

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.204 of 2007

Sankaranarayanan

... Appellant

Vs

P.Senthilnathan

.... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the order of acquittal passed by the Judicial Magistrate No.III, Salem in C.C.No.116 of 2003 dated 16.12.2006 acquitting the respondent accused under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.S.Swamidoss Manokaran

For Respondent : No Appearance

JUDGMENT

This Criminal Appeal is preferred by the appellant/complainant against the order of acquittal passed by the learned Judicial Magistrate No.III, Salem in C.C.No.116 of 2003 dated 16.12.2006 under section 138 of the Negotiable Instrument Act.

2.Brief case of the appellant/complainant

The case of the appellant/complainant is that the respondent/accused borrowed sum of Rs.2,25,000/- on 24.12.2001 and repaid a sum of Rs.32,000/- to the appellant/complainant and issued a post-dated cheque for the balance amount of Rs.1,68,000/- drawn at the Syndicate Bank, Salem Branch. The appellant deposited the said cheque for collection in his Urban Co-operative bank Sevvaipettai branch, Salem on 6.9.2002, but the same was dishonoured and returned with return memo dated

13.9.2002 noted with "Account Closed". The appellant/complainant issued statutory legal notice to the respondent/accused on 17.9.2002 and the same was received on 23.9.2002. The respondent/accused issued the reply notice with false averments and failed to repay the loan amount. Hence, the appellant filed complaint.

3. During trial, the appellant/complainant examined himself as PW1 and Exhibits P1 to P7 were marked. Further he examined PWs 2 and 3 to prove the transaction. On the side of the respondent exhibit B1 was marked. No evidence was adduced. On completion of the trial, the learned trial judge acquitted the respondent/accused under section 138 of the Negotiable Instrument Act. Aggrieved over the order of acquittal, the appellant/complainant preferred this criminal appeal.

4. The learned counsel for the appellant submits that the Court below seems to have given undue importance to the fact that no intimation was given to the respondent /accused at the time of closing of the account in the bank as per the evidence of PW2 which is no way affect the case under section 138 of the Negotiable Instrument Act. In fact, this will also attract offence under section 406, 420 IPC for criminal breach of Trust and cheating and as such the Judgment reported in 2005 M.L.J. (Cr1) 497 will not apply to the facts of the present case.

5. The learned counsel for the appellant submits that the Court below failed to appreciate the fact that the respondent who have received the statutory notice dated 17.9.2002 has chosen not to reply stating his stand at the earliest point of time as such Exhibit P5 which makes all the averments the Court below ought to have relied constantly on this.

6. The learned counsel for the appellant submits that the Court below has failed to consider the fact that the Exhibit P2 the P.S.R.No.209 of 2002 given in Asthampatti Police station only proves the stand of the appellant/complainant.

7. The learned counsel for the appellant submits that the Court has failed to appreciate the Exhibit P4 the return memo, giving reason for return as "account closed" which also considered an offence under section 138 of the Negotiable Instrument Act.

8.The learned counsel for the appellant submits that the Court below has erroneously construed that the initial onus is on the plaintiff referring to a judgment, which is totally irrelevant to the present case. As per Negotiable Instrument Act, is concerned, the initial onus is only to a very limited extent of averments proving the issue of cheque towards the liability, the cheque deposited within time and on return of the cheque issuing statutory notice within the limitation period. Having done this, the complainant job is over and the burden of proof is evidentially on the respondent as per the section 139 of the Negotiable Instrument Act.

9.The learned counsel for the respondent supported the findings of the trial Court.

10.I heard Mr.S.Swamidoss Manokaran, learned counsel for the appellant. I have carefully examined the evidences placed on record before the trial Court and the exhibits marked on both sides. No representation on behalf of the respondent.

11.It is admitted by the appellant before the trial Court in his examination that his account was closed on 12.03.2002. PW2 Rajendran, the branch manager, deposed that the impugned cheque was presented in his bank on 6.9.2002 and the memo was returned with the instructions holding that the account was closed.

12.It is seen from the evidences that the cheque was presented in the account which was closed before 7 months. The exhibit P7 is discloses the account statement of the respondent/accused did not disclose the impugned cheque. Further the appellant/complainant itself admitted that the impugned cheque was received from the respondent/accused only for security and not for the loan amount. The claim of the appellant regarding the loan amount creates doubt whether the claim is a legally enforceable debt or not. The learned trial Court rightly disbelieved the evidence of the appellant and acquitted the respondent/accused.

13.Therefore the arguments advanced by the appellant cannot be taken into consideration for interference by this Court in this appeal.

14.In the result, this Criminal Appeal filed by the appellant/complainant is dismissed and the order passed by the

learned Judicial Magistrate No.III, Salem in C.C.No.116 of 2003 dated 16.12.2006 is confirmed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

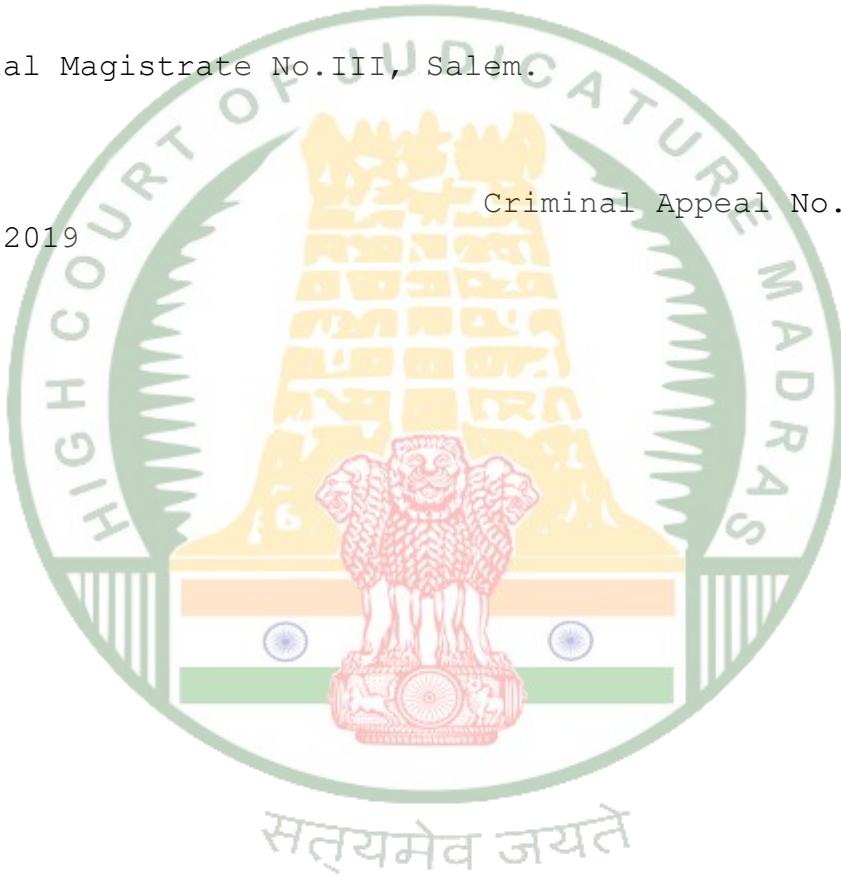
vs

To

The Judicial Magistrate No.III, Salem.

CSL/30.01.2019

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