

IN THE HIGH COURT OF JUDICATURE AT MADRASDATED : **05.04.2018**

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**Crl.A.No.642 of 2017**

R.Sundararaj .. Appellant

Vs.

S.Karthikeyan .. Respondent

Prayer:- Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 14.03.2016 made in C.A.No.102 of 2011 on the file of the III Additional District Court, Dharapuram reversing the order, dated 17.08.2011 made in S.T.C.No.2151 of 2010 on the file of the Judicial Magistrate, Kangeyam.

For Appellant : Mr.M.Guruprasad
 For Respondent : No Appearance
 (Not served)

JUDGMENT

This Criminal Appeal is directed against the Judgment of the lower Appellate Court, dated 14.03.2016 made in Crl.A.No.102 of 2011, whereby reversed the conviction and sentence passed by the Judicial Magistrate, Kangeyam, dated 17.08.2011 made in S.T.C.No.2151 of 2010.

2. The respondent has not appeared. Heard the learned counsel appearing for the appellant.

3. The case of the appellant / complainant is that the respondent / accused borrowed a sum of Rs.5,00,000/- on 02.05.2010 and issued a cheque and when the same was presented for collection, the same was returned by the bank with an endorsement saying "Funds insufficient". The complainant issued notice and there was no reply. Therefore he filed the complaint before the Judicial Magistrate, Kangeyam.

4. The learned counsel appearing fore the appellant / complainant argued that the lower appellate Court permitted the respondent / accused to fill up the lacuna in the evidence. The lower appellate Court without appreciating the evidence available on record properly acquitted the accused and therefore the Judgment of the lower appellate Court is liable to be set aside.

5. The only defence put forth on the side of the respondent / accused even before lower appellate Court is that the cheque in dispute was given to one Palanisamy by the accused and the same has been misused by the complainant. Before the lower Appellate Court, the accused filed petition praying to receive additional evidence and the same was allowed. Pursuant to the order of the lower appellate Court, Ex.D.3 to Ex.D.5 have been marked. Ex.D.3 is the copy of the lawyer notice issued by the accused to

C.S.Palanisamy and Venkatachalamoorthy, for which the complainant through his counsel T.M.Palanisamy also sent a reply which was marked as Ex.D.4. In the above notice, it has been clearly mentioned by the accused that cheque bearing No.988527 was given to Palanisamy in blank with his signature as security to the loan amount of Rs.50,000/- obtained from him. The above notice, Ex.D.3 is dated 22.03.2010.

6. The complainant's case is that the accused borrowed Rs.5,00,000/- on 02.05.2010 and issued the cheque. It is clear from Ex.D.3 and Ex.D.4 that signed blank cheque was already given to one C.S.Palanisamy by the accused and therefore the presumption under Section 139 of Negotiable Instruments Act is rebutted. The complainant is bound to establish that the cheque was issued for enforceable liability. In this case the appellant / complainant has not established the same and therefore, this Court does not see any reason to interfere with the Judgment of the lower Appellate Court and accordingly, this Criminal Appeal is liable to be dismissed.

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In the result, this Criminal Appeal is dismissed confirming the Judgment, dated 14.03.2016 made in C.A.No.102 of 2011 on the file of the III Additional District Court, Dharapuram.

P.KALAIYARASAN, J

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To

1. The III Additional District Court
Dharapuram.
2. The Judicial Magistrate
Kangeyam.



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