

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 26.03.2018****CORAM:****THE HONOURABLE MR.JUSTICE P.N.PRAKASH****Crl.A.(MD) No.147 of 2018****WEB COPY**

Francis Harrington

... Appellant / Complainant

vs.

K.M.Syed

... Respondent / Accused

PRAYER : Criminal Appeal filed under Section 378 Cr.P.C., praying to call for the records relating to the judgment dated 08.09.2009 made in C.A.No.56 of 2007 on the file of Additional District Sessions Court (FTC), Dindigul in reversing the judgment dated in C.C.No.263 of 2004 dated 31.10.2007 on the file of Judicial Magistrate Court No.III, Dindigul and set aside the same as illegal.

For Appellant : Mr.J.Sulthan Basha

For Respondent : No appearance

J U D G M E N T

For the sake of convenience, the appellant and the respondent herein are referred to as "the complainant" and "the accused" respectively in this judgment.

2.Heard Mr.J.Sulthan Basha, learned counsel for the complainant.

3.The complainant initiated a prosecution in C.C.No.263 of 2007 before the Judicial Magistrate No.III, Dindigul under Section 138 of the Negotiable Instruments Act against the accused. The trial Court by judgment dated 31.10.2007 in C.C.No.263 of 2004 convicted the accused and sentenced him to undergo 6 months imprisonment and to pay a compensation of Rs.3,05,500/- to the complainant, in default to undergo 3 months Rigorous Imprisonment. Challenging the conviction and sentence the accused filed C.A.No.56 of 2007 before the Sessions Court, and the Sessions Court (Fast Track Court), Dindigul by judgment dated 08.09.2009 in C.A.No.56 of 2007 reversed the finding of the trial Court and has acquitted the accused. Challenging the order of acquittal, the complainant filed the present Appeal against acquittal with a huge delay of 1180 days. Therefore, the complainant filed M.P.(MD) No.1 of 2013 in Crl.A.(MD) No.SR3324 of 2013 under Section 5 of the Limitation Act for condonation of the delay, which has been allowed by this Court today.



4. Coming to the Criminal Appeal, it is the case of the complainant that the accused borrowed Rs.3,00,000/- on 10.10.2003 and issued a cheque for Rs.3,00,000/- on 29.01.2004; that the cheque was dishonoured on 04.08.2004 for insufficiency of funds; that the complainant issued statutory notice on 10.08.2004 and thereafter initiated the prosecution as stated above.

5. It is the case of the accused that cheque is dated 29.01.2004 and it should have been presented before 28.07.2004, whereas the complainant had failed to send the cheque for clearance; that the cheque was returned by the bank of the accused on 30.07.2004, which is six months after the date of cheque. On facts, the first appellate Court has found sufficient material in the defence taken by the accused. In **Arulvelu and another vs. State [2009 (10) SCC 206]**, the Hon'ble Supreme Court held that when two views are possible, the view favouring the accused merits acceptance. That apart the first appellate Court has found that the cheque has been presented twice on 23.07.2004 and 04.08.2004. Thus, the finding of the first appellate Court that the cheque has been presented after six months from the date of its expiry cannot be stated to be perverse.

6. Hence, this Criminal Appeal is devoid of merits and the same is dismissed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

1. The Sessions Judge,
(Fast Track Court),
Dindigul.
2. The Judicial Magistrate No.III,
Dindigul.
3. The Record Keeper, (2 COPIES)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

SJ

VB/SKN/RSK/SAR1/17/04/2018/2P/5C

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