



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.(MD) No.300 of 2018

WEB COPY

S.Jothiswaran

... Petitioner/Respondent

Vs.

S.Ganesan

... Respondent/Appellant

PRAYER: The Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the judgment of the Additional District and Sessions Judge, Pudukottai in C.A.No.85 of 2015 dated 09.01.2018 setting aside the judgment of the learned Judicial Magistrate, Pudukottai in S.T.C.No.1084 of 2006 dated 10.09.2015 and set aside the same and confirm the judgment of conviction passed by the learned Judicial Magistrate, Pudukottai in S.T.C.No.1084 of 2006 dated 10.09.2015.

For Petitioner : Mr.V.Angusamy

For Respondent : No appearance

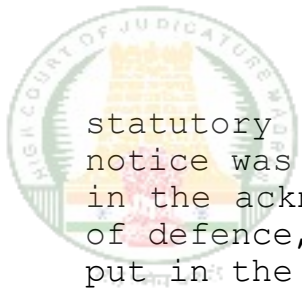
ORDER

This revision case has been filed to to call for the records in C.A.No.85 of 2015 dated 09.01.2018 setting aside the judgment of the learned Judicial Magistrate, Pudukottai in S.T.C.No.1084 of 2006 dated 10.09.2015 and to set aside the same.

2.Heard the learned counsel for the petitioner.

3.In a private complaint arising under Section 138 of the Negotiable Instruments Act, the trial Court has held that a cheque issued by the respondent for a sum of Rs.2,00,600/- was to discharge illegally enforceable and having failed to honour the cheque, the respondent herein is guilty of offence under Section 138 of the Negotiable Instruments Act. However, the appellate Court has reversed the findings of the trial Court holding that on comparison, the signature found in the cheque marked as Ex.B1 differs from the signature found in the acknowledgement card, (Ex.B4) signed by the respondent for the receipt of the statutory notice and the signature of the respondent / accused in question and answers put under Section 313 Cr.P.C. The trial Court has held that on comparing these three signatures appears to vary and allowed the appeal.

4.A short point involved in this revision case is that whether such an opinion by the lower appellate Court exercising its power under Section 73 of Indian Evidence Act warrants in this case. Admittedly, the respondent herein has not given any reply to the



statutory notice. The explanation given by the accused is that notice was not served to the correct address and the signature found in the acknowledgement card is not her signature. On the same line of defence, when the complainant was examined as P.W1 suggestion was put in the cross

examination. Suggestion put to the complainant that he and the accused were partners and at that point of time blank cheque signed by the accused person and unsigned blank cheques were stolen by the complainant and misused to file a criminal complaint. While questioning under Section 313 Cr.P.C., the same defence has been taken by the accused.

5. In such circumstances, when the signature found in the cheque is denied, the burden does not fall on the complainant but on the accused. More so, when the bank memo annexed with return cheque does not indicate that the signature varies but only say insufficient fund. Further more, comparing the signature cheque dated 22.03.2006 with the signature made during the Section 313 Cr.P.C., questioning which has taken place after completion of the prosecution witnesses on 12.04.2008, is not a contemporary document fit for signature comparison. That too by naked eye is not safe. Therefore, on this sole ground, this Court is inclined to allow this revision.

6. Accordingly, this criminal revision case is allowed and the order of acquittal passed by the learned Additional District and Sessions Judge, Pudukottai in C.A.No.85 of 2015 case is remitted back to the lower appellate Court for fresh appreciation of evidence.

7. The learned Additional District and Sessions Judge, Pudukottai is directed to hear the matter after issuing notice to the both parties and dispose the appeal within a period of three months from the date of receipt of a copy of this order. The Registry is directed to inform the order to the appellate Court.

Sd/

Assistant Registrar (Crl Side)

/True copy/

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate,
Pudukottai.

2. The Additional District and Sessions Judge,
Pudukottai

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