

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.40 of 2014

S.Dhamotharan

... Appellant/Complainant

Vs.

1.Sri. Venkateswara Trading Company,
Through its Sole Proprietor,
K.R.Venkatachalam,
Housing Unit,
H599 Taj Nagar,
SPB Colony Post,
Erode – 638 010.

2.K.R.Venkatachalam,
Housing Unit,
H599 Taj Nagar,
SPB Colony Post,
Erode – 638 010.

... Respondents/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records in C.C.No.772 of 2012 on the file of the learned Fast Track Court (Magisterial Level), Thoothukudi and set aside the same.

For Appellant : Ms.C.Arockia Selvi

For Respondents : Mr.J.Anandkumar

JUDGMENT

This appeal has been preferred as against the Judgment passed in C.C.No.772 of 2012 on the file of the learned Fast Track Court (Magisterial Level), Thoothukudi, dated 09.12.2013, thereby dismissing the complaint filed under Section 138 of the Negotiable Instruments Act and acquitted the respondents.

2. The appellant is the complainant and the respondents are the accused.

3. The crux of the complaint is that the respondents borrowed a sum of Rs.3,50,000/- as a hand loan during the month of December 2010 for business developments. They also promised to repay the same within a period of one year. On request, the respondents issued a cheque for the said sum and the same was presented for collection. However, it was returned 'dishonoured' for the reason that 'no sufficient funds'. After the issuance of 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.5 and on the side of the respondents, they had examined D.W.1 and marked Ex.D.1.

5.On perusal of the oral and documentary evidence, the trial Court found the respondents not guilty and acquitted them 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 respondents categorically admitted their signature and the issuance of cheque. Therefore, the appellant discharged his initial burden in order to prove his case as contemplated under Section 138 of the Negotiable Instruments Act. Whereas the respondents failed to rebut the presumption and as such, the Court below ought not to have acquitted the respondents herein.

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

8. On perusal of the records revealed that after returning the cheque, the appellant caused statutory notice on 07.11.2012. However, it was returned with a postal endorsement that 'door locked'. No fresh notice was issued and it would not amount to sufficient service of notice. If it was returned with a postal endorsement 'refused' or 'not claimed', it would amount to sufficient service of notice. Admittedly, the statutory notice was returned with an endorsement 'door locked'. Hence, there was no cause of action to lodge the very complaint itself.

9. In so far as the capacity is concerned, the respondents categorically cross-examined the appellant in order to the source of income. The appellant also admitted that he is not an Income Tax Assessee and the amount which was lent by him was not accounted for. Therefore, the respondents rebutted the presumption as contemplated under Section 139 of the Negotiable Instruments Act. Even then, the appellant failed to prove that he had a source of income and he had financial capacity in order to lend money, that too to the tune of Rs.3,50,000/-. The appellant also failed to prove that the appellant and the respondents had an acquaintance and had lent loan. At the time of borrowal of the alleged loan, no documents were received by the appellant as security.

10.That apart, the appellant also failed to prove that Ex.P.1 was issued for any legally enforceable debt. Hence, the trial Court rightly acquitted the respondents and this Court finds no illegality or irregularity in the order passed by the Court below and the Criminal Appeal is dismissed.

05.04.2023

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

To

The Fast Track Court (Magisterial Level),
Thoothukudi.

G.K.ILANTHIRAIYAN, J.

ps

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