

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.763 of 2008

S.Sivaraj

.. Appellant/Complainant

Vs.

R.Subramani

.. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment dated 05.08.2008 made in C.C.No.311 of 2003 on the file of Judicial Magistrate, Sathyamangalam.

For Appellant : Mr.R.T.Doraisamy
For Respondent : Mr.I.C.Vasudevan

J U D G M E N T

The appeal has been preferred against the judgment dated 05.08.2008 in C.C.No.311 of 2003 on the file of Judicial Magistrate Court, Sathyamangalam.

2. Previously, in the year 2003, the appellant filed a private complaint against the respondent alleging that the respondent has committed an offence under Section 138 of Negotiable Instruments Act. In the trial Court, after completing the enquiry, the learned Judicial Magistrate came to the conclusion that the respondent is not found guilty for the offence under Section 138 of Negotiable Instruments Act and thereby, he acquitted the respondent against which, the appellant approached this Court by way of this appeal praying to set aside the judgment rendered by the Judicial Magistrate, Sathyamangalam and to convict the respondent.

3. The case of the appellant in the trial Court is as follows:-

i)The appellant and the respondent are friends. On 05.01.2003, the respondent availed a loan of Rs.2,00,000/- promising to repay the same within two months. Subsequently, in order to repay the debt, on 28.02.2003, the respondent met the appellant and gave cheque for Rs.2,00,000/- dated 28.02.2003 drawn on Canara Bank, Mettupalayam Branch. On 06.03.2003, the

appellant presented the said cheque in State Bank of India, Kenbanaikenpalayam Branch for encashment. Unfortunately, on the same day the cheque was returned unpaid. Again, the respondent requested the appellant to present the cheque for collection. Thereby, the appellant on 22.07.2003 presented the cheque for encashment as a second time. But the cheque was returned on 28.07.2003, for the reason "insufficient fund". So on 02.08.2003 the appellant issued a lawyers notice in which he demanded to pay the cheque amount within 15 days from the receipt of notice. The said notice was received by the respondent on 17.08.2003. Subsequently, he had not paid any amount. Thus, the appellant lodged the complaint before the learned Magistrate, Sathyamangalam.

ii) In the trial Court, 3 witnesses were examined on the side of appellant besides 6 documents were exhibited as P.1 to P.6. On the other hand, on the side of respondent, 3 witnesses were examined as R.Ws.1 to 3. Further, 7 documents were marked as Ex.R1 to R7. After concluding the trial, the learned Magistrate came to the conclusion that the respondent is found not guilty of the offence under Section 138 of Negotiable Instruments Act and acquitted him.

4. Today, when the appeal is taken up for hearing, we heard the arguments of Mr.T.Doraisamy, learned counsel for the appellant and Mr.R.C.Vasudevan, learned counsel for the respondent.

5. The first and foremost contention raised by the appellant in the trial Court is that the respondent in the trial Court took a defence as the cheque had been issued to one V.K.Manokaran. But in order to prove his case the said person has not been examined on the side of respondent. Which shows that the stand taken by the respondent had not been proved. But the said aspect is not considered by the trial Court. Accordingly, he prayed to convict the respondent.

6. On the other hand, the learned counsel appearing for the respondent would submit that as per the case of the appellant, on 05.01.2003 at about 11.00 am the loan amount was given to the respondent. Further, as per the case of the respondent on 21.07.2003 at about 11.00 am he requested the appellant for presenting the cheque for encashment.

7. Further submit that being the employee of Tamil Nadu Transport Corporation, on the above said date and time, he was in the duty. The said aspect is clearly established in the trial Court through the evidence of P.Ws.2 and 3 and through the Exs.R5 to R7. Now, on going through the judgment rendered by the Judicial Magistrate, no doubt it is a well considered judgment.

8. First of all, it is an admitted fact that the

signature found in the cheque belongs to the respondent. Further, the date of presentation, date of return, the date on which statutory notice was issued and the date on which the complaint was lodged before the Magistrate are all admitted by the respondent. So this Court holds that the complaint has been filed before the learned Magistrate as per the stipulation stated in Section 138(B) of Negotiable Instruments Act.

9. Since, the signature found in the cheque is admitted by the respondent, it is the duty of the respondent to place a probable defence to prove that the cheque has not been issued for discharging the legally enforceable debt. In this regard, Section 139 of Negotiable Instruments Act, comes to play. So, the respondent is now having the duty to rebut the presumption through his probable defence. In this regard, in the trial Court, when at the time of giving evidence as P.W.1 he stated in the cross-examination as on 05.01.2003 at about 11.00 am the loan amount was paid to the respondent. Further, he admitted as on 22.07.2003, the respondent requested him to present the cheque for encashment. On the other hand, on going through the evidence given by R.3 Jyothi, who is the checking Inspector, Tamilnadu State Transport Corporation, at 11.00 am, on 05.01.2003 the respondent was working as bus Conductor, in Tamilnadu State Government bus. No doubt, being the conductor he must be physically present for doing his duty. Even though, there may be the possibility, that the respondent informed the appellant through mobile phone for presenting cheque for collection, for receiving the debt amount, the physical presence of the respondent is very much necessary. So it is not easy to disbelieve the evidence given by R.W.3. Further, the evidence given by R.W.3 was corroborated through the documents Ex.R5, 6, 7. The attendance register, route map pertaining to 35A route.

10. So, in the trial Court, the respondent clearly rebutted the presumption and proved that he is not having any existing liability to pay the cheque amount. Thereby, in the light of the above discussion, this Court hold the judgment rendered by the Judicial Magistrate, does not warrant any interference.

11. Accordingly, the appeal is dismissed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

AT

TO

1.The Judicial Magistrate,
Sathyamangalam.

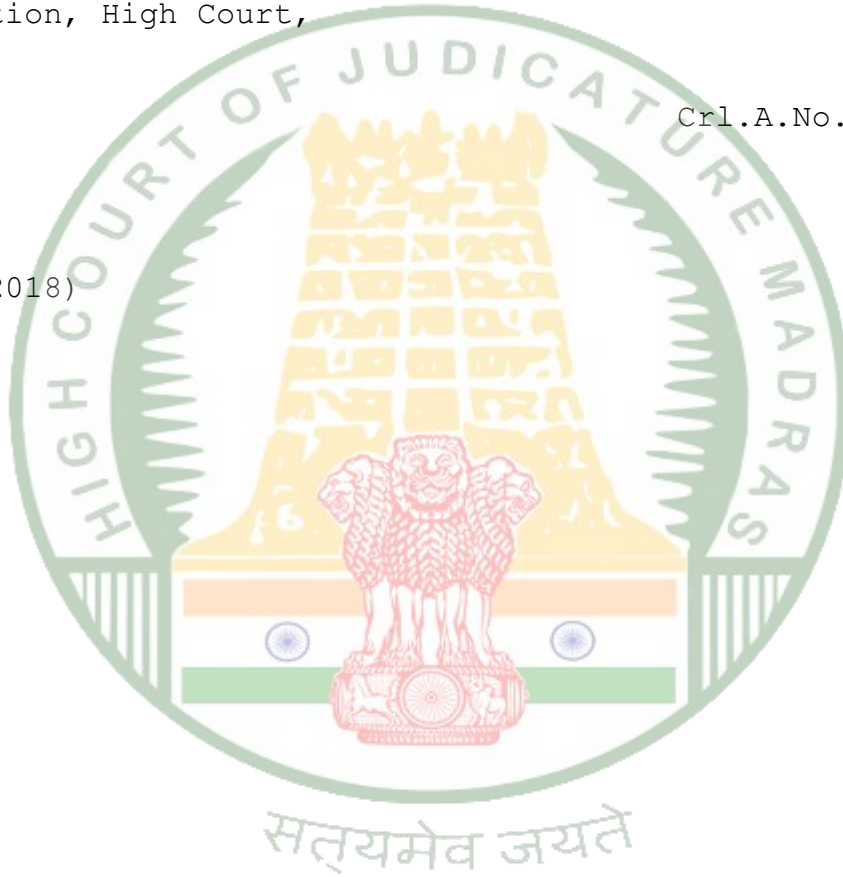
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1. The Public Prosecutor,
High Court, Madras.

2.The Section Officer,
Crl.Section, High Court,
Madras.

Crl.A.No.763 of 2008

SVI (CO)
GN(21/07/2018)



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