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CRL.A.(MD).No.127 of 2014



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.127 of 2014

K.Prabakaran

... Appellant/Complainant

Vs.

R.Alagesan

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records pertaining to the Judgment in S.T.C.No.99 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Thanjavur, dated 07.03.2014 and set aside the same.

For Appellant

: Mr.T.A.Ebenezer



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JUDGMENT

This appeal has been preferred as against the order of acquittal passed in S.T.C.No.99 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Thanjavur, dated 07.03.2014, thereby dismissing the complaint and acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The appellant is the complainant and the respondent is the accused.

3. The crux of the complaint is that on 15.01.2012, the respondent borrowed a sum of Rs.4,50,000/- for his family expenses from the appellant and assured to repay the same within a period of one month. On demand, in order to repay the said amount, the respondent issued a cheque for the said sum. The said cheque was presented for collection and the same was returned 'dishonoured' for the reason 'funds insufficient'. After causing statutory notice, the appellant lodged the complaint.



4. On the side of the appellant, he himself was examined as P.W.1 and marked Exs.P.1 to P.4 and on the side of the respondent, he himself was examined as D.W.1 and no documents were marked.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and acquitted him for the offence punishable under Section 138 of the Negotiable Instruments Act. Aggrieved by the same, the present Appeal.

6. The appellant raised the ground that the respondent never disputed the signature found in the cheque and also the issuance of the cheque. Therefore, the appellant had discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. The respondent also failed to rebut the presumption by probable defence. The respondent also failed to produce any material in order to substantiate his contention. The mere non-receipt of the security deposit at the time of borrowal of loan would not be the reason for disbelieving the case of the appellant. Without considering those aspects, the trial Court mechanically acquitted the respondent.



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7. Heard the learned counsel for the appellant and perused the materials available on record.

8. On perusal of the records revealed that the appellant was examined as P.W.1. He deposed that he had acquainted with the respondent by meeting him at his brother's shop in Chennai. Except one meeting, that too in the shop owned by his brother, he had no acquaintance with the respondent. While it was being so, the appellant had lent a sum of Rs.4,50,000/- to the respondent for his urgent needs, that too without any document such as pro-notes and any other title document. In his cross-examination, he failed to substantiate his income to lend such a huge amount of Rs. 4,50,000/-. Except the cheque, the appellant did not produce any document to show that the respondent borrowed a sum of Rs. 4,50,000/-. Further, no one witnessed the borrowal of Rs. 4,50,000/-. Further, he had already filed another complaint under Section 138 of the Negotiable Instruments Act against one Saravanan, who also hails from Chennai. Therefore, the appellant lodged the complaint on behalf of his brother's debtor, who resides in Chennai. The alleged cheque was not issued for any legally enforceable debt in favour of the appellant herein. Hence, the trial Court rightly dismissed the complaint and acquitted the respondent.



Therefore, this Court finds no infirmity or illegality in the order passed by the Court below and the Criminal Appeal is dismissed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

The Judicial Magistrate,
Fast Track Court,
Thanjavur.



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G.K.ILANTHIRAIYAN, J.

ps

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