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Crl.A.No.344 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2022

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

Crl.A.No.344 of 2018

P.Subramani

... Appellant

Vs.

R.Rajavel

...Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment passed in CA.No.45 of 2017 dated 09.11.2017 on the file of II Additional District and Sessions Judge, Salem reversing the judgment passed in STC.No.61 of 2014 dated 28.03.2016 on the file of the Judicial Magistrate(Fast Track Court), Omalur, Salem District and to allow the criminal appeal.

For Appellant : Mr.R.Nalliyappan

For Respondent : Mr.S.Vinoth Kumar
for Mr.G.Arul Murugan

J U D G M E N T

This criminal appeal is directed as against the order passed in Crl.A.No.45 of 2017 dated 09.11.2017 on the file of the II Additional District and Sessions Judge, Salem, thereby reversed the findings made in STC.No.61 of



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2014 on the file of the learned Judicial Magistrate, Fast Track Court, Omalur, thereby convicted the respondent for the offence punishable under Section 138 of NI Act.

2. The appellant / complainant lodged complaint for the offence punishable under Section 138 of NI Act against the respondent herein. The crux of the complaint is that the complainant had acquaintance with the respondent on the purchase of siddha and ayurvedic medicine for the past two years. While being so, the respondent borrowed a sum of Rs.4,25,000/- on 22.01.2014 for doing herbal medicine research. On the date of borrowal itself, the respondent issued post dated cheque for a sum of Rs.4,25,000/-. On instruction, the complainant presented the said cheque for collection and the same was returned dishonoured for the reason 'insufficient funds'. The complainant caused statutory notice and lodged complaint.

3. On the side of the complainant, he examined PW1 and PW2 and marked Ex.P1 to Ex.P5. On the side of the respondent, he examined himself as DW1 and marked Ex.D1 and Ex.D2. On perusal of oral and documentary evidence produced by either side, the trial court found the respondent as guilty for the offence punishable under Section 138 of NI Act and sentenced him to



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undergo one year simple imprisonment with fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Aggrieved by the same, the respondent filed appeal and the same was allowed and acquitted him from the charge under Section 138 of NI Act. Aggrieved by the same, the defacto complainant filed this appeal.

4. The learned counsel for the appellant would submit that the first appellate court acquitted the respondent on the ground that the appellant failed to prove the acquaintance between the appellant and the respondent herein to borrow such huge amount. Further, the appellant had no source of income to lend such huge amount. He further submitted that once the respondent failed to deny the signature and issuance of cheque, the appellant discharged his initial burden as contemplated under Section 138 of NI Act and there was a presumption under Section 139 of NI Act that the cheque was issued for legally enforceable debt. Though the said presumption is rebuttable in nature, the respondent failed to rebut the presumption in the manner known to law. Therefore, the trial court rightly convicted the respondent and the first appellate court on wrong presumption, acquitted the respondent herein.

5. The learned counsel for the respondent would submit that the alleged cheque was stolen and as such immediately, the respondent lodged



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complaint and he was issued CSR. It was marked as EX.D1. In fact, after lodgment of complaint, the respondent also made paper publication in respect of the stolen cheque. Immediately after receipt of the statutory notice, the respondent categorically denied the relationship between the appellant and the respondent and denied the issuance of cheque. In fact, he stated in the reply notice that already the cheque was stolen and he lodged complaint along with paper publication. Therefore, even in the initial stage, the respondent rebutted the presumption arising out of Section 139 of NI Act. Therefore, the appellate court rightly acquitted the respondent herein for the offence punishable under Section 138 of NI Act.

6. Heard, Mr.R.Nalliyappan, the learned counsel for the appellant and Mr.S.Vinoth Kumar, the learned counsel for the respondent.

7. On perusal of records, revealed that the appellant lodged complaint for the offence punishable under Section 138 of NI Act against the respondent that he used to purchase siddha and ayurvedic medicines for the past two years. Therefore, both had acquaintance with each other and while being so, the respondent borrowed a sum of Rs.4,25,000/- to do his herbal medicine research. On the date of borrowal of the amount, the respondent issued post dated cheque



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and the same was presented for collection. The said cheque was marked as

Ex.P1. On perusal of Ex.P1, revealed that the signature and the other letters found in different inks and the handwriting also differs each other. The date of Ex.P1 is 31.03.2014, whereas the respondent lodged complaint alleging that the cheque book containing cheque leaves bearing Nos.001636 to 001650 drawn on Axis Bank was stolen from his custody before the Sub Inspector of Police, Pallapatti Police Station, Salem. On receipt of the same, the Sub Inspector of Police issued CSR No.83 of 2014 to the respondent, which was marked as Ex.D1. Immediately, the respondent also made paper publication, which was marked as Ex.D2. Both D1 and D2 revealed that the respondent had lost his cheque book and immediately he lodged complaint as well as made paper publication.

8. On receipt of the statutory notice, which was marked as Ex.P3, the respondent had sent detailed reply, which was marked as Ex.P5. On perusal of Ex.P5, revealed that the respondent denied the acquaintance with the appellant and he denied the borrowal of any loan amount and issuance of cheque. When the respondent rebutted the presumption arising out of Section 139 of NI Act, the burden shifted to the shoulder of the appellant to prove his case. In order to prove his case, except the cheque, which was marked as Ex.P1, no other



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documents were produced by the appellant to prove his case. Further, he also failed to bring on record any evidence to corroborate his evidence of advancing the loan to the respondent herein.

9. Even according to the appellant, the respondent borrowed loan. Except post dated cheque, no other documents were executed by the respondent while borrowing loan. Therefore, the appellate court rightly reversed the findings of the trial court and acquitted the respondent. As such, this Court finds no infirmity or illegality in the judgment passed in CA.No.45 of 2017 dated 09.11.2017 on the file of II Additional District & Sessions Judge, Salem.

10. Accordingly, this criminal appeal is dismissed.

02.11.2022

Speaking/Non-speaking order

Index: Yes / No

Internet: Yes

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To

- 1.The learned II Additional District and Sessions Judge,
Salem
- 2.The Judicial Magistrate(Fast Track Court),



Omalur, Salem District

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G.K.ILANTHIRAIYAN, J.

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