

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.No.812 of 2009

M.Hari Choudhury ... Appellant/Complainant

/Vs/

V.Vaidyanathan Respondent/Accused

PRAYER: Criminal Appeal filed under section 378 of the Criminal Procedure Code, to allow this Criminal Appeal by setting aside the Judgment dated 26.10.2009 in C.C.No.13198 of 2004 on the file of the V Metropolitan Magistrate, Egmore, Chennai and punish the accused for an offence under Section 138 of the Negotiable Instruments Act, 1881 and also prays for compensation for the cheque amount under Section 142 of the Negotiable Instruments Act.

For Appellant : M/s.C.Umashankar
For Respondent : M/s.J.Prithivi
Legal Aid Counsel

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J U D G M E N T

This criminal appeal has been filed by the appellant/complainant against the order of acquittal dated 26.10.2009 in C.C.No.13198 of 2004 on the private application/complaint filed under Section 138 of the Negotiable Instrument Act 1881 and under Section 142 of the Negotiable Instruments Act.

2.The case of the complainant is that the accused on several occasions, borrowed a sum of Rs.2,50,000/- and in order to repay the same, issued a cheque dated 03.02.2004 for a sum of Rs.1,50,000/- and when the same was presented for encashment before the State Bank of Indore, Koyambedu Branch, the same was returned for "Insufficient Funds" and the complainant issued legal notice on 15.03.2004, and it was refused to be received by the accused. Since, the accused neither repaid the amount nor sent a reply to the legal notice sent by the de-facto complainant, the complainant preferred the complaint under Section 138 of the Negotiable Instruments Act.

3.The case was taken on file in CC.No.13198/2004, by the V Metropolitan Magistrate, Egmore, Chennai and necessary issues were framed. The accused had denied the allegation and sought for trial. In order to prove the allegation against the accused, the de-facto complainant examined himself as P.W.1 and marked Exs.P.1 to 6 and on the side of the defence, D.Ws.1 and 2 were examined; and Ex.D.1 was marked.

4.The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused guilty and awarded punishment, as referred to above, which is challenged in this Criminal Appeal.

5.This court heard the submissions of the learned counsel on either side.

6.The learned counsel for the appellant/complainant would submit that the learned Trial Judge had on wrong presumption of law has acquitted the accused stating that Ex.P2 cheque was dated 03.03.2004, and that there was a seal in the backside of the cheque dated 03.09.2003 and rendering a finding of the cheque had not been presented within a period of six months and had acquitted the accused. He would further submit that infact, the accused had revalidated the cheque by extending the date and that the cheque had been presented within a period of six months from the date of revalidation, and as per Section 87 of the Negotiable Instruments Act, such revalidation is legally permissible and when the respondent/accused having not denied the revalidation of the cheque the Trial Court ought to have extended the benefit of presumption in favour of the appellant/complainant under Section 118 of the Negotiable Instruments Act with regard to the consideration and revalidation of the Instrument and when the accused having not denied such revalidation the trial Court erred in acquitting the respondent/accused on assumption that there was no supporting document to prove that the cheque was presented for collection on 04.03.2004.

7.The learned counsel for the appellant/complainant would further submit that the cheque had been returned by the Bank stating that "Funds Insufficient" and not that it was prosecuted out of time. When that being so, a duty is cast by the accused to rebut the same stating that the counter signature extending the validity of the cheque had not been made by him or that he had not signed by the endorsement and when no contra evidence had been let in by the respondent/accused regarding the same, the trial Court should have taken presumption in favour of the complainant and convicted the respondent/accused.

8.The learned Counsel appearing for the appellant/complainant would rely on the decision of the Hon'ble Supreme Court of India reported in AIR 2002 SC 388 (Veera Exports Vs. T.Kalavathy) that a cheque which has become invalid because of the expiry of the stipulated period, could be made valid by alteration of dates as per Section 87 of the Negotiable Instruments Act. The learned counsel also would submit that if this Court thinks that additional evidence with regard to the same is required, the Court shall remand the matter to the Magistrate for taking additional evidence under Section 386 of the Negotiable Instruments Act.

9.The learned Legal Aid counsel appearing for the respondent would rely on the judgment of this Court reported in 2015-1-Law Weekly (Cr1) 675 and would submit that the cheque had been presented beyond the period of limitation, and thereby, the Trial Court had acquitted the accused. However she would submit that there is no clarity in the evidence with regard to the counter signature extending the validity of the cheque.

10.In this case on hand, Ex.P1 is the Power of Attorney and Ex.P2 is the cheque bearing No.309918. Though the cheque had been dated 01.05.2003, as per the appellant/complainant it had been revalidated and the date has been given as 03.03.2004 and necessary counter signature have been made by the respondent/accused accepting the alteration of date. However, there is no clarity in the evidence with regard to the fact whether the revalidation of the date has been made by the respondent/accused and that the counter signature attesting the same had been made by him.

11.This Court is of the opinion that in the interest of justice and to arrive at a just decision the order of acquittal has to be set aside and the case be remanded back to the Trial Court and that further enquiry be conducted by the learned Trial Judge to arrive at a conclusion to the limited extent of proving to whether the revalidation of the cheque had been done by the respondent/accused by affixing his counter signature, and thereby, in view of powers granted under Section 386 of Cr.P.C., this Court remands the matter back to the Trial Court to conduct further enquiry by summoning both parties and decide the aspect whether the cheque had been duly revalidated and whether the counter signature attesting the revalidation is made by the respondent/accused and pass orders in accordance with law.

12.It is made clear that the Trial Court shall summon the accused by issuing notice afresh and proceed with trial after the appearance of the respondent/accused. The appellant/complainant shall furnish the present address of the respondent/accused to the Court.

13.With this observation, the appeal is remitted back to the Trial Court.

-sd/-

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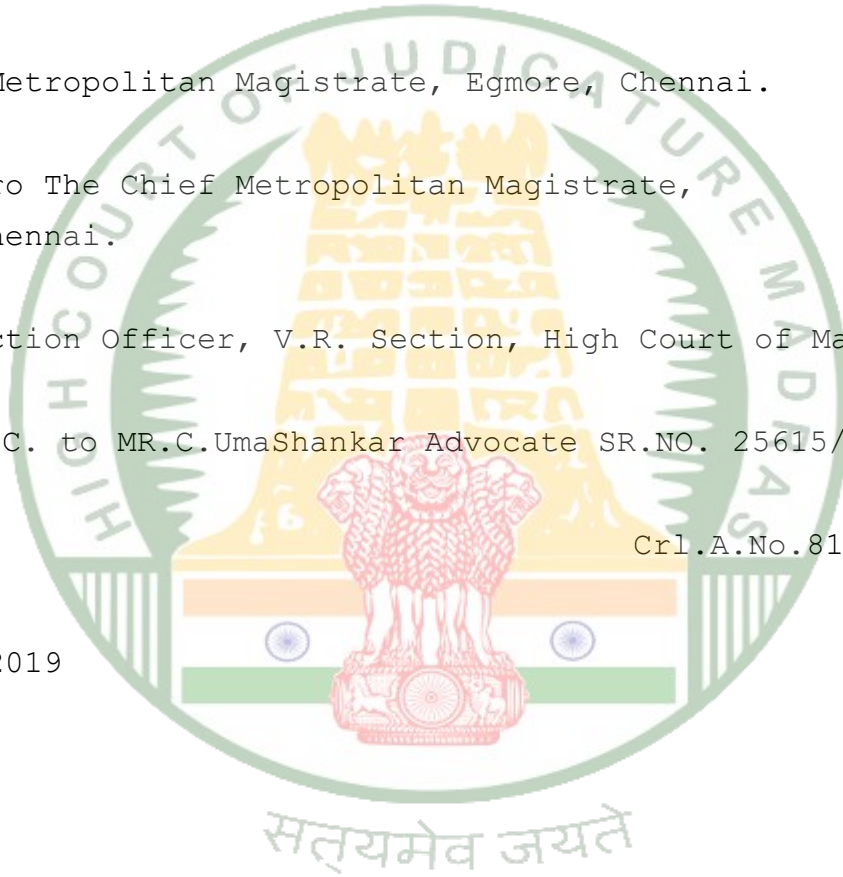
1. The V Metropolitan Magistrate, Egmore, Chennai.
- 2 -do- Thro The Chief Metropolitan Magistrate, Egmore, Chennai.
3. The Section Officer, V.R. Section, High Court of Madras.

C.C. to MR.C.UmaShankar Advocate SR.NO. 25615/19

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NA (CO)

VS 30.05.2019



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