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CRL.A.(MD).No.284 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.284 of 2014

Sarfoji

... Appellant/Complainant

Vs.

G.Nithyanandam

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to set aside the Judgment and acquittal order passed by the learned District Munsif cum Judicial Magistrate, Papanasam, dated 24.07.2013 in S.T.C.No.908 of 2012 and convict the accused for the offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.M.Karunanithi

For Respondent : Mr.Ilayaraja



JUDGMENT

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This appeal has been preferred as against the order of acquittal passed in S.T.C.No.908 of 2012 on the file of the learned District Munsif cum Judicial Magistrate, Papanasam, dated 24.07.2013, 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 was introduced by his friend, one Mariappan. While being so, on 06.09.2011, the respondent borrowed a sum of Rs.3,00,000/- in order to develop his business. He also assured to return the same within a period of one month. In order to repay the same, the respondent issued a cheque for the said sum and the same was presented for collection. However, it was returned for the reason 'funds insufficient'. After causing statutory notice, the appellant lodged the complaint.



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

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 learned counsel appearing for the appellant would submit that the respondent admitted his signature and also the issuance of cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. At the same time, the respondent also failed to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Though the appellant failed to mention the date of borrowal and place of borrowal, when the respondent admitted the issuance of cheque, he is liable to be punished for the offence under Section 138 of the Negotiable Instruments Act.



7.Per contra, the learned counsel appearing for the respondent would submit that the cheque was not issued for any legally enforceable debt. In fact, the said Mariappan is not his friend, who was examined as P.W.2. One Marimuthu along with Subbaraj were doing timber business. Due to misunderstanding between them, they separated in the month of September 2010. The respondent borrowed a sum of Rs.50,000/- and for security purposes, he issued the cheque. It was misused by the appellant and initiated the proceedings under Section 138 of the Negotiable Instruments Act. The respondent categorically rebutted the presumption and as such, the trial Court rightly dismissed the complaint.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.On perusal of records revealed that Ex.P.1 was presented for six times. Further, the appellant was introduced to the respondent through his friend one Mariappan, who was examined as P.W.2. According to the respondent, he had a business of timber along with Marimuthu and Subburaj. Therefore, the said Marimuthu was not examined by the appellant and he had examined only Mariappan as P.W.2. The respondent had absolutely no acquaintance



with P.W.1 and P.W.2. That apart, when unknown person that too introduced by P.W.2 while borrowing of huge amount to the tune of Rs.3,00,000/-, the prudent person would receive the other document as security. The appellant accepted the cheque and no other documents were produced in order to prove the borrowal and the cheque was issued only for legally enforceable debt. Whereas, the respondent produced Ex.D.1 and it revealed that he had a business transaction with Marimuthu and Subburaj. Therefore, the respondent categorically rebutted the presumption and the appellant failed to prove his case beyond any doubt. 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 District Munsif cum Judicial Magistrate,
Papanasam.



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ps

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