

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Criminal Appeal No.437 of 2007

V.S.Easwaran ... Appellant/Complainant

Vs.

E.Ganesh
Proprietor, K.Arumugha Gounder & Co.,
Thirupur. ... Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, praying against the judgment of the learned Judicial Magistrate No.1, Thirupur, acquitting the respondent/accused from the private complaint filed by the appellant herein under Section 138 of Negotiable Instruments Act in C.C.No.912 of 2003 by a judgment dated 01.03.2007.

For Appellant : No appearance

For Respondent : No appearance

सत्यमेव जयते

J U D G M E N T

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This appeal has been filed by the complainant in C.C.No.902 of 2003 on the file of Judicial Magistrate No.1, Thiruppur. The learned trial Magistrate by the impugned dated 01.03.2007 acquitted the respondent/accused for the offence under Section 138 of Negotiable Instrument Act. Hence, this appeal has been filed.

2. None appears for the appellant and none appears for the respondent also, but this is a Criminal Appeal and therefore this Court cannot dismiss this appeal for non prosecution. It went through the entire records and dispose this appeal on merits.

3. As per the case of complainant is that the accused has borrowed a sum of Rs.4,00,000/- [Four lakhs only] from the complainant on 05.05.2003 towards discharge of the said loan liabilities. The accused said to have been issued cheque dated 10.06.2003 for a sum of Rs.4,00,000/- [Four lakhs only]. The said cheque, on presentation was returned unpaid for the reason "FUNDS INSUFFICIENT" after following the usual statutory formalities, the complaint was laid.

4. The complainant examined himself as PW.1 and marked Ex.P.1 to Ex.P.7. On the side of the accused three witnesses were examined and one of them was accused himself. On the side of the complainant Ex.D.1 to Ex.D.3 were also marked.

5. The Court below noted the admission of the complainant/PW.1 that he withdrew a sum of Rs.2,00,000/- [Two lakhs only] from his bank account in Anupparpalayam Branch, Indian Overseas Bank and paid the same to the accused. The balance amount was mobilised by the complainant from other sources. In other words the specific stand taken by the complainant is that, he withdrew a sum of Rs.2,00,000/- [Two lakhs only] from his bank account maintained in Anupparpalayam Branch, Indian Overseas Bank on 05.05.2003. This was conclusively rebutted by the accused and it had been conclusively established that the said bank account was opened only on 09.06.2003. This was spoken by DW.2 [The Bank Manager].

In fact, it was in that Bank Account, the cheque was presented on 11.06.2003. Therefore, the very foundation of the complaint has been totally undermine by this. That is why the Court below categorically gave a finding that the complainant has come out with a false case. Holding that the accused has more than rebutted the presumption raised against him under Section 139 of the Negotiable Instrument Act, the judgment of the acquittal was rendered.

6. This appeal against the judgment of acquittal. Unless the judgment of the Court below is shown to be perverse or improper, the question of interference by the appellate Court does not arise. In this case, the Court below has come to the correct finding that the complainant had filed a false case. There is no case made out for interference. Therefore, there is no merit in this case. Hence, the Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm

To

The Judicial Magistrate-I,
Thirupur.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

सत्यमेव जयते

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