

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.622 of 2014

Arul Mari Joseph

... Appellant

Vs

Edward Raj

... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the order of acquittal passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, made in C.A.No.37 of 2012, by order dated 17.04.2014, setting aside the conviction and sentence passed by the learned District Munsif cum Judicial Magistrate, Neyveli, by judgment dated 06.08.2012 made in S.T.C.No.1018 of 2009.

For Appellant : Mr.M.Saravanan

For Respondent : Mr.M.Devaraj

J U D G M E N T

This Criminal Appeal has been filed at the instance of the complainant against the judgment passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, dated 17.04.2014, in C.A.No.37 of 2012, acquitting the accused for the offences under Section 138 of the Negotiable Instruments Act, 1881, reversing the conviction and sentence passed by the learned District Munsif-cum-Judicial Magistrate, Neyveli, by judgment dated 06.08.2012 made in S.T.C.No.1018 of 2009.

2.The case of the appellant/complainant is that the accused borrowed a sum of Rs.3,50,000/- from the complainant to meet out his family expenses and issued a cheque dated 20.08.2009. When the said cheque was presented for collection in State Bank of India, Neyveli Branch, the same was returned with an endorsement "insufficient funds". The complainant issued a legal notice. But, the accused has neither repaid the amount nor replied.

3.The trial Court, after analysing the evidence, convicted the accused for the offence under Section 138 of Negotiable Instruments Act, 1881 and the same was challenged

before the first appellate Court and the appellate Court reversed the order of the trial Court, by acquitting the accused. Aggrieved with the same, the complainant has come forward with this Criminal Appeal.

4.Learned counsel for the appellant argued that the accused has not rebutted the presumption under Section 139 of the Negotiable Instruments Act, 1881 by projecting any probable defence and the appellant has proved the charges levelled against the accused with acceptable evidence and the lower appellate Court, without appreciating the same, acquitted the accused and therefore, the same is required to be interfered with.

5.Learned counsel for the respondent per contra argued that the accused through Ex.D3, rebutted the presumption and the case of the accused is that the cheque was stolen and the same was misused. But even after rebuttal of the presumption, the complainant has not established the guilt, through acceptable evidence and therefore, the lower appellate Court has rightly acquitted the accused and the same does not warrant any interference.

6.This Court perused the judgment of both the first appellate Court and the trial Court and also the documents.

7.The defence put forth by the accused is that the bag containing cheque leaves and other articles was stolen away, even in the year 2007 and the disputed cheque leaf is one from the cheque leaves missed by the accused.

8.The accused has been examined as D.W.1 and through him, the petition given to the police regarding missing of the bag with cheque leaves has been marked as Ex.D3. Ex.D3 depicts that the same was lodged with the police on 16.09.2007. The disputed cheque is dated 20.08.2009. Thus, the accused has rebutted the presumption through Ex.D3 which creates doubts about the existence of a legally enforceable debt or liability and the complainant has to establish the enforceable liability through acceptable evidence. Except the oral evidence of P.W.1./complainant, there is absolutely no evidence, as to the lending of loan to the tune of Rs.3,50,000/- to the accused. The first appellate Court has rightly acquitted the accused and this Court do not see any reason to interfere with the judgment.

9.In the result, this Criminal Appeal is dismissed, confirming the judgment passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, dated 17.04.2014, in C.A.No.37 of 2012, acquitting the accused for the offences under Section 138 of the Negotiable Instruments Act, 1881, setting aside the conviction and sentence passed by the

learned District Munsif-cum-Judicial Magistrate, Neyveli, by judgment dated 06.08.2012 made in S.T.C.No.1018 of 2009.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

- 1.III Additional District and Sessions Court,
Cuddalore at Vridhachalam
- 2)The District Munsif cum
Judicial Magistrate, Neyveli.
- 3.The Chief Judicial Magistrate,
Cuddalore (For Information)
- 4.The Secretary,
TamilNadu state Legal Services Authority,
High Court Legal Services Committee,
High Court, Madras.
- 5.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.Ganesh Rajan, Advocate SR.No.26621
+1cc to Mr.M.Devaraj, Advocate SR.No.26689

Cr1. Appeal No.622 of 2014

VGII(CO)
GN(20/04/2018)

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