



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.279 of 2011

John Jeyaprakashan

... Appellant/Respondent/
Complainant

Vs

S.V.Rajendran

... Respondent/Appellant/Accused

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records and set aside the Judgment of the learned Additional District and Sessions Judge, (Fast Track Court No.I), Trichirappalli, dated 03.06.2011 in C.A.No.99 of 2006.

For Appellant : Mr.T.Senthil Kumar

For Respondent : Mr.C.Jeganathan

JUDGMENT

The complainant in C.C.No.169 of 2004 on the file of the Judicial Magistrate No.4, Thiruchirappalli is the appellant herein. It is a case arising out of Section 138 of the Negotiable Instrument Act. It was filed against the respondent herein. The respondent was originally convicted by the learned trial Magistrate. But then, the Appellate Court in Criminal Appeal No.99 of 2006, on the file of the Additional District Judge(Fast Track Court No.1), Thiruchirappalli, allowed the appeal filed by the respondent and acquitted him. Aggrieved by the same, this appeal has been filed by the complainant.

2.Even though this case had seen an earlier round, I am of the view that there is no need or necessity to refer to the history of the litigation. Suffice it to say that the Appellate Court acquitted the accused on a short technical ground. The complaint was filed only by the power agent John Stalin. It is admitted that the P.John Jeyaprakash was not examined as witness. But then, in the earlier round, this Court had held that the power agent is also



competent to speak about those transactions, with which, he is personally acquainted. Be that as it may, it is not in dispute that the power of attorney was executed by P.John Jeyaprakash in favour of John Stalin on 04.02.2004. The complaint cheques were presented for collection in December 2003. It is admitted by John Stalin-P.W.1 that the principal authorised him to present the cheque for collection. In fact, the power of attorney itself came to be executed only much later. P.W.1-John Stalin fairly admitted that it was, on his instructions, the statutory notice was issued. Therefore, the Court below came to the conclusion that the complainant P.John Jeyaprakash did not present the cheque himself nor he did authorise John Stalin to present the cheque. The statutory notice was not issued by the complainant.

3.The appellant's counsel contended that the notice is in the name of the complainant-P.John Jeyaprakash. But the fact remains that P.John Jeyaprakash did not authorise the counsel to issue notice on his behalf. It was John Stalin who instructed the counsel. In fact, in the statutory notice, the signature of the P.John Jeyaprakash is not found. In any event, P.John Jeyaprakash did not enter the witness box to tell the Court that it was on his instructions, the cheques were presented and that Ex.P7 notice was issued. Therefore, the Appellate Court was justified in coming to the conclusion that the elementary ingredients of the offence under Section 138 of the Negotiable Instruments Act are not fulfilled in this case. Therefore, I am of the view that there is no merit in this appeal and the Judgment of the acquittal passed by the Court below does not warrant any interference. This criminal appeal stands dismissed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To
The Additional District and Sessions Judge,
(Fast Track Court No.I),
Trichirappalli.

Copy to:

The Section Officer, (2 Copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.



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+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-79847[F] dated 06/08/2019)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-80125[F] dated 06/08/2019)

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