



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.310 of 2010

K.Subramaniam ... Appellant/Respondent/Complainant

Vs

Poongothai ... Respondent/Appellant/Accused

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records relating to the Judgment dated 21.04.2010 made in C.A.No.60 of 2007, on the file of the Sessions Judge, Karur reversing the Judgment made in C.C.No.1006 of 2004, dated 31.10.2007 on the file of the Judicial Magistrate No.1, Karur and set aside the same.

For Appellant : Mr.N.Shanmugaselvam

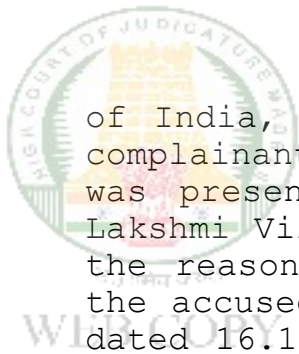
For Respondent :Mr.M.KarthikeyaVenkatachapathy

JUDGMENT

The appellant herein filed C.C.No.1006 of 2004 on the file of the Judicial Magistrate No.I, Karur against the respondent herein for the offence under Section 138 of the Negotiable Instruments Act. The case ended in conviction vide Judgment dated 31.10.2007. Challenging the same, the accused/respondent herein filed Criminal Appeal No.60 of 2007 before the Sessions Judge, karur. By Judgment dated 21.04.2010, the appeal was allowed and the respondent was acquitted of the offence under Section 138 of the Negotiable Instrument Act. Aggrieved by the same, the complainant has filed this appeal.

2.Heard the learned counsel on either side and perused the evidence on record.

3.It is seen that the complaint cheque Ex.P2 dated 24.09.2004 drawn on Bank of India, Coimbatore was issued by the respondent herein. The complainant's case is that on 06.10.2003, the accused borrowed a sum of Rs.3,00,000/- from him by executing a pronote. When the complainant demanded the money back, the accused issued a post dated cheque bearing No.009726, dated 24.09.2004 drawn on Bank



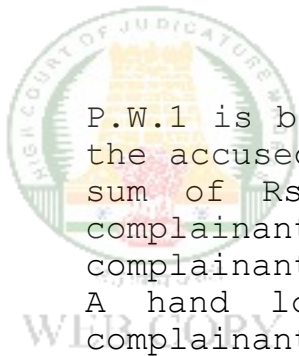
of India, Coimbatore, for a sum of Rs.3,00,000/- in favour of the complainant towards partial discharge of his liability. The cheque was presented on 05.10.2004 with the complainant's banker namely Lakshmi Vilas Bank Limited, Karur West. It was returned unpaid for the reason of insufficiency of funds in the account maintained by the accused on 07.10.2004. The complainant issued statutory notice dated 16.10.2004 calling upon the accused to pay the cheque amount within a period of 15 days from the date of receipt of a copy of the notice. The accused received the same on 19.10.2004, but did not honour the demand. Hence, the Private complaint under Section 138 of the Negotiable Instrument Act, was filed before the Judicial Magistrate No.1, Karur. The complainant examined himself as P.W.1 and marked as many as six documents (Ex.P1 to Ex.P6). The accused examined herself as D.W.1 and marked as Ex.D1 to Ex.D12. The defence of the accused was that she was having a financial transaction with one Rajendhiran and that the documents given to him have been misused and on that basis, the present complaint was laid. But the learned trial Magistrate rejected the defence of the accused and convicted and sentenced her. But the defence projected by the accused was accepted by the appellate Court, which reversed the Judgment of the trial Magistrate and acquitted the accused.

4.The learned counsel appearing for the appellant submitted that the appellate Court erred in not giving effect to the presumption under Section 139 of the Negotiable Instruments Act. The appellant's counsel would contend that the signatures attributed to the accused in the pronote as well as in the complaint cheque Ex.P2 have not been disputed and that, therefore, the burden shifted to the accused.

5.According to the complainant's counsel, the accused failed to discharge the burden cast on him. I am unable to agree with the submission of the appellant's counsel. This Court must note that the accused apart from cross examining the complainant, got into the witness box and marked as many as 12 documents. Ex.D8 is the complaint copy in C.C.No.65 of 2005 on the file of the Judicial Magistrate No.1, Karur. It was filed by one Ramasamy against the respondent herein. The cheque number therein was 009727, dated 04.10.2004 drawn on Bank of India, Coimbatore for a sum of Rs.3,00,000/- The cheque number in this case is 009728. Ex.D11 is the copy of the complaint filed in C.C.No.523 of 2005 on the file of the Judicial Magistrate, Tharapuram against the respondent herein. The subject matter of the said complaint was cheque number bearing 009730 drawn on Bank of India, Coimbatore.

6.The learned counsel appearing for the respondent would submit that Rajendhiran filed as many as five complaints against the accused/respondent herein through his friends before five different Courts.

<https://hcservices.ecourts.gov.in/hcservices> 7.This Court went through the cross examination of P.W.1,



P.W.1 is based in Karur. The accused is based in Coimbatore. When the accused wanted money, the complainant would claim that he gave a sum of Rs.3,00,000/- on the strength of Ex.P1 pro note. The complainant had not taken any security from the accused. The complainant had not stated as to how the accused was known to him. A hand loan was given by way of cash is the claim of the complainant. The testimony of the complainant does not inspire the confidence of this Court. More than anything else, the fact that the successive cheques form the subject matter of five different complaints is a clear give away that Thiru.Rajendhiran who, with whom the accused had transaction, had misused the cheques given to him as security through his friends. The Appellate Court, after a careful consideration of the evidence on record, chose to acquit the accused/respondent herein. This is an appeal against acquittal. In this case, the accused had rebutted the presumption drawn against her under Section 139 of the Negotiable Instruments Act. I find no ground to interfere. There is no merit in this case. The Judgment of the Court below is confirmed. This criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Sessions Judge, Karur

2.The Judicial Magistrate No.I, Karur.

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The Record Keeper, (2 Copies)

Criminal Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.KARTHIKEYA VENKITACHALAPATHY, Advocate (SR-76897[F] dated 23/07/2019)

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