



WEB COPY



Crl.A.No.317 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.317 of 2018

K.Vasikaran

...Appellant

-Vs-

Maruthachalam

... Respondent

Prayer: Criminal Appeal filed under Section 397 r/w Section 401 of Code of Criminal Procedure, against the order dated 12.01.2011 passed in C.C.No.66 of 2009 on the file of the Judicial Magistrate No.II, Coimbatore.

For Appellant : Mr.A.Daivasigamani

For Respondent : No appearance

ORDER

This Criminal Appeal has been preferred as against the order of acquittal dated 12.01.2011 passed in C.C.No.66 of 2009 on the file of the Judicial Magistrate No.II, Coimbatore, for the offence under Section 138 of Negotiable Instruments Act.



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2. The appellant lodged a complaint alleging that the respondent purchased golden jewels and in order to pay the balance amount, he issued cheque for a sum of Rs.18,000/- when the said cheque was presented for collection and the same was returned for the reason "funds insufficient". Thereafter, he caused notice to the appellant and lodged a complaint.

3. On the side of the appellant, PW1 was examined and Exs.P1 to P8 were marked and on the side of the respondent DW1 and DW2 were examined and Exs.P1 and P2 were marked.

4. On perusal of the oral and documentary evidence, the trial Court acquitted the respondent for the offence under Section 138 of NI Act. Aggrieved by the same the petitioner preferred this appeal.

5. The learned counsel for the petitioner would submit that though the respondent had taken specific stand that he had repaid the cheque amount by subsequent cheque, he failed to depose before the trial Court in order to rebut the evidence of appellant. He would further submit that the alleged cheque



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bearing No.144532 had given for some other transactions to the appellant and whereas the finding of the trial Court as to the same is totally unreasonable and baseless. The trial Court erroneously conclude that the amount of Rs.18,000/- was paid by the appellant is totally against the facts and evidence on record. In fact, the respondent failed to produce any bill for the purchase of the said jewels to the tune of Rs.43,187.60/- or any other supportive documents to prove the case of the appellant.

6. On perusal of records revealed that the respondent purchased jewels and issued cheque for a sum of Rs.18,000/- and the said cheque was presented for collection and the same was returned dishonoured on the ground that "funds insufficient". To rebut the evidence of the appellant, the respondent examined PW1 and PW2, who are Bank Managers. DW2 deposed that the respondent as Account in his Bank and a cheque bearing No.144532 for a sum of Rs.18,000/- was cleared in favour of the appellant herein. Except the said transaction, no other transaction held between the appellant and the respondent. Therefore, the trial Court rightly acquitted the respondent for the offence under Section 138 of Negotiable Instruments Act. This Court finds no infirmity or illegality in the order passed by the Court below and this appeal is liable to be dismissed.



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WEB COPY 7. Accordingly, the Criminal Appeal stands dismissed.

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Index : Yes/No
Speaking/Non Speaking order
ata

To

The Judicial Magistrate No.II,
Coimbatore.



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G.K.ILANTHIRAIYAN. J.

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