

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Crl.A.No.906 of 2007

R.Selvaraj ... Appellant/ Respondent /Complainant

Vs

K.Arunagiri Respondent/Appellant/Accused

Prayer : Criminal Appeal filed under Sections 378 of Criminal Procedure Code, against the order of acquittal dated 28.06.2007 made in Crl.A.No.172 of 2006 passed by the learned Additional District and Sessions Judge and Presiding Officer, Special Court for E.C.Act, Coimbatore and restore the order of conviction dated 07.4.2006 made in C.C.No.913 of 2002 passed by the learned Judicial Magistrate No.I, Coimbatore.

For Appellant : No Appearance

For Respondents : Mr.C.D.Johnson

J U D G M E N T

The appellant in this appeal was the complainant in C.C.No.913 of 2002 on the file of the Judicial Magistrate-I, Coimbatore. After trial, the learned Trial Magistrate found the first accused/respondent herein guilty of the offence punishable under Section 138 of The Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of one year, with fine of Rs.5,000/- failing which to undergo simple imprisonment for a period of one month. However, the trial court held that the second accused is not guilty of the offence under Section 138 of The Negotiable Instruments Act and acquitted him.

2. Questioning the Judgment dated 07.04.2006 of the trial Court, the accused filed Crl.A.No.172 of 2007 before the Additional District and Sessions Judge, Sessions Court for E.C.Act cases, Coimbatore. The lower Appellate Court by Judgment dated 28.06.2007 acquitted the first accused/respondent herein by allowing

Crl.A.No.172 of 2006. Challenging the said Judgment of the acquittal rendered by the lower Appellate Court, this Appeal has been filed by the complainant.

3. When the appeal is taken up for hearing, there is no representation for the complainant/appellant. However, this Court cannot dismiss the Criminal Appeal for default. This Court, therefore, went through the entire record and after hearing the submissions of the learned counsel for the respondent/first accused, this Court proceeds to dispose of this appeal on merits.

4. It is seen from the records that the case of the appellant was that on 14.12.1999, the first accused, namely K. Arunagiri, availed loan of Rs. 7,50,000/- from him and executed a promissory note, promising to repay the same with interest at the rate of 24% per annum. As the first accused failed to repay the amount, a police complaint was lodged by the complainant. This was followed by compromise talks and an agreement was said to have been entered into between the parties.

5. According to the complainant towards the discharge of the loan liability the first accused/respondent herein namely K. Arunagiri issued the complaint cheque and it was presented on 16.07.2001. On presentation of the complaint cheque, it was dishonoured. Thereafter, the respondent altered the cheque date as 08.06.2002 and counter signed the same. This was presented for collection on 10.06.2002. The cheque was returned once again unpaid. Thereafter, the complainant issued the statutory notice dated 18.06.2002 and the same was received on the very next day by the accused but he did not choose to give any reply. In these circumstances, the appellant, as complainant, has presented the complaint.

6. During the course of trial, the appellant examined himself as P.W.1 and one Govindasamy was examined as P.W.2. Eight documents were marked as Exs.P1 to P8. The respondent/first accused examined himself as D.W.1 along with one Ramu, who was examined as D.W.2. Since the counter signature said to have been made by the first accused in the complaint cheque was disputed, the cheque was referred to forensic opinion. The report of the hand writing expert dated 09.03.2005 was marked as Ex.P1.

7. The Trial Magistrate took note of the fact that the cheque in question was signed only by the first accused K.Arunagiri and not by the second accused

Arumugam. The second accused was acquitted and rightly so. Since the first accused admitted the signature and did not dispute the same by issuing a reply the notice, the Trial Magistrate was of the view that the complainant had established the case against the first accused beyond reasonable time. Accordingly, the Trial Magistrate held the first accused/respondent herein guilty of the offence under Section 138 of Negotiable Instrument Act and sentenced was also imposed.

8. As rightly contended by the learned counsel appearing for the respondent, the First Appellate Court is justified in reversing the said judgment of the Trial Magistrate. It is seen that the cheque originally bears one date and it was subsequently altered as 08.06.2002. The only question is whether the alteration was done by the accused himself. In this case, the accused specifically denied having made the said alteration. However, the altered date has been counter signed. The report of the hand writing expert is clearly in favour of the first accused. It is true that the report of the hand writing expert is not conclusive. The fact remains that it is in favour of the accused. The complainant in a proceeding under Section 138 of The Negotiable Instrument Act has to discharge his burden by proving that the cheque was issued for a legally enforceable debt and liability and such presumption is rebutted by the accused. In the present case, the accused, by sending the cheque for examination by the forensic science expert, has clearly rebutted the presumption with respect to the fact that he did not sign the alteration made to the date in the complaint cheque.

9. As regards the presumption raised by the complainant with respect to non-issuance of reply notice, the lower Appellate Court has rightly observed that the accused could not have been found guilty merely because he did not respond to the statutory notice issued by the complainant. Apart from the report of the hand writing expert, the lower Appellate Court had also compared the admitted signature in the complaint cheque with the disputed signature. The Courts have inherent power to do so under Section 73 of the Indian Evidence Act. After making such comparison, the lower Appellate Court had given a specific finding in favour of the accused. Thus, apart from the report of the hand writing expert, the findings rendered by the lower Appellate Court was also in favour of the accused. On account of the material alteration of the cheque became a void instrument.

10. This Appeal against the acquittal is therefore devoid of merits and the appeal stands dismissed.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

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To

1) The Additional District and Sessions Judge,
Special Court for E.C.Act, Coimbatore.

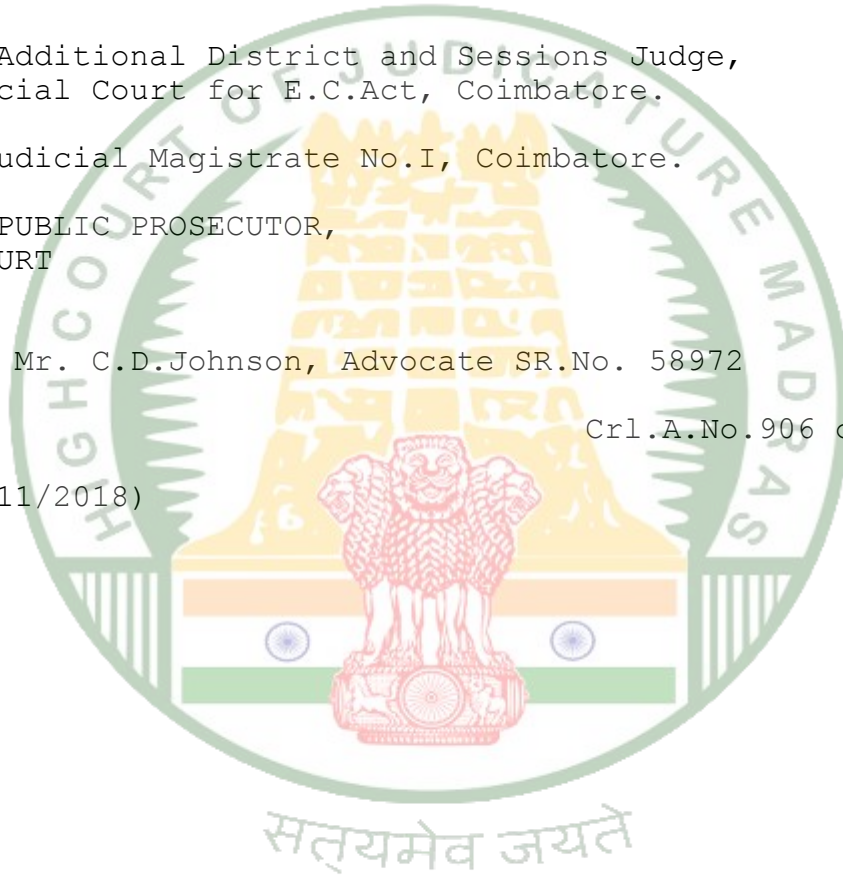
2)The Judicial Magistrate No.I, Coimbatore.

3) THE PUBLIC PROSECUTOR,
HIGH COURT
MADRAS.

+1cc to Mr. C.D.Johnson, Advocate SR.No. 58972

Cr1.A.No.906 of 2007

ASK(15/11/2018)



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