



Crl.A.(MD)No.64 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.64 of 2014

N.Devaraj

... Appellant

Vs.

1.M.Kannan

2.A.Muthukrishnan

... Respondents

PRAYER : Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to allow the appeal and set aside the judgment passed by the learned Judicial Magistrate, Sivakasi dated 05.09.2013 in STC.No.1279 of 2010.

For Appellant : Mr.R.Gowri Shankar

For R1 : Mr.R.Sathish

For R2 : No Appearance



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JUDGMENT

This Criminal Appeal has been filed as against the order of acquittal passed in STC.No.1279 of 2010 dated 05.09.2013 on the file of the learned Judicial Magistrate, Sivakasi, thereby dismissed the complaint and acquitted the respondents for the offence under Section 138 of the Negotiable Instruments Act.

2.The appellant is the complainant and the respondent is the accused in the proceedings initiated under Section 138 of the Negotiable Instruments Act. The crux of the complaint is that on 14.12.2009, the respondents entered into an agreement for sale. As per the agreement, the respondents along with one Shankar owe to pay a sum of Rs.12,92,757/-, in order to settle the same, the respondents issued cheque dated 11.01.2010 for a sum of Rs.6,92,757/- and another cheque dated 18.01.2010 for a sum of Rs.6,00,000/-, issued in favour of the appellant. Both cheques were presented for collection and they were returned dishonoured for the reason that “funds insufficient”. After causing statutory notice, the appellant lodged the complaint.



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3. On the side of the appellant, he had examined P.W.1 and marked Ex.P.1 to Ex.P.9. On the side of the accused, no one was examined and marked Ex.D.1 to Ex.D7. On perusal of oral and documentary evidence, the trial Court found the respondent herein not guilty and dismissed the complaint. Aggrieved by the same, the appellant preferred the present appeal.

4. The appellant raised grounds that the cheques, which were issued by the respondents, marked as Ex.P.1 and Ex.P.2 and the respondents have categorically admitted the signature found in the cheques and also issuance of cheques. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. However, the respondents failed to rebut the presumption by preponderance of probabilities. The respondents had agreed to purchase certain lands from the owners of the land through the appellant for total sale consideration of Rs.1,85,45,500/-. In order to pay part of the amount, they had issued cheques and the same were returned dishonoured. Therefore, the cheques were issued only for legal



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enforcement. Further, agreement of undertaking dated 14.02.2009 is valid under law and as such, the trial Court ought not to have dismissed the complaint.

5.On perusal of records revealed that the respondents had taken a specific stand that the cheques were issued not for any legal enforcement. Admittedly, the respondents entered into an agreement for sale on 31.10.2009 with one Kiragalakshmi and Vasantha Malliga, D/O., Thiruppathi Nadar. As per agreement of sale, the respondents agreed to purchase land measuring 2558 kuzhi at the rate of Rs.7,259/-, total sale consideration of Rs.1,85,45,500/-. As per the agreement, Rs.9,00,000/- and Rs.15,00,000/- was issued as advance. Further, remaining sale consideration to be paid on or before 30.11.2009. On receipt of the same, they shall register sale deed in favour of the respondents. Subsequently, another agreement was executed between the appellant and the respondents, in continuation of agreement dated 31.10.2009, and accordingly, cheques were issued for a sum of Rs.6,92,757/- dated 11.01.2010 and for a sum of Rs.6,00,000/- dated 18.01.2010 towards balance sale consideration. Admittedly, both cheques were not issued for



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any legal enforcement. That apart, the appellant is not the original owner of the land. He acted on behalf of the original owners of the land.

Therefore, there was no transaction between the appellant and the respondents, at any point of time. Hence, cheques were not issued for any legal enforcement and as such, the appellant failed to discharge his initial burden as contemplated under Section 138 of NI Act. Hence, the trial Court rightly acquitted the respondents and this Court finds no infirmity or illegality in the order passed by the trial Court. Accordingly, this criminal appeal is dismissed.

26.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns

To

The Judicial Magistrate,
Sivakasi.



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G.K.ILANTHIRAIYAN,J.

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