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CRL.A.(MD).No.142 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.142 of 2014

Bennet

... Appellant/Complainant

Vs.

K.A.A.M.Veluthas

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records in C.C.No.185 of 2012 on the file of the learned Judicial Magistrate Court (Magisterial Level), Thoothukudi, Thoothukudi District and set aside the Judgment, dated 10.03.2014 and punish the accused in accordance with law.

For Appellant : Mr.N.Subramanian

For Respondent : Mr.D.Saravanan



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JUDGMENT

This appeal has been preferred as against the order of acquittal passed in C.C.No.185 of 2012 on the file of the learned Judicial Magistrate Court (Magisterial Level), Thoothukudi, Thoothukudi District, dated 10.03.2014, 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 the respondent purchased timber from the appellant on a credit basis. In order to repay the part amount, the respondent issued a cheque for a sum of Rs.15,00,000/- on 13.10.2005. The said cheque was presented for collection and the same was returned 'dishonoured' for the reason 'funds insufficient'. After causing statutory notice, the appellant initiated the proceedings under Section 138 of the Negotiable Instruments Act.



4. On the side of the appellant, he himself was examined as P.W.1 and marked Exs.P.1 to P.16 and on the side of the respondent, he had examined D.W.1 and D.W.2 and marked Ex.D.1 to Ex.D.5.

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 and dismissed the complaint. Aggrieved by the same, the present Appeal.

6. The appellant raised the ground that the respondent had admitted the business transaction between them. As per the bills of the year 2009, the respondent purchased timbers from the appellant worth about Rs.29,64,452/-. In order to repay part of the amount, the respondent issued a cheque. In fact, the respondent also admitted the signature found in the cheque and issuance of cheque and therefore, the appellant discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. However, the respondent failed to repay the same and even then, the trial Court acquitted the respondent.



7. On perusal of records revealed that the appellant admitted that he had already initiated proceedings under Section 138 of the Negotiable Instruments Act as against the wife of the respondent and brother-in-law of the respondent. The same was ended in acquittal. In fact, the appellant was an employee of the respondent and he had looked after the entire transaction of the respondent's timber Industry. Thereafter, the appellant had started a timber business on his own. In fact, the appellant also failed to state on which date, the respondent purchased timber. That apart, there were transactions between the appellant and the respondent.

8. The specific case of the appellant is that the respondent purchased timbers and in order to repay part of the amount, he issued cheque. Whereas, the appellant failed to produce any invoice or bill at the time of purchase of wooden logs by the respondent. Therefore, the appellant failed to prove that the cheque was issued for any legally enforceable debt. In fact, the appellant also failed to produce any delivery note obtained from the respondent in order to prove the purchase of timber. Further, the admission of signature in a cheque leaf alone would not constitute an admission of execution of the cheque. The execution of cheque



may be established by placing oral or circumstantial evidence. The mere fact that the cheque was produced before the Court from the appellant's possession alone is not sufficient to prove the execution, though it may be one of the circumstances. Therefore, the trial Court rightly dismissed the complaint and acquitted the respondent and this Court finds no infirmity or illegality in the order passed by the Court below. Hence, the Criminal Appeal is dismissed.

26.04.2023

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

To

The Judicial Magistrate Court
(Magisterial Level),
Thoothukudi,
Thoothukudi District.



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ps

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