



Crl.A.No.310 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

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K.Ananda Babu

.. Appellant

Vs.

M.Ananda Prabakar

..Respondent

PRAYER : Criminal Appeal has been filed under sections 378 of Criminal Procedure Code to set aside the judgment passed in C.C.No.04 of 2016 dated 17.02.2020 on the file of the learned Judicial Magistrate, Arakkonam, Ranipet District and consequently thereby allow this Criminal Appeal.

For Appellant : Mr.B.Sundarapandiyan

For Respondent : Mr.K.P.Suresh kumar

JUDGMENT

This Criminal Appeal is filed by the victim/complainant aggrieved by the dismissal of the private complaint by the trial Court.



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2. The complaint is regarding issuance of cheque for Rs.10,94,000/- in favour of the complainant by the accused towards discharge of part sale consideration of the property owned by the complainant. While the said cheque dated 21.05.2014 drawn on HDFC bank, Vellore for a sum of Rs.10,94,000/- was presented for collection on 26.05.2014, but returned with the endorsement “Insufficient of Funds”. The complainant has caused notice dated 03.06.2014 to the accused through registered post. The accused has refused to receive the notice. Thereafter, the complaint has been filed before the Judicial Magistrate, Arakkonam, Ranipet District and taken on file in C.C.No.04 of 2016.

3. The complainant has mounted the witness box subjected himself for examination as PW.1. He had marked the subject cheque [Ex.P1], Certified copy of the registered Power of Attorney executed by him in favour of the accused in respect of the immovable property situated at Vellore [Ex.P2], the Cheque deposit chellan [Ex.P3], Intimation memo [Ex.P4], his notice to the accused [Ex.P5] and Unclaimed envelop from the accused [Ex.P6]. In defence the accused has



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mounted the witness box and one Ekambaram, attester of the receipt marked as Ex.D2, was examined. The two documents on the side of the defence namely Ex.D1 and Ex.D2 were shown to the complainant, while he was in the witness box and confronted. The complainant at the first sight of Ex.D1 admitted the signature found in it, but later, he has categorically denied his signature found in Ex.D2.

4. While the case of the complainant is the subject cheque is part sale consideration payable to him by the accused, the defence taken by the accused is that there was an agreement between him and the complainant regarding the property, but within the time prescribed in the agreement, the accused was not able to pay the full sale consideration. Therefore, the subject cheque for Rs.10,94,000/- given to the complainant with promise that he will pay the balance sale consideration and get back the cheque. Accordingly, on 06.03.2013, the balance sale consideration was paid in cash and the Power of Attorney deed [Ex.D2] got registered. In acknowledgment of the receipt of the balance sale consideration in cash, the complainant gave an undertaking that the cheque received for sum of Rs.10,94,000/- will be returned. Though the accused had



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completed the contract by paying entire sale consideration, the complainant misusing the cheque given earlier, retained it even after receiving the full sale consideration and presented for collection

5. The trial Court had accepted the case of the accused believing Ex.D2 and consequently dismissed the complaint. In the appeal filed by the victim/complainant, it is specifically stated that Ex.D1 and Ex.D2 are not genuine documents executed by the complainant. DW.2, who claims to be a witness for Ex.D1 and Ex.D2, is a land broker and an interested witness. When the execution of these two documents denied, the trial Court ought to have sent the documents to the forensic department for comparison. The accused, who had custody and produced ought to have proved the execution of the document, which he has failed. Having admitted the signature found in the cheque and the due payable on the date of cheque, neither testimony of the accused nor his friend Egambaram or the forged document marked as Ex.D1 and Ex.D2 will probabalise the case of the accused. Therefore, the trial Court judgment is bound to be reversed.



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6. This Court, after giving consideration to the rival submissions and the earlier order of this Court dated 19.11.2022 requesting the Forensic Department to compare the admitted signature of the complainant with the signature found in Ex.D2 and in response of the Forensic Department vide his letter dated 01.12.2020 expressing difficulty in comparing the signatures found in the document which is in the custody of the Court and judgments cited, suggesting the Court has to appoint an Advocate Commissioner to take the disputed document and the admitted signature to the forensic laboratory for comparison by the experts.

7. It is appropriate to pass the following order:

In this case, the accused admits the issuance of cheque, he relies upon Ex.D2 purported to have been executed by the complainant to establish that the sum mentioned in cheque been paid in cash to the complainant. However, the very execution of Ex.D2 is denied by the complainant. Unless and until the genuineness of the signature found in the document is tested by an expert, the plea of the accused cannot be



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taken as rebuttal of the presumption even by preponderance of probability. Therefore, the order of the trial Court is set aside and the matter is remanded back to the trial Court to afford opportunity to the parties to prove the veracity of Ex.D1 and Ex.D2, which was introduced at the time of cross examination of PW.1 and not whispered by the accused at the earliest point of time, when he was given opportunity through statutory notice and thereafter, the trial Court to arrive at conclusion based on the evidence.

8. In the result, this *Criminal Appeal is allowed*. Trial Court judgment is set aside. The matter is remanded back for fresh trial. The trial Court to dispose of the case preferably within a period of four months from the date of receipt of a copy of this judgment.

19.06.2023

Internet : Yes/No

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The Judicial Magistrate, Arakkonam, Ranipet District.



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Dr.G.JAYACHANDRAN, J.

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