IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.978 of 2007

Boopathy ..Appellant/Complainant

vs.

Masila
Proprietrix,
Masila Traders,
13(1)(a) Swaminathapuram Extension,
2nd Street, Anuparpalayam Post,
Tiruppur. ..Respondent/Accused

Prayer:- Criminal Appeal is filed under Section 378 of the Cr.P.C. against the judgment dated 11.07.2007 made in C.C.No.204 of 2004 on the file of the learned Judicial Magistrate I, Tirupur.

For Petitioner : Mr.K.Goviganesan
For Respondent : Mr.J.Franklin - No Appearance

JUDGMENT

This criminal appeal has been filed against the judgment dated 11.07.2007 made in C.C.No.204 of 2004, on the file of the learned Judicial Magistrate I, Tiruppur.

2 Complainant is the appellant in the present criminal appeal. The case of the appellant is that the respondent had borrowed a sum of Rs.1,00,000/- for her business needs. When the appellant insisted the respondent for repayment of the same, she issued a cheque for a sum of Rs.1,00,000/- in favour of the appellant drawn from the Indian Overseas Bank, bearing cheque No.136300. When the said cheque was presented for collection on 19.12.2003, it was returned with an endorsement "exceeds arrangement". Subsequently, the appellant issued a legal notice on 24.12.2003 and the same was received by the respondent on 26.12.2003. Despite receipt of the said notice, the respondent neither repaid the amount nor given any reply to the notice. Therefore, the appellant filed a private complaint under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate I, Tiruppur in C.C.No.204 of 2004.

3 The respondent denied the allegations made against her by stating that she has not issued any cheque to the appellant and has not borrowed any loan from him as stated in the complaint. The said cheque was issued only due to the business transaction between the appellant and husband of the respondent. Hence the respondent prayed for rejection of the complaint preferred by the appellant.

4 Before the trial Court, the appellant examined himself as P.W.1 and one Karthikeyan, who is Branch Manager of the Bank, where the respondent runs his account as P.W.2 and documents Exs.P1 to P7 were marked to prove his claim. The respondent examined the said Karthikeyan, Branch Manager as R.W.1 and marked Exs.R1 to R5.

5 After hearing the arguments advanced on either side, the trial court acquitted the respondent by judgment dated 11.07.2007, by observing that the impugned cheque relied on by the appellant, was materially altered one and the same could not be accepted.

6 Aggrieved against the said jugment dated 11.07.2007 made in CC.No.204 of 2004, the appellant come forward with the present criminal appeal.

7 The learned counsel for the appellant would contend that the respondent borrowed a sum of Rs.1,00,000/- for her business needs. The respondent issued a cheque for a sum of Rs.1,00,000/- for the above liability in favour of the appellant drawn from the Indian Overseas Bank, bearing cheque No.136300, and the same was returned with an endorsement "exceeds arrangement", when presented for collection. Hence, the appellant issued a legal notice on 24.12.2003, the same was received by the respondent on 26.12.2003. Despite receipt of the said notice, the respondent neither repaid the amount nor given any reply to the notice. Therefore, the appellant filed a private complaint before the learned Judicial Magistrate I, Tiruppur in CC.No.204 of 2004, which came to be rejected, on the ground that the cheque was materially altered. The learned trial judge failed to consider the facts that the respondent has not chosen to cross examine the appellant and respondent himself did not come into the witness box to contradict the witness of the appellant.

8 P.W.2, Branch Manager, deposed that the cheque in question was issued to the respondent from his Bank only. The signature found in the cheque was also not disputed by the respondent. The learned trial Judge failed to consider the above facts and erred in acquitting the respondent. Hence the appellant prays to allow the appeal.

9 Today When the matter is taken up for hearing, there is no representation on behalf of the respondent.

10 Heard the learned counsel for the appellant and perused the materials available on record.

11 A perusal of the records would reveal that a cheque was issued by the respondent to the appellant for the liability and the same was returned as "exceeds arrangement", when it was presented for collection. Despite, appellant issued a legal notice, the respondent neither repaid the amount nor given any reply to the said notice and the respondent did not file any counter before the trial court. R.W.1 deposed that the cheque in question was issued to the respondent from his Bank only. The signature found on the cheque is not disputed by the respondent.

12 As rightly pointed out by the learned counsel appearing for the appellant that if really the respondent denied the allegations made against her, she ought to have cross examined the appellant to prove her contention. Furthermore the respondent did not enter into to the witness box to contradict the evidence of P.W.1/appellant.

13 It is an admitted fact that the cheque was not sent to handwriting expert to prove that the signature found in the cheque is that of the signature of the respondent. It was deposed by P.W.2 that the signature found in the cheque is that of the respondent only. Further, R.W.1/Branch Manager, in his evidence has not stated anything to disprove the claim of the appellant.

14 In such circumstances, the order passed by the learned Judicial Magistrate I, Tiruppur, in C.C.No.204 of 2004, dated 11.07.2007 warrants serious interference of this Court.

15 In the result, the criminal appeal is allowed on the following terms:

(1) Since, the respondent/accused found guilty, he is convicted under Section 138 of Negotiable Instruments Act and sentenced to pay a sum of Rs.2,00,000/- to the credit of C.C.No.204 of 2004 on the file of Judicial Magistrate I, Tiruppur, within a period of three months from the date of receipt of a copy of this order. The fine amount of Rs.2,00,000/- may be treated as compensation and the same shall be paid to the appellant herein.

(2) In default, the respondent/accused shall undergo simple imprisonment for a period of three months.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1. The Judicial Magistrate I, Tiruppur.
(He is required to serve copy of Judgment on the respondent accused immediately)

2. -do- Thro' The Chief Judicial Magistrate, Coimbatore.

Copy to: The Section Officer,
Criminal Section, High Court, Madras.

+ 1 cc to Mr.K. Govi Ganesan, Advocate Sr. 20310.

Crl.A.No.978 of 2007

GJ(CO)
EU(26/07/2018)