BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.9 of 2014

P.Amulraj ... Appellant/Complainant

Vs.

K.Manikandan ... Respondent/Accused

PRAYER : Criminal Appeal is filed under Section 378 of Cr.P.C to call for the records from the lower Court and to set aside the order made in C.C.No.225 of 2012 dated 25.11.2013 on the file of the learned Judicial Magistrate, Rajapalayam.

For Appellant : Mr.M.Thirunavukkarasu
For Respondent : Mr.S.C.Herold Singh

JUDGMENT

This appeal has been preferred as against the Judgment passed in C.C.No.225 of 2012 dated 25.11.2013 on the file of the learned Judicial Magistrate, Rajapalayam, thereby dismissing the complaint filed under Section 138 of the Negotiable Instruments Act and acquitted the respondent.

2. The appellant is the complainant and the respondent is the accused in the proceedings initiated under Section 138 of Negotiable Instruments Act.

3. The crux of the complaint is that the petitioner had lent a sum of Rs.2,30,000/- as a hand loan to the respondent on 10.03.2012. The respondent also assured to repay the same within a period of four months. In order to repay the said amount, the respondent issued a cheque for the said sum on 20.07.2012 and the same was presented for collection. However, it was returned 'dishonoured' for the reason that 'insufficient 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 respondent, no witness was examined 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. Aggrieved by the same, the present Appeal.

6.The learned counsel for the appellant submitted that the trial Court acquitted the respondent only on the ground that the appellant failed to receive any document as security at the time of borrowal of loan. When the first loan was availed by the respondent's father from the appellant, the respondent's father had executed the mortgage deed as well as cheque as security to the appellant and the same was not repaid. The said loan is completely different. Thereafter, the appellant being the friend of the respondent had lent a sum of Rs.2,30,000/- as loan to the respondent. Therefore, the loan transactions cannot be clubbed together and the appellant had discharged his initial burden. Therefore, the trial Court ought to have convicted the respondent for the offence punishable under Section 138 of NI Act.

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

8.On perusal of the records revealed that according to the appellant, the appellant had lent a sum of Rs.2,30,000/- as a loan to the respondent. In order to repay the said sum, the respondent issued a cheque and the same was presented for collection. However, it was returned 'dishonoured' for the reason that 'Insufficient Funds'. After causing statutory notice, the appellant lodged a complaint to punish the respondent for the offence under Section 138 of the Negotiable Instruments Act.

9.Admittedly, the father of the respondent borrowed a sum of Rs.2,50,000/- from the appellant. At the time of borrowal of loan, he had also given a mortgage deed as well as the cheque drawn from ICICI Bank. The acknowledgment was also executed between them on 28.03.2011, which was marked as Ex.D1. That apart, his father failed to repay the said loan and he committed default. While it was being so, on 20.07.2012, the appellant could not have lent another sum of Rs.2,30,000/- to the respondent, when the earlier loan amount itself was not settled by his father. That apart, admittedly, the appellant did not receive any other document as security at the time of the lending loan. In his cross-examination, he also categorically admitted Ex.D.1, which was executed between the father of the respondent and the appellant herein. He also admitted that the respondent's father had executed a mortgage deed in his favour in respect of his house property. So far, his father did not settle the loan amount. Therefore, the cheque was not issued for any legally enforceable debt. It is seen that the appellant failed to discharge the initial burden as if Ex.P.1 was issued for legally enforceable debt. It is true the issuance of cheque and the signature of the cheque, which was not denied by the respondent and as such, it can be presumed that cheque was issued for legally enforceable debt. However, it is rebuttable in nature. The respondent by marking Ex.D.1 and cross-examined P.W.1 rebutted the presumption and as such, the trial Court rightly dismissed the complaint and acquitted the respondent. This Court finds no illegality or infirmity in the order passed by the learned Judicial Magistrate, Rajapalayam, in CC.No.225 of 2012 dated 25.11.2013. Accordingly, this Criminal Appeal is dismissed.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1.The Judicial Magistrate, Rajapalayam.

2.The Section Officer,
VR Section,
Maduria Bench of Madras High Court, Madurai.

G.K.ILANTHIRAIYAN, J.

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