

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.438 of 2012

Janab Kaka Shabir Ahmed

Appellant

Vs

R. Srinivasan

Respondent

Prayer: Criminal Appeal is filed under Section 378(4) of the code of Criminal Procedure, praying to set aside the order of Judicial Magistrate, Tambaram in CC No. 762 of 2006 dated 09.10.2009 and praying to allow the appeal by holding the respondent has committed the offence under Section 138 and 142 of Negotiable Instruments Act.

For Appellant : Mrs.A. Sumathy

For Respondent : Mr. Lakshmi Raj Rathnam

J U D G M E N T

This Criminal appeal is directed against the Judgment of acquittal by the trial Court.

2. The brief facts of the case is that the respondent herein and his wife were running a Leather business in the name and style of "Adhiithya Leathers and "JAY ORR Leathers". The respondent herein owed Rs.9,63,502.75/- to the appellant herein. In order to supply the raw-materials, the respondent herein received a sum of Rs.1,45,000/- from the appellant and failed to supply the goods. On 13.02.2006, he issued a cheque for Rs.2,00,000/- to the appellant. On 02.05.2006, the said cheque was presented for collection by the appellant. It was returned with an endorsement as "Insufficient Funds". Statutory notice issued to the respondent and the reply also received denying the liability. Hence, Private Complaint filed for the offence under Section 138 of Negotiable Instrument Act. The trial Court after taking into consideration the evidence adduced and the documents placed, has acquitted the respondent herein, against which the present Criminal Appeal is preferred.

3. Heard the Counsel for the appellant / complainant.

4. For the cheque Rs.2,00,000/- issued by the respondent herein, criminal complaint has been lodged under Section 138 of Negotiable Instrument Act. The trial Court has held that the complainant has failed to prima facie established the fact that the subject cheque was issued to discharge the legally enforceable debt. Hence, dismissed the complaint and acquitted the accused.

5. On perusal of the records and the submissions made by the counsels, this Court could find that the allegations made in the complaint is that the complainant and the accused were involved in leather trade. There was a mutual open running account between them. While the complainant used to supply raw-skin, the accused used to supply semi-finished products. In the said course, it is contended by the complainant that apart from the outstanding, he has also paid Rs.1,45,000/- in cash to the accused. To discharge the outstanding a Cheque for Rs.2,00,000/- was given by the accused on 13.02.2006. When it was presented for collection, it was returned with an endorsement "insufficient funds". Both the complainant and the accused have exchanged the notice substantiating their claim.

6. During the course of the trial, notice and reply were marked. The complaint was dismissed for two reasons. The first reason is that when the complainant has stated that he gave Rs.1,45,000/- cash to the accused towards purchase of material and the accused issued receipt for the same. The said receipt was not placed before the Court. Yet another doubt has been entertained by the Court that when cash of Rs.1,45,000/- only given to the accused, why cheque for Rs.2,00,000/- given by the accused not justified by the complainant since the alleged liability and cheque amount differed, the Court below held that Section 139 of Negotiable Instrument Act can not be drawn against the accused.

7. On hearing the Counsels as well as on perusal of the records, this Court finds that the reasonings given by the lower Court is in consonance with the preposition of law. There is no illegality in the findings of the Court below. The order of the acquittal requires no interference.

8. In the light of the above discussions, this Criminal appeal is dismissed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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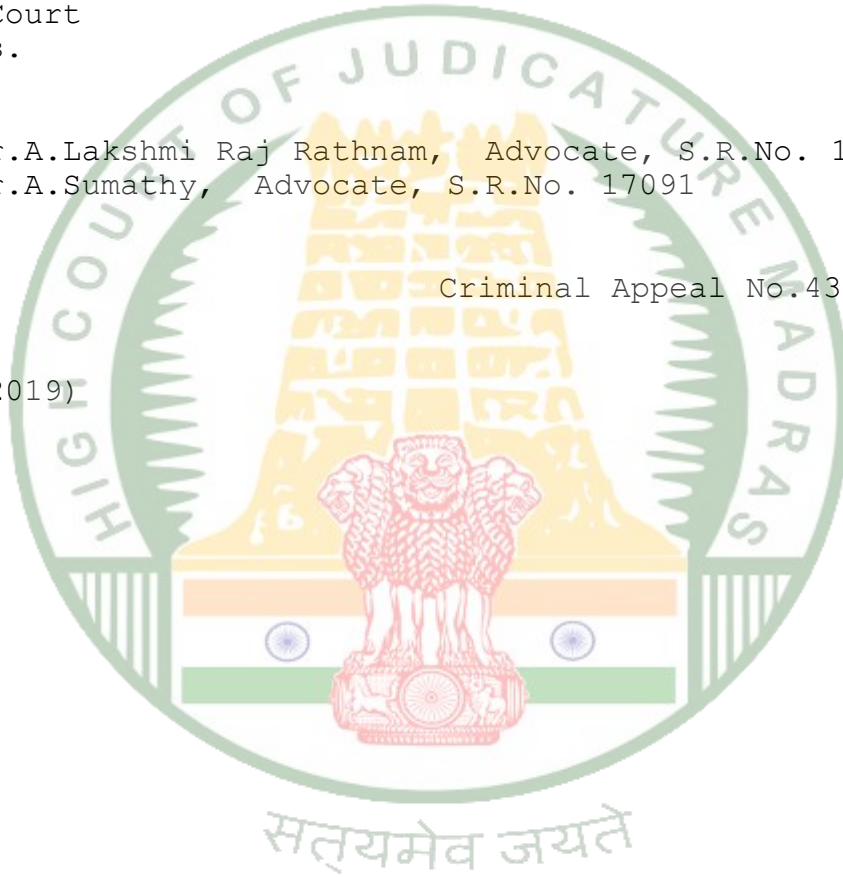
To

1. The Principal District Judge, Tambaram
2. The Chief Judicial Magistrate, Tambaram
3. The Judicial Magistrate, Tambaram
4. The Deputy Superintendent of Police,
Mylapore, Chennai-4.
5. The Public Prosecutor
High Court
Madras.

+2cc to Mr.A.Lakshmi Raj Rathnam, Advocate, S.R.No. 16476
+1cc to Mr.A.Sumathy, Advocate, S.R.No. 17091

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