lent Rs.2,00,000/- on 27.02.2013. It is significant to note that the cheques were drawn only for Rs.2,00,000/-. No interest has been charged. It is impossible to believe that the complainant lent Rs.2,00,000/- without any agreement for interest. Except the disputed cheques Ex.S.1 to Ex.S.3, there is no reliable evidence has been produced. Therefore, the Trial Court was justified in coming to the conclusion that the complainant has failed to prove his case beyond reasonable doubt.

10. The learned counsel for the appellant would submit that the Trial Court ought not to have recorded findings on merits in view of its finding that the complaint was premature. It has been held in **YOGENDRA PRATAP SINGH vs. SAVITRI PANDEY AND ANOTHER [(2014) 10 SCC 713]** “a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable and the complainant cannot be permitted to present the very same complaint at any later stage”. In **N.VENKATA SIVARAM PRASAD vs. RAJESWARI CONSTRUCTIONS [1996 CRI.L.J. 3409]** it has been observed that “Magistrate should not have acted upon the premature complaint which is not a complaint at all in the eye of law.”

11. The learned counsel appearing for the appellant requested this Court to set aside the findings recorded by the Trial Court on merits and grant liberty to file fresh complaint. However, this request is belated and liable to be rejected. The complainant has participated in the trial without any objection and let in evidence in support of his case. The respondent has also participated in the trial and order of acquittal has been passed in her favour. Therefore, this Court is not inclined to set aside the findings recorded by the Trial Court on merits.

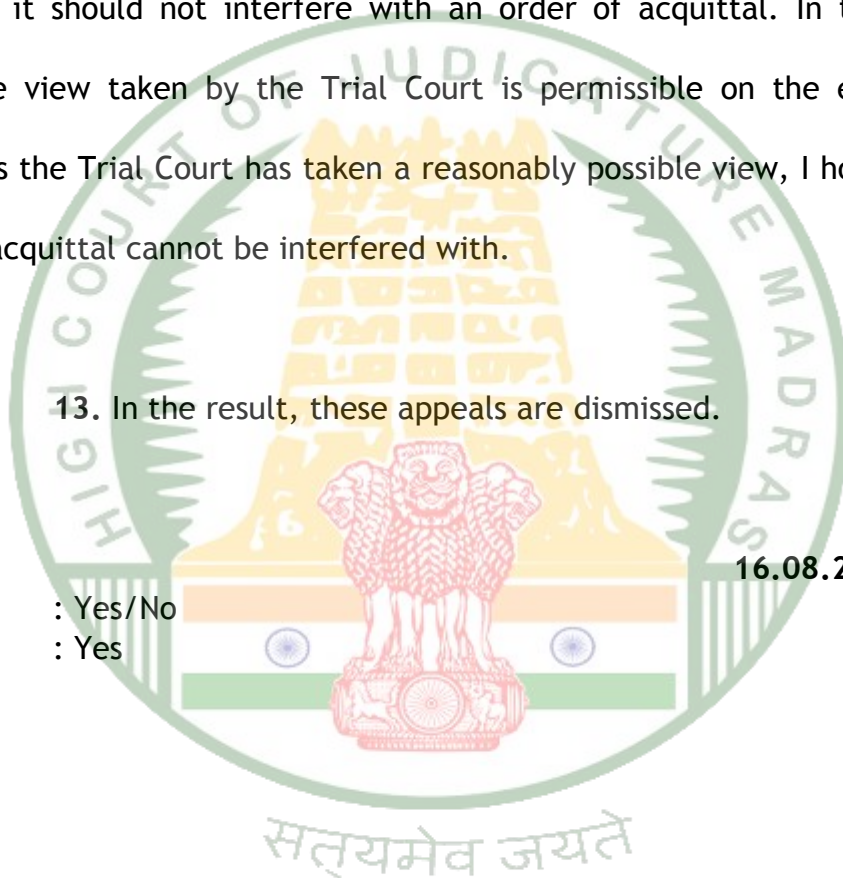
12. The Trial Court carefully considered the testimony of the witnesses and took into account the facts and circumstances of the case and held that the complainant failed to prove his case. It is well settled unless the Appellate Court finds that the view taken by the Trial Court is unreasonable or perverse, it should not interfere with an order of acquittal. In the case at hand, the view taken by the Trial Court is permissible on the evidence of record. As the Trial Court has taken a reasonably possible view, I hold that the order of acquittal cannot be interfered with.

13. In the result, these appeals are dismissed.

16.08.2017

Index : Yes/No
Internet : Yes

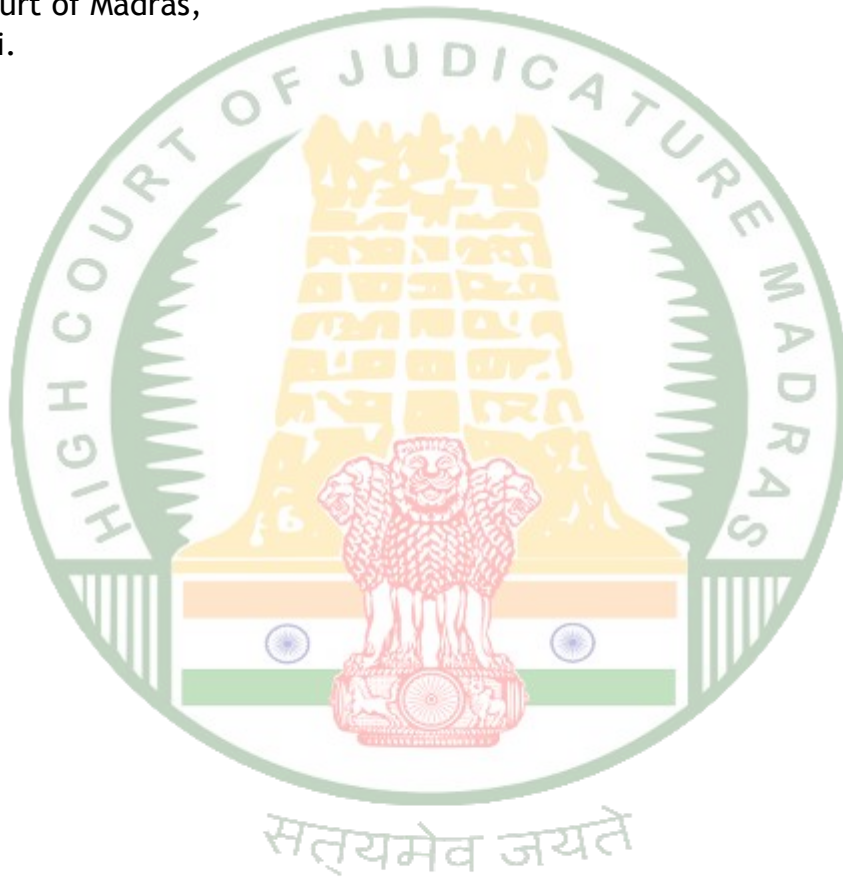
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To

- 1.The Fast Track Judicial Magistrate No.I,
Erode.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.



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N.AUTHINATHAN, J.,



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