

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2018

Pronounced on : 01.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.453 of 2008

S.P.Kannan,
S/o.Late Shanmugham. ... Appellant

Vs.

P.Bhanumathy,
W/o.Chandramouli. ... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, against the acquittal Judgment dated 01.04.2008 made in Crl.A.No.47 of 2008 passed by the learned III Additional Sessions Judge at Chennai against the Judgment dated 11.01.2008 made in C.C.No.3624 of 2006 passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : No appearance

For Respondent : Not ready in notice

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J U D G M E N T

This Criminal Appeal is filed to set aside the Judgment dated 01.04.2008 made in Crl.A.No.47 of 2008 passed by the III Additional Sessions Judge, Chennai.

2.When this case was taken up on special sitting, Saturday i.e. on 27.10.2018, there was no representation for the respondent/appellant, prior to which advance list has been printed and circulated in the cause list. On the day of special sitting, when the case was called up both the petitioner and the respondent had not appeared. It is the case of the year 2008 pending for more than ten years, without any progress. This appeal is against the Judgment dated 01.04.2008 made in Crl.A.No.47 of 2008 passed by the III Additional Sessions Judge, Chennai. Hence, on perusal of the records, this Court proposed to take up the appeal and dispose the same on merits. Further, keeping the case pending would serve no purpose.

3.The appellant, who is the complainant in a case filed under Section 138 of the Negotiable Instruments Act against the respondent before the XVII Metropolitan Magistrate Court, Saidapet, Chennai in C.C.No.3624 of 2010, which ended in acquittal vide Judgment dated 01.04.2008 made in Crl.A.No.47 of 2008 passed by the III Additional Sessions Judge, Chennai had filed this appeal.

4.The contention of the appellant/complainant is that the husband of the respondent/accused had borrowed a sum of Rs.1,50,000/- [Rupees one lakh fifty thousand only] as loan at the rate of interest of 12% per annum. During April 1999 in repayment of the said loan, the husband of the

respondent/accused had issued two cheques for Rs.70,000/- and Rs.80,000/- pertaining to Syndicate Bank, Nandanam, which when deposited was not honoured and the same was returned with an endorsement "Funds Insufficient". Finally, the husband of the respondent/accused on 09.07.2005 had entered into a Memorandum of Understanding with the appellant and the interest was re-worked. Therefore, in discharge of the said liability the respondent had issued a cheque for Rs.2,73,000/- [Rupees two lakh seventy three thousand only] through cheque No.074020 drawn on Central Bank, Washermenpet, which when deposited on 23.03.2006 was dishonoured and the same was returned on 31.03.2006 with an endorsement "Funds Insufficient". Statutory notice was issued by the appellant/complainant, which was received by the respondent/accused on 03.04.2006, thereafter, the complaint came to be filed.

5.On completion of trial, the Trial Court had found the respondent/accused guilty and had imposed a sentence of one year Simple Imprisonment and a compensation of Rs.2,73,000/- to the complainant. Against which the respondent/accused had filed an appeal before the learned III Additional Sessions Judge, Chennai in Crl.A.No.47 of 2008. The learned III Additional Sessions Judge, Chennai by his Judgment dated 01.04.2008 had set aside the Judgment of the Trial Court and had acquitted the respondent/accused, against which the present appeal has been filed.

6.On perusal of the records, it is found that the Lower Appellate Court had given a cogent and well reasoned Judgment, which is not perverse to interfere with.

7.In view of the above, the appeal filed by the appellant is dismissed and the the acquittal Judgment dated 01.04.2008 made in Crl.A.No.47 of 2008 passed by the learned III Additional Sessions Judge at Chennai is confirmed. No costs.

01.11.2018

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Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

To

1.The III Additional Sessions Judge,
Chennai.

2.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN

Crl.A.No.453 of 2008

01.11.2018