

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.79 of 2015

M.Ganesan

... Appellant/Complainant

Vs.

Jeyaraman @ Raja

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records pertaining to the Judgment in C.C.No.338 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court, Thanjavur dated 27.02.2015 and set aside the same.

For Appellant

: Mr.T.A.Ebenezer

JUDGMENT

This appeal has been preferred as against the Judgment passed in C.C.No.338 of 2011, on the file of the learned Judicial Magistrate, Fast Track Court, Thanjavur dated 27.02.2015, thereby 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 an accused in the proceedings initiated under Section 138 of the Negotiable Instruments Act.

3. The crux of the complaint is that the respondent borrowed a sum of Rs.3,00,000/- for his family expenditure and also to meet his business expenditure. Even after repeated requests, the respondent failed to return the amount and finally, he issued a cheque for the said sum on 24.02.2011. On the same day, it was presented for collection and the same was returned 'dishonoured' for the reason that 'funds insufficient'. After causing 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.4 and on the side of the respondent, he had examined D.W.1 and D.W.2 and no documents were marked.

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 appellant raised the ground that the respondent admitted the signature found in the cheque and also the issuance of the cheque. Therefore, the appellant had discharged his initial burden in order to prove the offence as contemplated under Section 138 of the Negotiable Instruments Act. Unfortunately, the trial Court dismissed the complaint on the ground that non-mentioning of the date of the loan is fatal to the case of the appellant. Further, the appellant also failed to obtain any security at the time of borrowal of loan from the respondent.

7.Heard the learned counsel for the appellant and perused the materials available on record.

8.On perusal of the records revealed that the respondent had examined D.W.1 and D.W.2 in order to rebut the presumption arising under Section 139 of the Negotiable Instruments Act. The specific stand of the respondent is that the appellant was running chit, in which, the son of the respondent subscribed and had taken a sum of Rs.60,000/-. Even after repayment of the entire amount, the cheque which was given as security by the respondent was not returned to him. It was a blank signed cheque. The said cheque was issued as security 7 years before the date of presentation. Therefore, the said cheque was not issued for any legally enforceable debt.

9.That apart, while borrowing the loan, no documents were received from the respondent as security. In fact, Ex.P.1 was issued only after several months, and the appellant also did not mention the date of borrowal. Therefore, the respondent categorically rebutted the presumption as contemplated under Section 139 of the Negotiable Instruments Act. However, the

appellant failed to prove his case in the manner known to law. Therefore, the trial Court rightly acquitted the respondent 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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