

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:07.07.2017
CORAM
THE HONOURABLE MR. JUSTICE C.T.SELVAM
Crl.A.No.674/2007

G.Nagarajan

... Appellant/Complainant

vs

R.Udhya Shankar

... Respondent/Accused

Criminal Appeal filed u/s.378 of the Code of Criminal Procedure against the judgment passed in CC.No.21788/2005 by the learned XIX Metropolitan Magistrate, Rippon Building, Chennai dated 12.06.2007.

For Appellant : Mr.N.Bhaskaran
For Respondent : Mr.K.Balasubramaniam

JUDGMENT

This appeal arises against judgment of learned XIX Metropolitan Magistrate, Chennai, passed in C.C.No.21788/2005 on 12.06.2007.

2 Appellant/de facto complainant moved prosecution informing that the respondent towards the repayment of the loan amount of Rs.3 lakhs thereof, issued 6 cheques for a sum of Rs.50,000/- each and two cheques for Rs.50,000/- each dated 30.06.2005 drawn on UTI Bank, Anna Nagar Branch, which upon presentation was returned unpaid for the reason 'insufficient funds'. On request of the accused/respondent, when two cheques dated 25.08.2005 and 27.08.2005 were presented on 29.08.2005 and 30.08.2005 respectively, the same were returned for the reason "insufficient funds". Appellant/de facto complainant, following the procedure envisaged u/s.138 of the Negotiable Instruments Act, preferred a complaint and the same was taken on file in C.C.No.21788/2005 on the file of learned XIX Metropolitan Magistrate, Chennai.

3 Before Trial Court, appellant examined himself as P.W.1 and marked 11 exhibits. On the side of defence, the respondent/accused was examined as D.W.1 and 5 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 12.06.2007, acquitted respondent. Aggrieved, appellant/de facto complainant has preferred this appeal.

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

5 The Trial Court, on consideration of oral and documentary evidence, has found that though under section 139 of the Negotiable Instruments Act, 1989, it is proved that cheques has been issued by the accused towards discharge of his liability, as accepted by the accused himself while letting in evidence as D.W.1, though denied the borrowal of monies, the accused had discharged his burden by preponderance of probabilities. It is further observed by the Trial Court that the complainant himself had admitted in his evidence that as regards borrowal of Rs.3,50,000/- and Rs.8,50,000/-, prior to the presentation of the instant case, two cases in CC.Nos.163/2003 and 164/2003 are pending on the file of the Court of Judicial Magistrate, Tiruvallur. Further, the accused, in his evidence had deposed that in order to settle those liabilities, he had issued the cheques in question and that he had not borrowed any amount on 30.04.2002. The accused had also filed documentary evidence in the form of Ex.D2 and D3-Sworn affidavits of the complainant in CC.Nos.163 and 164/2003. Such being the position, it is not known on what basis the complainant had parted Rs.3,00,000/- with the accused, as cases are pending against him for the earlier borrowal of monies. Hence, the Trial Court recorded the finding that the burden is on the complainant to prove the same and having found that the complainant has not made out any case, dismissed the case in CC.No.21788/2005. When the judgment of the Trial Court reflects one possible view, it is not for this Court to interfere.

6 Hence, the Criminal Appeal shall stand dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1.The XIX Metropolitan Magistrate, Rippon Building
Chennai.

2.-do-thro The Chief Metropolitan Magistrate,
Egmore, Chennai -8

3.The Section Officer, Criminal Section,
High Court, Madras

+1cc to MR.K.Balasubramaniam, Advocate Sr.No.47335

Crl.A.No.674/2007

SKV(CO)

sm:6.2.2018

¹/₂