

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.52 of 2011

Pandiyan ... Appellant/Complainant

Vs

Gopalakrishnan ... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Order of acquittal passed by learned Judicial Magistrate No.1, Mayiladuthurai dated 25.06.2009 made in C.C.No.496 of 2007.

For Appellant : Mr.S.Sounthar
For Respondent : Mr.R.John Sathyan

JUDGMENT

This Criminal Appeal is preferred by the appellant/complainant against the order of acquittal passed by the learned Judicial Magistrate No.1, Mayiladuthurai in C.C.No.496 of 2007 dated 25.06.2009 under section 138 of the Negotiable Instrument Act.

2.Brief case of the appellant/complainant:

The case of the appellant is that the respondent borrowed a sum of Rs.50,000/- in the year 2007 and issued two cheques in favour of him bearing cheques Nos.109761 and 109762 each for Rs.25,000/- dated 06.06.2007 and 16.06.2007 respectively drawn on Indian Bank, Koorainadu Branch. On 07.06.2007 the appellant/complainant deposited the said cheques for collection through his Banker Lakshmi Vilas Bank, Mayiladuthurai Branch and the same was returned on 07.06.2007 and 18.06.2007 respectively with endorsement "Funds Insufficient". On 25.06.2007 the appellant issued a statutory legal notice to the respondent and the same was acknowledged by respondent on 29.06.2007. Since the amount was not paid, the appellant/complainant filed complaint before the learned Judicial Magistrate No.1, Mayiladuthurai under section 138 of Negotiable Instrument Act.

3. During trial, the appellant examined himself as PW1 and Exhibits-P1 to P6 were marked. The respondent neither examined himself nor marked any document on his side.

4. After trial, the learned Judicial Magistrate acquitted the respondent/accused.

5. Aggrieved over the same, the appellant/complainant preferred this criminal appeal.

6. The learned counsel for the appellant/complainant submits that the lower Court failed to consider the presumption under section 114 of Indian Evidence Act.

7. The learned counsel for the appellant/complainant submits that the lower Court failed to see the exhibits filed by him and the acquittal of the respondent/accused is erroneous and not warranted by the legal materials on the record.

8. The learned counsel for the respondent supported the findings of the learned trial judge and seek for dismissal of criminal appeal.

9. I heard Mr. S. Sounthar, learned counsel for the appellant and Mr. R. John Sathyan, learned counsel for the respondent and perused the entire materials available on record.

10. This Court carefully examined the records and the evidence adduced by the appellant. In the cross examination, the respondent/accused maintain his defence that he obtained a loan from Santhosh finance and the appellant misused the impugned cheques. Further PW1 also admitted in his cross examination that he is a clerk in Santhosh Finance and filed the complaint on behalf of Santhosh Finance. Further he admitted that he is not the owner of the said finance and not obtained any power of attorney from the original owner namely Raja of Moovalur Village. Further the loan of Rs.50,000/- was granted to the respondent/accused only on his recommendation and he issued the cheque only to the finance. Therefore, the learned trial Court rightly dismisses the complaint filed by the appellant.

11. In the result, this Criminal Appeal is dismissed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

vs

To

1.The Judicial Magistrate No.1, Mayiladuthurai.

2. Do Through The Chief Judicial Magistrate, Nagapattinam

Copy to

The Section officer

Criminal Section, High Court, Madras 104.

+1 CC to Mr.S.Sounthar, Advocate sr 20713.

Criminal Appeal No.52 of 2011

SJ(CO)
SP(29/01/2019)



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