



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL A (MD) No.136 of 2011

P.Thangavel

... Appellant

Vs.

A.V.Murugan

... Respondent

Prayer : This Criminal Appeal is filed under Section 378(1) of Criminal Procedure Code, to set aside the judgment passed in C.A No.97 of 2008 dated 15.04.2009 on the file of the learned Additional Sessions Judge cum Fast Track Court No.I, Madurai against the order passed in S.T.C No.768 of 2005 dated 06.08.2008 on the file of the learned Judicial Magistrate No.IV, Madurai.

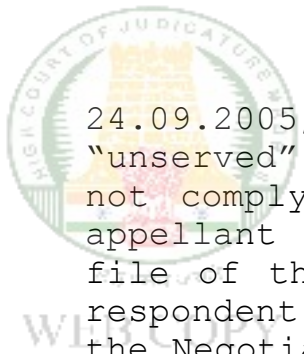
For Appellant : Mr.V.Nagendran
For Respondent : Mr.C.M.Arumugam

JUDGMENT

The appellant herein filed STC No.768 of 2005 on the file of the Judicial Magistrate No.IV, Madurai against the respondent herein for the offence under Section 138 of the Negotiable Instruments Act, 1881. The learned trial magistrate by judgment dated 06.08.2008 came to the conclusion that the respondent was guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo six months simple imprisonment and levied with a fine of Rs.5,000/-. Aggrieved by the same, the accused filed C.A No.97 of 2008 before the Additional Sessions Judge cum Fast Track Court No.I, Madurai. The appellate court by judgment dated 15.04.2009 allowed the appeal and acquitted the respondent herein. Challenging the same, this appeal has been filed by the complainant.

2.Heard the learned counsel on either side.

3.The case of the appellant is that on 25.08.2005, the accused received a sum of Rs.2.00 lakhs as hand loan. He issued Ex.P1 cheque dated 27.09.2004 drawn on Union Bank of India, Madurai for a sum of Rs.2.00 lakhs in favour of the complainant. The said cheque was presented for collection on 05.10.2004 by the complainant. But the complaint cheque was returned unpaid for the reason "insufficient funds" in the account maintained by the accused. The complainant informed the accused about the dishonor of the cheque issued by him. According to the complainant, the accused requested him to re-present the cheque and accordingly on 25.08.2005, the cheque was re-presented for collection. On



24.09.2005, Ex.P3 notice was issued. The notice was returned "unserved". Ex.P4 is the returned postal cover. The accused did not comply with the demand set out in the notice. Hence, the appellant filed a private complaint in STC No.768 of 2005 on the file of the Judicial Magistrate No.IV, Madurai for punishing the respondent for having committed the offence under Section 138 of the Negotiable Instruments Act. The complainant examined himself as P.W.1 and marked Exs.P1 to P.4. On the side of the accused no evidence was adduced. The learned Trial Magistrate found the accused guilty of the offence under Section 138 of the Act and sentenced him to undergo six months simple imprisonment.

4.The appellate court noted that the complainant having already presented the cheque for collection on 05.10.2004 and based on the second dishonor of the cheque, filed the impugned private complaint. The cause of action arose when the accused did not comply with the demand set out in the statutory notice issued on the first occasion. The complainant could not have filed the complaint based on the second cause of action. The appellate court proceeded on the premise that Section 138 of the Act envisages only one cause of action. It is true that this was the position entertained by the Hon'ble Supreme Court originally in the decision reported in **(1998) 6 SCC 514 (Sadanandan Bhadran vs. Madhavan Sunil Kumar)**. But then, this decision was overruled in the decision reported in **(2013) 1 SCC 177 (MSR Leathers vs. S. Palaniappan and Anr)**. The Hon'ble Supreme Court in the later decision held as follows :

"There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138."

<https://hcservices.equifund.gov.in/hcservices/>, the impugned judgment of the appellate court was



rendered on 15.04.2009 when **Sadanandan Bhadran's** case was holding the field. But, in view of the march of law, this Court follows **MSR Leathers vs. S. Palaniappan and Anr** and sets aside the impugned judgment of the appellate court. This Court called upon the parties to explore the possibilities of compromise. In fact, this Court heard the respondent A.V.Murugan. The respondent admitted before this Court that it was he who issued the cheque in question. But he stated that the financial transaction was only between the complainant and one EMS.Soundararajan who was a employer of the respondent. The respondent stated that he is aged about 62 years and is taking care of his aged father. He stated that he did not received a pie from the complainant.

6.Taking note of the mitigating factors, even while setting aside the impugned judgment of the appellate court and allowing this appeal, this Court confirms the conviction imposed on the respondent by the trial court and also the levy of fine of Rs.5,000/-. However, the sentence of imprisonment alone is reduced from six months simple imprisonment to one month simple imprisonment. The learned trial magistrate shall take steps to enforce this judgment.

7.This criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Additional Sessions Judge
cum Fast Track Court No.I, Madurai.

2.The Judicial Magistrate No.IV, Madurai.

+1 CC to MR.C.M.ARUMUGAM, Advocate (SR-78687[F] dated 30/07/2019)

+1 CC to MR.V.NAGENDRAN, Advocate (SR-78688[F] dated 30/07/2019)

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