



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.204 of 2013

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S.Saravanan

... Appellant/ Appellant/Complainant

Vs

M.Saravanan

... Respondent/Respondent/Accused

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C., to call for the records in connection with the Judgment passed by the learned Principal District Judge, Dindigul in C.A.No.49 of 2011, dated 29.11.2012 and set aside and thereby confirm the Judgment of the learned Judicial Magistrate No.3, Dindigul in C.C.No.39 of 2008, dated 02.11.2011.

For Appellant : Mr.N.Sathish Babu

For Respondent : Mr.G.Thiagarajan

JUDGMENT

The appellant is the complainant in C.C.No.39 of 2008 on the file of the Judicial Magistrate No.3, Dindigul. This is a case arising under Section 138 of the Negotiable Instruments Act.

2.The case of the appellant herein is that the respondent issued the complaint cheque Ex.P2, dated 23.11.2007 for a sum of Rs.5,00,000/- favouring him towards an enforceable liability. The complainant states that the respondent herein had availed a sum of Rs.5,00,000/- as hand loan on 07.05.2007. The cheque was returned for the reason of insufficiency of funds. There upon, the complainant issued Ex.P4-statutory notice dated 22.12.2007. The respondent herein received the said notice. This is evident from the acknowledge card (Ex.P5). But then, he did not comply with the demand set out in Ex.P4-Notice. Therefore, the appellant herein filed C.C.No.39 of 2018. The respondent herein denied the charge and contested the case. The complainant examined himself and three others as witnesses. He also marked Ex.P1 to Ex.P5. On the side of the accused, no witnesses were examined. But Ex.D1 to Ex.D3 were marked. The learned trial Judge, after a detailed consideration of the evidence on record, by Judgment dated 02.11.2011 found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to one year simple imprisonment and also directed him to pay a sum of Rs.5,00,000/- as compensation to the complainant. Default sentence was also imposed. Aggrieved by the same, the accused filed Crl.A.No.49 of 2011 before the



Principal District Judge, Dindigul. The Appellate Court, by Judgment dated 29.11.2012 allowed the appeal and set aside the Judgment of the trial Magistrate and acquitted the accused. Challenging the same, the complainant has filed this appeal.

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3. When the appeal was taken up for hearing, there was no representation on the side of the respondent/accused. Thereupon, this Court directed the Registry to appoint a Legal Aid Counsel. Today, when the appeal was taken up for hearing, the accused is represented by the learned Legal Aid Counsel.

4. The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the Judgment passed by the trial Court.

5. I am not persuaded by the submissions of the appellant's counsel. As rightly pointed out by the learned Legal Aid Counsel appearing for the accused, Ex.P2-complaint cheque was drawn on Global Trust Bank Limited, AR Plaza, North Veli Street, Madurai 625 001.

6. The learned counsel appearing for the respondent would point that the Global Trust Bank Limited got amalgamated with the Oriental Bank of Commerce in the year 2004 itself. The amalgamation came into force on 14.08.2004. Thereafter, all the branches of the Global Trust Bank Limited functioned as branches of the Oriental Bank of Commerce. Though the customers of the Global Trust Bank Limited can operate their accounts as customer of Oriental Bank of Commerce with effect from 14.08.2004, the cheque books issued by the Global Trust Bank Limited would cease to be valid after the amalgamation and the account holders will have to obtain a fresh cheque books from the Oriental Bank of Commerce. In the case on hand, the complaint cheque is dated 23.11.2007. Therefore, as rightly pointed out by the learned counsel appearing for the respondent, the presentation of the cheque was invalid at the very inception. He would point out that the appellant must have taken this cheque for security purpose long before and filled it up and presented the same. He drew my attention to the fact that P.W.3 examined on the side of the complainant, had himself admitted that he did not notice that the cheque that came for collection was actually drawn on Global Trust Bank Limited.

7. I am satisfied that the Appellate Court rightly acquitted the appellant on the ground that the presentation of the cheque in



question itself was invalid. There is no ground to interfere. The appeal stands dismissed.

Sd/-

Assistant Registrar (AD-I)

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// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Dindigul.

2.The Judicial Magistrate No.3, Dindigul.

+1 CC to Mr.N. SATHISHBABU, Advocate (SR-84947[F] dated 03/09/2019)

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