

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.702 of 2011

R.Sethumadhavan @ R.Madhavan

.. Appellant/Complainant

/versus/

K.Inayathkhan

.. Respondent /Accused

Criminal Appeal filed under Section 378 of the Criminal Procedure Code to call for the records in the above C.A.No.27 of 2011 on the file of the Additional District and Sessions Court, Salem to allow the above appeal, set aside the judgment of acquittal dated 11.07.2011 passed by the Additional District and Sessions Court, Salem in C.A.No.27 of 2011 and restore the order of conviction dated 11.02.2010 in S.T.C.No.53 of 2010 passed by the Judicial Magistrate-IV, Salem.

For Appellant :Mr.B.Christ Das

For Respondent :Mr.G.R.Deepak

J U D G M E N T

This appeal is directed against the judgment of the lower appellate Court reversing the judgment of the trial Court in a matter arising under Section 138 of the Negotiable Instruments Act, 1881.

2. Brief facts of the case is that the appellant herein, who is the complainant before the trial Court has handed over his Indico L.S car bearing Reg.No.TN 30J 625 to the respondent herein, who is a dealer in secondhand car to sell the car. The respondent herein has issued a cheque for Rs.1,75,000/- and taken all the documents necessary for name transfer. Though the vehicle was sold, the respondent has not honoured the cheque given by him drawn on I.C.I.C.I Bank at Shevapet, Salem District from the account maintained by him. The appellant after causing statutory notice has initiated prosecution before the trial Court. He has produced five documents in support of his complaint and also mounted witness box and subjected himself to be cross examined.

3. The trial Court considering the evidence before it and the defence taken by the respondent negated the claim of the respondent and held him guilty for offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 3 month Simple Imprisonment.

4. Aggrieved by the conviction and sentence, the respondent has preferred an appeal before the District and Sessions Judge, (Fast Track Court No.II), Salem in C.A.No.27 of 2011. The lower appellate Court on re-appreciating the evidence has held that the subject cheque was issued by the accused for taking the car from the complainant and there is no borrowing. The cheque was issued only as a security and there is no legally enforceable debt. The lower appellate Court has observed that the trial Court has ignored the terms and conditions found in the agreement marked as Ex.P5 and held the respondent not guilty. Aggrieved by the order of acquittal passed by the lower appellate Court, the present appeal is filed by the aggrieved complainant.

5. The learned counsel appearing for the appellant would submit that the lower appellate Court has failed to read Ex.P5 as a whole along with the deposition of PW-1 including the cross examination done by the accused. Having admitted the issuance of the cheque for Rs.1,75,000/- and receipt of the documents along with the vehicle for transfer of name, the accused has not produced any evidence to rebut the statutory presumption. By no stretch of imagination, the said cheque is treated as a security. It is a specific understanding that the agreement was arrived at between the parties, the value of the car has been fixed as Rs.1,75,000/- and the vehicle along with necessary documents were handed over to the accused. The accused has not denied the said fact. Neither he replied to the statutory notice issued by the complainant immediately after the return of the cheque. Only as an afterthought an attempt has been made by the accused to interpret the second part of the agreement wherein, the owner of the car was vested with right to take back the car, if the sale by the accused could not be fructified. Since the accused has sold away the vehicle based on the documents given by him, he is bound to honour the terms of the contract as per Ex.P5. Having failed to honour, he is liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881.

6. Per contra, the learned counsel appearing for the respondent would submit that it is true that the agreement was entered between the parties for sale of car and subject cheque was issued to the complainant. However, the vehicle was taken back by the complainant as per the second part of the agreement

and therefore, there is no enforceable liability. Since the subject cheque was issued only as a security, the trial Court failed to appreciate the terms of the agreement properly. Whereas, the lower appellate Court has rightly held that the cheque was not issued for any enforceable liability and held against the complainant. The appeal is devoid of merit, since the complainant has failed to establish that the subject cheque was issued for discharge of any enforceable debt. Even according to the complainant, from reading of Ex.P5, it could be easily seen that the cheque was issued only as a security and the car does not stand in the name of the accused. Since, the cheque is not supported by any consideration, the finding of the lower appellate Court has to be confirmed.

7. On perusing the deposition of PW-1 and Ex.P5, it is clear from the terms of the agreement Ex.P5 that the vehicle bearing Reg.No.TN 30J 625 was handed over to the accused along with the necessary form for transfer of ownership. As against the said part of performance by the complainant, the accused has issued the subject cheque for Rs.1,75,000/-. If really the vehicle was not sold by him and vehicle has been taken back by the complainant, there must be some written document, which could support the said fact. There is no document produced by the accused to support of his submission that the vehicle was taken back by the complainant as per the second part of the agreement.

8. In such circumstances, the first part of the agreement, which speaks about the handing over of the document and vehicle to the complainant for consideration of Rs.1,75,000/- and cheque being issued for the said consideration has to be interpreted in the plain manner in which the terms are constructed. The second part of the agreement, which is only an alternate in case the sale does not fructify. This can be put into force only if the accused had placed materials before the Court to show that the sale was not effected by him and the documents handed over to him along with the vehicle were returned back to the complainant. In the absence of the proof that the accused has returned back the vehicle and the documents to the complainant, it is a clear case of willful default in honouring the cheque after receiving the vehicle and transfer form from the complainant. The finding of the lower appellate Court without any material evidence to substantiate his finding but by misinterpretation of the terms of the agreement is perverse and it liable to be set aside.

9. Hence, this Criminal Appeal is allowed. The judgment passed by the Additional District and Sessions Judge, Fast Track Court No.II, Salem in C.A.No.27 of 2011 dated 11.07.2011 is set aside. The judgment of conviction and sentence imposed by the Judicial Magistrate No.4, Salem in S.T.C.No.53 of 2010 dated

11.02.2011 stands restored. The period of sentence already undergone by the accused is set off. Bail bond, if any executed by the accused shall be cancelled. The Police is directed to secure the accused and remand him into prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CO)

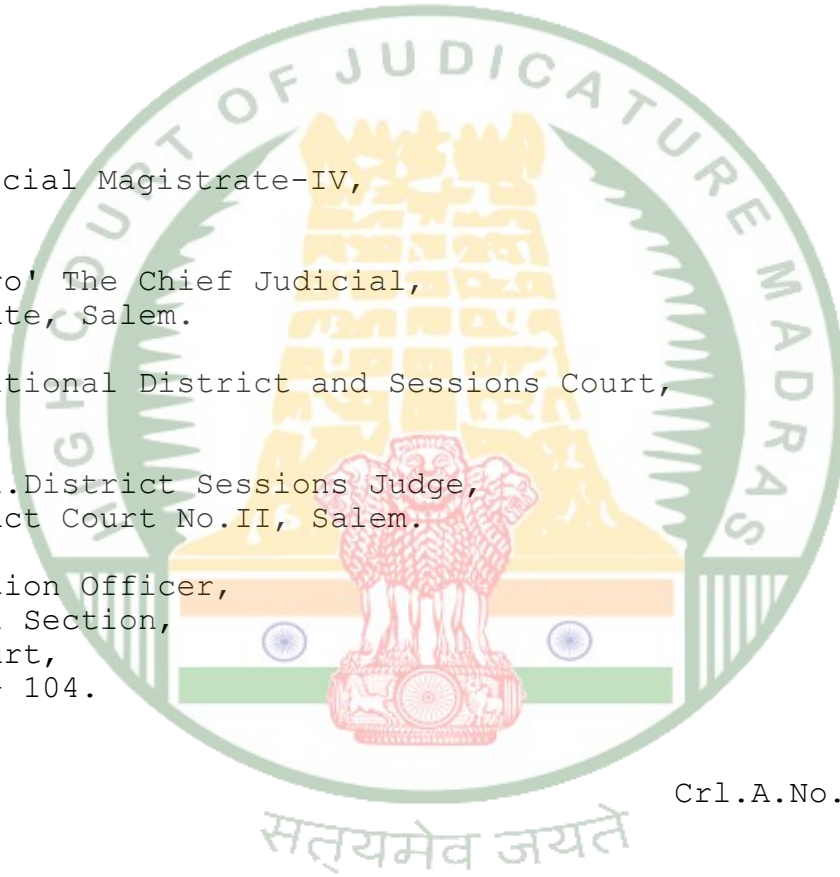
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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate-IV,
Salem.
- 2.-do- Thro' The Chief Judicial,
Magistrate, Salem.
- 3.The Additional District and Sessions Court,
Salem.
- 4.The Addl.District Sessions Judge,
Fast Tract Court No.II, Salem.
- 5.The Section Officer,
Criminal Section,
High Court,
Madras - 104.



Crl.A.No.702 of 2011

TSG(CO)

RRS(18/06/2019)

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