

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.357 of 2013

K.Subramaniam

.. Appellant/Complainant

Vs.

1.V.Saraswathi

... 1st Respondent/Accused

2.The State represented by
Public Prosecutor,
Erode, Erode District.

.. 2nd Respondent

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment passed in C.A.No.165 of 2012 dated 15.12.2012 on the file of Principal Sessions Judge, Erode, reversing the judgment in S.T.C.No.7 of 2012 dated 30.07.2012 on the file of Judicial Magistrate, FTC No.II, Erode.

For Appellant : Mr.D.Balachandran

For Respondents : Mr.R.Ravichandran,
Government Advocate (Crl.Side) for R2

No Appearance for R1

J U D G M E N T

The case of the appellant is that on 09.10.2011 the accused borrowed a sum of Rs.59,000/- for her urgent family expenses. In order to discharge the said liability, the accused issued a post dated cheque. The cheque was drawn on Axis Bank Ltd., Perundurai Road, Erode-II, bearing cheque No.768767 for Rs.59,000/- dated 10.10.2011. As per request of the accused, the complainant presented the above cheque for collection on 11.11.2011 through Federal Bank Ltd., Erode. The cheque was returned on 12.11.2011 from Axis Bank Ltd., Perundurai Road, Erode vide memo stating that "Opening Balane Insufficient". The appellant received the above said cheque through his bank on 14.11.2011. The accused issued the cheque with an intention to cheat the appellant. The accused is liable to pay the cheque amount. The appellant issued a legal notice through his counsel on 15.11.2011. The accused received the notice on 16.11.2011.

The accused had not paid the cheque amount within 15 days from the date of receipt of the notice. Hence, the accused has committed an offence under Section 138 of Negotiable Instruments Act.

2.The learned counsel for the appellant would submit that the signature is admitted. Therefore, as per Sections 118 and 139 of Negotiable Instruments Act, there is a legal presumption that the cheque has been issued for discharging legally enforceable debt. The cheque has not been issued by him, it was issued by his wife and the blank cheque signed by the respondent issued to his wife without any legal evidence and legal basis. The First Appellate Court set aside the order of the Magistrate and acquitted the accused.

3.Heard the learned counsel for the appellant. Though notice has been served to the 1st respondent none appears on her behalf.

4.Though the learned Magistrate has convicted the accused, the First Appellate Court reversed the judgment and also acquitted the accused.

5.On a perusal of the records, the signature is admitted by the 1st respondent. But during the cross examination, the complainant/ P.W.1 admitted that the cheque was not issued in his name. The evidence of P.W.1 is highly doubtful with regard to issuance of cheque. This Court is of the view that the cheque has not been issued in the name of the complainant and it is sufficient enough to rebut the legal presumption attached to the cheque. It is settled law that the accused need not rebut the presumption only by way of direct evidence even it can be done by way of preponderance of probabilities or probable defence even otherwise it can be done through cross-examination of the witnesses. In this case, this Court finds that the respondent/accused has rebutted the presumption in the manner known to law. Since the lower appellate Court is final Court of fact finding and in appeal against the judgment of acquittal, this Court cannot substitute its own view unless compelled circumstances so warranted. In this case, this Court does not find any compelled circumstances to interfere with the judgment of acquittal passed by the Lower Appellate Court.

6.Under these circumstances, there is no merit in the revision and there is no perversity in the judgment passed by the Lower Appellate Court. There is no sound reason or ground to interfere with the judgment of the Lower Appellate Court and finds no merit in the appeal. Hence, the appeal is liable to be dismissed.

7.In the result, the criminal appeal stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AT

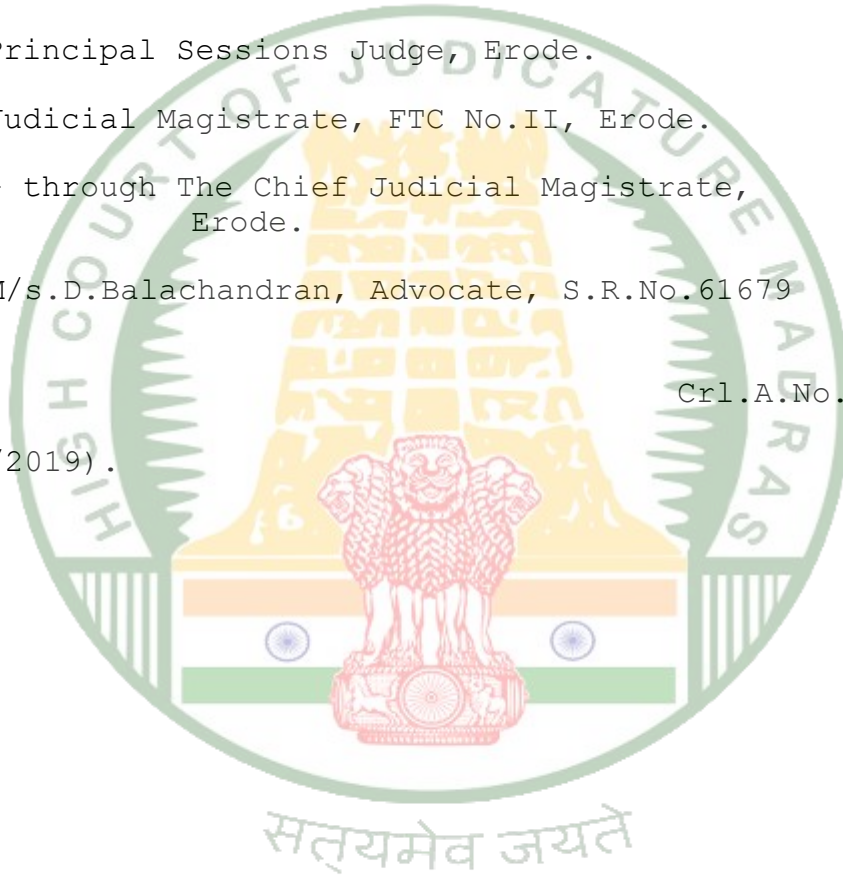
To

- 1) The Principal Sessions Judge, Erode.
- 2) The Judicial Magistrate, FTC No.II, Erode.
- 3) - do- through The Chief Judicial Magistrate,
Erode.

+1 cc to M/s.D.Balachandran, Advocate, S.R.No.61679

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RSI (CO)
SSM(06/08/2019).



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