

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.123 of 2009

K.Thangavelu

... Appellant / Complainant

Vs

R.P.Madeswaran,
Prop. R.P.M.Road Lines,
S/o.Palaniappan,
Sankari Main Road, Agraharam Post,
Pallipalayam Post, Tiruchengode Taluk,
Namakkal District. ... Respondent / Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973 against the Judgment dated 17.10.2008, made in S.T.C.No.59 of 2008, on the file of the Judicial Magistrate No.I, Sankari.

For Appellant : Mr.A.Yogaraj
for Mr.R.Marudhachalamurthy

For Respondent : Mr.Selvakumarasamy

J U D G M E N T

This Criminal Appeal is directed against the Judgment of the learned Judicial Magistrate No.I, Sankari, dated 17.10.2008 in S.T.C.No.59 of 2008, acquitting the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881.

2.The case of the complainant is that the complainant and the accused are friends and the accused borrowed a sum of Rs.5,00,000/- on 29.07.2007 from the complainant and issued a cheque. When the complainant presented the same for encashment on 27.10.2007, the same was returned by the bank with a memo saying that the account has been closed. Therefore, the complainant has preferred the complaint.

3.On the side of the complainant, two witnesses were examined and six exhibits marked.

4.After denial of incriminating evidence put under Section 313[1][b] of Cr.P.C., on the side of the accused, four

exhibits marked.

5. After analysing both oral and documentary evidence, the trial Court acquitted the accused.

6. Learned counsel appearing for the appellant/complainant argued that signature in the cheque has been admitted by the accused and therefore, it should be presumed that the cheque was issued for the existing liability and the trial Court is not correct in shifting the onus to the complainant.

7. Learned counsel appearing for the respondent/accused argued that the accused issued blank signed cheque in 2003 to the finance firm where the complainant was a partner, towards security and the same was misused by him in 2007. He further argued that the disputed cheque was not issued to the complainant towards any legal liability and the trial Court, after analysing the evidence has rightly acquitted the accused and the same does not require any interference.

8. Signature in the disputed cheque is admitted as that of the accused. The presumption under Section 139 of the Negotiable Instruments Act, 1881 is a rebuttable one. If the accused rebuts the presumption, the burden shifts on the complainant. The standard of proof to discharge the burden in terms of Section 138 of Negotiable Instruments Act, 1881 is only preponderance of probabilities.

9. In the case on hand, the specific case of the accused is that he took a loan in a finance firm, where the complainant was a partner in 2003 and gave a blank signed cheque leaf as security for that loan. The bank Manager examined as P.W.2, says in his evidence that all the 49 cheque leaves except the disputed cheque leaf, were transacted in the year 2003. The complainant examined as P.W.1 admits in his evidence that he was a partner in three financial firms, including the finance firm, where the accused took loan to purchase a lorry in 2003. Thus, the accused rebutted the presumption as envisaged under Section 139 of the Negotiable Instruments Act, 1881 by establishing the probabilities through the above said evidence. Therefore, the burden shifts on the complainant to establish that there was legal liability and only for that liability, the disputed cheque was issued.

10. The complainant as P.W.1, says that he is an income tax assessee and he has not shown the loan amount given to the accused in his income tax account. No document has been filed to show that the complainant gave loan to the accused. Therefore, the complainant has not discharged his onus and therefore, the trial Court has rightly acquitted the accused. This Court does not find any reason to interfere with the judgment of the trial Court.

11.In the result, this Criminal Appeal is dismissed and the judgment of the trial Court in S.T.C.No.59 of 2008 is confirmed.

Gya

Sd/-
Assistant Registrar
/TRUE COPY/

Sub-Assistant Registrar

To

1 Judicial Magistrate Court No.I,
Sankari.

2 -do- to the Chief Judicial Magistrate,
Salem.

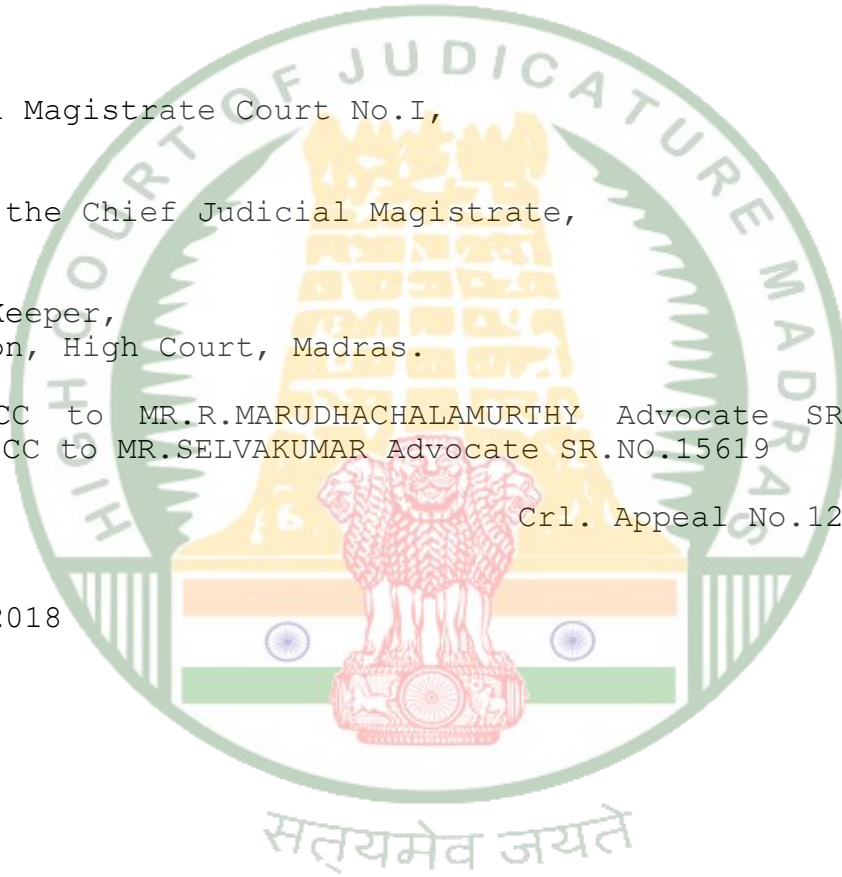
3 Record Keeper,
Crl.Section, High Court, Madras.

+1CC to MR.R.MARUDHACHALAMURTHY Advocate SR.NO.15625

+1CC to MR.SELVAKUMAR Advocate SR.NO.15619

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