

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.06.2018

CORAM :

THE HON'BLE MR. JUSTICE G.R.SWAMINATHAN

Cr1.A.No. 379 of 2006

D.Sakthivel ... Appellant/Complainant

Vs.

Subramanian ...Respondent/Accuse

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the order dt. 10.11.2005 made in C.C.No.197/2004 on the file of the Court of Judicial Magistrate No.V, Salem and allow this criminal appeal.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

This appeal has been filed by the complainant questioning the judgment of acquittal rendered in C.C.No.197 of 2004 on the file of Judicial Magistrate, No.V, Salem. There is no representation on the side of the appellant. It is seen that notice to the accused has also not yet been completed. This Court however went through the records and is of the view that there is no merit in this appeal and that it ought to be dismissed.

2. Though notice is not served on the accused, this Court proceeds to dispose of this appeal.

3. The case of complainant is that the respondent/accused borrowed money as a hand loan from the complainant and issued a complaint cheque bearing No. 756117 dated 02.01.2004 drawn on

Indian Bank, Harur for a sum of Rs.2,00,000/-. When the cheque was presented, it was dishonoured with the endorsement "insufficient funds" . Thereafter, the complainant issued the demand notice dated 31.01.2004 (Ex.P.3) to the accused and the accused received the same. Since the demand set out in the notice was not complied with, the complainant filed C.C.No.197 of 2004. Before the Trial Court, the complainant examined himself as PW1. The accused examined himself as DW1. On the side of the complainant, Ex.P1 to EX.P5 were marked. On the side of the accused, no documentary evidence were marked.

4. The Trial Court acquitted the accused by the judgment dated 10.11.2005. The complainant was an Income Tax Assessee. In fact, he deposed that for the years from 2002 to 2005, he filed Income Tax Returns. A specific question was posed to him as to whether the transaction in question was reflected in the Income Tax Returns. The complainant answered in the negative. The Income Tax Return was not filed before the Court below. The Court below therefore held against the complainant. This Court is of the considered view, that this approach of the Trial Court is right and justified.

5. The complainant had claimed that on 14.08.2003, he advanced a sum of Rs.2,00,000/- to the accused. If this claim was true, this transaction would have definitely been mentioned in his Income Tax Returns.

6. The accused is running a theatre. His defence is that he had dealings with one film distribution firm. The defence of the accused is that the complainant had taken the cheque given by one Mr.Ganesh. The Trial Court took the view that this is quite probable. The Trial Court, had, on examination of the complainant's cheque, noted that the signature of the accused was made with one pen and the other particulars in the cheque were filled by using another pen. These circumstances also have been taken note of by the Trial Court.

7. This is an appeal against the acquittal. The appellant has not chosen to pursue the appeal and the appellants' counsel is not present. This Court had perused the records and is of the view that the view taken by the Trial Court cannot be said to be incorrect or perverse. It is also pertinent to note here that on the side of the complainant, what were marked are only the cheque in question, the bank return memo, the legal notice, acknowledgement and a letter dated 14.08.2003 written by the accused. When the complainant is admittedly an Income Tax assessee, he ought to have filed those documents. When he himself admitted that the transaction in question was not reflected in his Income Tax Return, it is absolutely fatal to his case. There is no merit in this appeal.

8. Accordingly, this appeal is dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

msv

To

1. The Judicial Magistrate V, Salem.

2. -do-Through The Chief Judicial Magistrate, Salem

Copy To

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

Crl.A.No. 379 of 2006

GK (CO)

GMV (07/03/2019)



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