



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.728 of 2017

M.Vinayagam  
S/o.Mani

... Appellant

vs

1.A.Sivakumar  
S/o.Arumugam

2.Anugraha Properties Management  
(India) Pvt. Ltd.,  
represented by R.Dhayalan

... Respondents

Criminal Appeal filed u/s.374 of the Code of Criminal Procedure against the judgment of learned Judicial Magistrate II, Kancheepuram, passed in C.C.No.142 of 2010 on 06.08.2010.

For Appellant : Mr.G.Anabayachozhan

For Respondents: Mr.Ravi Kumar[R1]  
Mr.P.Sivamani [R2]  
Mr.A.Raghunathan, senior counsel  
Amicus Curiae

JUDGMENT

Originally, appellant filed a revision against the judgment of learned Judicial Magistrate II, Kancheepuram, passed in C.C.No.142 of 2010 on 06.08.2010. This Court, under orders dated 12.07.2017, ordered as follows:

'This Court gratefully acknowledges the contribution of Sri.Raghunathan, learned senior counsel, who informed that the effect of dismissal of complaint by Court below would be that of a finding of acquittal and upon a finding of acquittal in a criminal case, only, an appeal would lie. Learned senior counsel submits that Section 401(4) of the Code of Criminal Procedure, stipulates that where there is a provision for an appeal, no revision would be entertained by this Court. Even while acknowledging the said position informed by learned senior counsel,





(iii) In the absence of any proof to show that the subject cheque was issued towards payment of balance sale consideration, it was not for the Court to come to the conclusion that the same was issued towards a legally enforceable debt. As such, offence u/s.138 of the Negotiable Instruments Act could not be attracted.

For the aforesaid reasons and for other reasons, Court below has found that appellant/complainant has failed to establish his case through proper oral and documentary evidence and accordingly, dismissed the complaint. This Court finds no error in the judgment under challenge. Even taken as true, appellant/complainant's case would offend Section 23 of the Contracts Act and hence, the complaint would not lie.

The Criminal Appeal shall stand dismissed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Judicial Magistrate II,  
Kancheepuram.

2.Do Thro The Chief Judicial Magistrate,  
Kancheepuram.

Copy to:  
The Section Officer,  
Criminal Section,  
High Court, Madras-104.

Criminal Appeal No.728 of 2017

sv(co)  
nr 15/11/2018