

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.655 of 2016

Ponnusamy

... Appellant

versus

G.Jeyalakshmi

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 25.02.2016 passed in S.T.C.No.40 of 2015, on the file of the learned Second Additional District Munsif, Bhavani, Erode District.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.V.Raja Mohan

JUDGMENT

सत्यमेव जयते

The complainant in S.T.C.No.40 of 2015 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 20.11.2014 borrowed a sum of Rs.10,00,000/- from him and for the discharge of the said liability, he has handed over a post-dated cheque [Ex.P.1] [bearing No.582714 dated 11.03.2015 for Rs.10,00,000/-]. That cheque was

dishonoured when presented for collection through Canara Bank, Bhavani Branch, due to “funds insufficient” in the account of the respondent and it was informed to the complainant on 13.03.2015 [Ex.P.2].

2. The complainant issued legal notice [Ex.P.3] dated 14.03.2015 calling upon the respondent to pay the cheque amount. It was received on 16.03.2015 as per postal acknowledgement [Ex.P.5]. The respondent sent reply [Ex.P.6] dated 27.03.2015. The complaint was presented on 30.03.2015. The complaint was returned by the Magistrate, as it had been presented before the expiry of the notice period of 15 days for payment, from the date of receipt of notice [Ex.P.5] on 16.03.2015. Thereafter, the complaint was represented on 21.04.2015.

3. The Magistrate took cognizance in the case on 28.04.2015. The respondent appeared before the Magistrate. The complainant led evidence in support of his case. The respondent pleaded not guilty. The Trial Court acquitted the accused on the ground that the complaint had been filed before the expiry of the notice period of 15 days for payment and the complaint was premature. Aggrieved by the order of acquittal, the appellant filed the present appeal after obtaining leave.

4. The learned counsel appearing for the appellant would submit that the Trial Court has erred in acquitting the accused on the ground that the complaint was premature, inasmuch as it has taken cognizance after the expiry of the notice period of 15 days for payment.

5. The learned counsel appearing for the respondent would submit that in the light of the decision of the Hon'ble Supreme Court in **YOGENDRA PRATAP SINGH vs. SAVITRI PANDEY & ANOTHER [2014 CJ (SC) 627]**, the Trial Court was correct in acquitting the accused.

6. Admittedly, Ex.P.3 notice dated 14.03.2015 calling upon the respondent to pay the cheque amount was received by him [respondent] on 16.03.2015 as per postal acknowledgement [Ex.P.5]. Action under Section 138 of the Negotiable Instruments Act can be taken only if a valid notice has been given to the drawer about the dishonour of cheque and he does not pay the cheque amount within 15 days of the serving of the notice. Cause of action for an action under section 138 of the Negotiable Instruments Act would arise in terms of Section 142(b) of the Negotiable Instruments Act only after the expiry of the notice period of 15 days for payment. In the case at hand, admittedly the complaint was presented on 30.03.2015, before the expiry of the notice

period of 15 days for payment. As the complaint had been presented before the cause of action arose for an action under Section 138 of the Negotiable Instruments Act the Trial Court has correctly returned the complaint. However, it has taken the complaint on file on 28.04.2015, after it was represented on 21.04.2015.

7. It is true that the Magistrate has taken matter on file after the expiry of notice period of 15 days for payment. However, the Hon'ble Supreme Court in **YOGENDRA PRATAP SINGH vs. SAVITRI PANDEY & ANOTHER [2014 CJ (SC) 627]** held thus: *“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”. “His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause.”* In the light of the dictum laid down by the Hon'ble Supreme Court, I have no hesitation to hold that the complaint in the present case is not maintainable, as it was presented before the expiry of the notice period of 15 days for payment.

8. The Trial Court placing reliance on the dictum laid down by the Hon'ble Supreme Court in the said case, acquitted the respondent on the ground that the complaint was not maintainable. Hence, I do not find any ground to take a different view. The appeal is liable to be dismissed and is dismissed.

05.09.2017

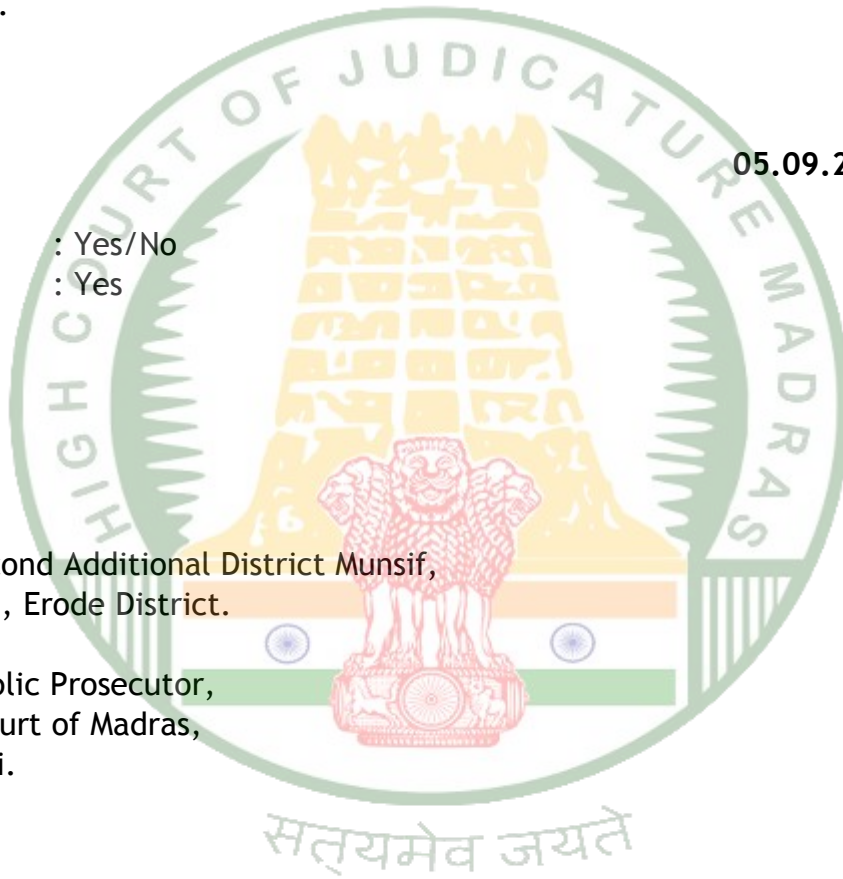
Index : Yes/No
Internet : Yes

sri

To

1.The Second Additional District Munsif,
Bhavani, Erode District.

2.The Public Prosecutor,
High Court of Madras,
Chennai.



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N.AUTHINATHAN, J.,

sri



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