



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A. (MD) .No.51 of 2022

WEB COPY

Krishnan

... Appellant/Complainant

Vs.

G.Kathiresan

... Respondent/Accused

PRAYER : Criminal Original Petition filed under Section 378 (3) of Cr.P.C., praying to call for the records pertaining to the judgment rendered by the learned Judicial Magistrate No.II, Fast Track Court, Madurai in S.T.C.No.462 of 2013, dated 31.01.2020 and set aside the same as illegal and allow the Criminal Appeal.

For Appellant : Mr.D.Balamurugapandi

ORDER

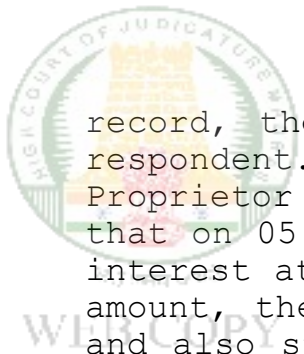
This Criminal Appeal has been preferred as against the Judgment of the learned Judicial Magistrate No.II, Fast Track Court, Madurai in S.T.C.No.462 of 2013, dated 31.01.2020, thereby acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2.The appellant lodged a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that the respondent is doing Millet wholesale business and during the course of business, the respondent demanded a sum of Rs.4,00,000/- for his family expenses and to improve his business. On 05.01.2013, the appellant had lent a sum of Rs.4,00,000/- as a hand loan to the respondent. In order to repay the same, the respondent issued cheque and the same was presented for collection. It was returned dishonored for the reason that the 'funds insufficient' and after causing statutory notice as required under Section 138 of the Negotiable Instruments Act, the appellant lodged the complaint and the same has been taken cognizance in S.T.C.No.462 of 2013.

3.On the side of the appellant, he himself examined as P.W.1 and marked Exs.A.1 to Ex.A.4 and on the side of the respondent, he himself examined as D.W.1 and one Kumar has been examined as D.W.2 and marked Exs.B.1 to B.5 were marked.

4.Heard the learned counsel appearing for the appellant and perused the entire materials available on record.

5.On a perusal of the evidence and materials available on <https://hcservices.ecourts.gov.in/hcservices/>



record, the Court below dismissed the complaint and acquitted the respondent. The cheque was marked as Ex.A1. It was issued by the Proprietor of Meenakshi Amman Traders. The case of the respondent is that on 05.03.2010, he borrowed a sum of Rs.50,000/- as a loan with interest at the rate of 10% and on the date of borrowal of the said amount, the respondent handed over unfilled signed cheque, pro-note and also stamp papers etc., in favour of the appellant. Even after repaying the entire loan amount with interest, the appellant failed to return the documents, which were handed over to the appellant as a security, since the appellant demanded further sum of Rs.25,000/-. Therefore, the respondent lodged complaint before the Superintendent of Police, Madurai and the same was marked as Ex.D.1 and the acknowledgment receipt was marked as Ex.D.2. Further, the respondent issued legal notice to the appellant, which was marked as Ex.D.3. It revealed that the legal notice was issued on 29.05.2013, thereby calling upon the appellant to return the cheque which was issued as security at the time of borrowal of loan by the respondent. The appellant categorically admitted the notice caused by the respondent and it was duly acknowledged by him. It was issued even before presentation of the cheque for collection by the appellant and even after receipt of the notice, dated 29.05.2013, the appellant failed to reply to the respondent. However, he presented the cheque for collection. Therefore, the appellant failed to prove that the alleged cheque was issued for the legally enforcement debt. Hence, the Court below rightly acquitted the respondent and dismissed the complaint.

6.In view of the above, this Court finds no infirmity or illegality in the order passed in S.T.C.No.462 of 2013, dated 31.01.2020 by the learned Judicial Magistrate No.II, Fast Track Court, Madurai. Accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Judicial Magistrate No.II,
Fast Track Court, Madurai .

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.BALAMURUGAPANDI, Advocate (SR-7246[F] dated
18/02/2022)

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SRR(CO)
KB(05.03.2022) 3P 4C