



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.07.2019
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

CRL A (MD)No.279 of 2010

Arulraj ... Appellant /Complainant
Vs.

Kumaravel ... Respondent/Accused

Prayer : This Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to set aside the order dated 19.08.2009 made in C.C No.340 of 2002 on the file of the Judicial Magistrate, Valliyoor.

For Appellants : Mr.P.T.S.Narendravasan

For Respondent : Mr.K.Rajeshwaran

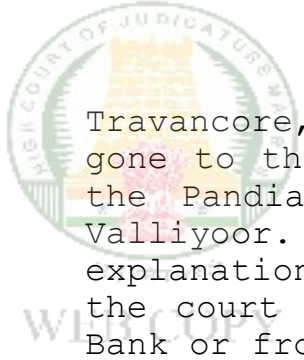
JUDGMENT

The appellant herein filed C.C No.340 of 2002 on the file of the learned Judicial Magistrate, Valliyoor against the respondent herein for the offence under Section 138 of the Negotiable Instruments Act. The learned Trial Magistrate by judgment dated 19.08.2009 acquitted the respondent of the said offence. Questioning the same, this criminal appeal has been filed.

2.The learned counsel appearing for the appellant submitted that the respondent borrowed a sum of Rs.2.00 lakhs from the complainant Arulraj and that towards the repayment of the said amount, the complaint cheque was issued. He submitted that the court below failed to take note of the statutory presumption available under Section 139 of the Act. He also submitted that even though the complaint cheque was drawn on State Bank of Travancore, Kalakadu Branch, there was a procedure of sending the cheque to the nearest nationalised bank.

3.Per contra, the learned counsel appearing for the respondent/accused submitted that the impugned judgment does not warrant any interference and that the appeal is liable to be dismissed.

4.I carefully considered the rival contentions and perused the evidence on record. The case of the complainant is that there was a financial transaction between Arulraj and Kumaravel. But then, in support of the said theory of borrowal, there was no documentary evidence forthcoming. What is projected by the complainant is Ex.P1 complaint cheque alone. The said cheque was drawn on State Bank of



Travancore, Kalakadu. But then, the cheque does not seem to have gone to the said bank at all. Ex.P2 is the return memo issued by the Pandian Grama Bank, Kalakadu to Tamil Nadu Mercantile Bank, Valliyoor. However, the appellant has come out with some explanation with regard to the banking procedure. But then, before the court below no official either from the Tamil Nadu Mercantile Bank or from the State Bank of Travancore was examined.

5. There is a bigger impediment for the appellant. This complaint was prosecuted through the power agent John Amalanathan. He examined himself as P.W.1. The principal namely, Arulrajan was not examined. Ex.P7 is the power of attorney deed executed in favour of John Amalanathan. The said document merely confers certain authority on John Amalanathan. It does not seem to confer anything beyond that. There is nothing on record to indicate that the power agent was personally acquainted with the transaction between the complainant and the accused. Since the original complainant namely the principal of John Amalanathan namely Arulraj did not enter the witness box, there is absolutely no evidence to establish that there was an enforceable liability on the part of the accused. Unless the primary transaction namely lending of sum of Rs.2.00 lakhs by Arulrajan to Kumaravel is established, the question of drawing presumption under Section 139 of the Negotiable Instruments Act will not at all arise.

6. After receiving the Ex.P4 statutory notice, the accused has given a reply notice vide Ex.P6 in which he denied all the allegations set out in Ex.P4 notice. Therefore, it was all the more necessary that Arulraj should have stepped into the witness box. He has not done so. Therefore, I am of the view that the judgment passed by the court below does not warrant any interference. The judgment passed by the court below in C.C No.340 of 2002 on the file of the learned Judicial Magistrate, Valliyoor stands confirmed. This appeal stands dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate, Valliyoor.
 2. -do-thro' The Chief Judicial Magistrate, Tirunelveli
 3. The Section Officer, Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 copies)
- +1cc to Mr.K.RAJESHWARAN, Advocate, SR.No.77013

Skm

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