



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD).No.197 of 2010

D.Devanayagam : Appellant / 1st Respondent /
Complainant
Vs.

1.N.Subbiah

2.State of Tamil Nadu
Represented by the Public Prosecutor

: Respondents/Appellant and
2nd Respondent/Accused and
Non-party Complainant

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C, against the Judgment dated 06.04.2010 of the learned Court of Session, Kanniyakumari Division at Nagercoil, and made in Criminal Appeal No.64 of 2004, on his file, reversing the Judgment dated 23.02.2004 of the learned Judicial Magistrate No.I, Nagercoil in C.C.No.445 of 2002.

For Appellant : Mr.K.N.Thampi

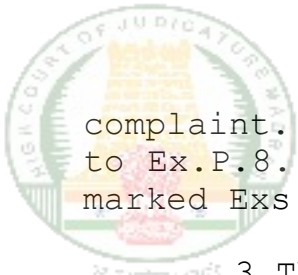
For Respondent : Mr.K.P.Krishnadoss (for R-1)

Mr.A.Robinson,
Government Advocate (Crl.Side)
(for R-2)

JUDGMENT

The appellant herein filed C.C.No.445 of 2002, before the learned Judicial Magistrate No.I, Nagercoil, against the first respondent herein for the offence under Section 138 of the Negotiable Instruments Act.

2.The case of the complainant is that the accused, namely, N.Subbiah, issued Ex.P.1 cheque dated 12.06.2000 in favour of the complainant for a sum of Rs.1,65,200/-. The cheque on being presented for collection was returned unpaid for the reason "Insufficient Funds" in the account of the accused. The complainant after fulfilling the usual statutory formalities laid the private



complaint. The complainant was examined as P.W.1. He marked Exs.P.1 to Ex.P.8. On the side of the accused he was examined as D.W.1 and marked Exs.D.1 to Ex.D.12.

3.The learned Trial Magistrate by Judgment dated 23.02.2004 found the accused guilty and sentenced him to undergo one year imprisonment. The accused was also directed to pay a sum of Rs.1,65,200/- as compensation to the complainant. Challenging the same, the accused filed Criminal Appeal No.64 of 2004, before the learned Sessions Judge, Kanniyakumari Division at Nagercoil. The appeal was allowed vide Judgement dated 06.04.2010 and the accused was acquitted. Challenging the same, this appeal has been filed at the instance of the complainant.

4.When the matter was taken up for hearing, the learned counsel appearing on either side admitted that the accused had paid substantial portion of his liability and that the accused has to pay a further sum of Rs.79,000/-. This Court on the earlier occasion, directed the counsel for the accused to come with a demand draft for a sum of Rs.79,000/-. Today, when the matter is taken up for hearing, the learned counsel for the accused submitted that the accused requested three more months to pay the said amount. Taking into account the facts and circumstances in this case, this Court, even while setting aside the impugned Judgment of the Appellate Court and holding the first respondent guilty of the offence under Section 138 of the Negotiable Instruments Act, is of the view that interest of justice will be served by directing the first respondent to deposit a sum of Rs.79,000/- as compensation to the credit of C.C.No.445 of 2002, on the file of the learned Judicial Magistrate No.I, Nagercoil, within a period of three months from the date of receipt of a copy of this Judgment. If the first respondent fails to deposit the compensation amount payable to the complainant within the said period, the first respondent will have to undergo a default sentence of six months simple imprisonment. Accordingly, this Criminal Appeal stands allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Sessions Judge, Kanniyakumari Division at Nagercoil.

2.The Judicial Magistrate No.I, Nagercoil.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.P.KRISHNA DOSS, Advocate (SR-76634[F] dated 22/07/2019)

+1 CC to M/s.K.N.THAMPI, Advocate (SR-76701[F] dated 22/07/2019)

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22.07.2019

sjj

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