



Crl.A.(MD)No.108 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM

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

Crl.A.(MD)No.108 of 2016

R.Suryamaharaja

... Appellant

Vs.

P.Jeyaram

... Respondent

PRAYER : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment passed by the learned Judicial Magistrate (Fast Track), Srivilliputhur, dated 21.12.2015 in C.C.No.92 of 2014 and convict the respondent for the offences and provide reasonable compensation to the complainant.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.R.Nikesh Kumar



JUDGMENT

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This Criminal Appeal has been filed against the order of acquittal passed in C.C.No.92 of 2014 by the learned Judicial Magistrate (Fast Track), Srivilliputhur, on 21.12.2015.

2.The appellant is the defacto complainant and the respondent is the accused in the complaint lodged by the appellant for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The case of the prosecution is that the defacto complainant is running a contract business to construct buildings. On 23.04.2013, the respondent approached the petitioner to build a house and they entered into an agreement for a sum of Rs.16,40,000, in which, Rs.12,00,000/- was given by the respondent. For the balance amount, the respondent issued a cheque. It was presented for collection and the same was returned dishonoured for the reason that “funds insufficient”. Even after dishonour of cheque, the respondent paid Rs.70,000/- and he failed to pay remaining amount of Rs.3,50,000/-. Therefore, the appellant caused statutory notice and lodged complaint.



4.On the side of the complainant, he examined himself as P.W.1 and marked Ex.P.1 to Ex.P8. On the side of the accused, no one was examined and marked Ex.D.1 and Ex.D.2. On perusal of oral and documentary evidence, the trial Court found the respondent not guilty for the offence under Section 138 of NI Act and acquitted him. Aggrieved over the same, the present appeal has been filed.

5.The appellant raised grounds that the respondent categorically admitted his signature and issuance of cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of NI Act. The cheque was issued for the balance amount in favour of the appellant and it was categorically admitted by the respondent. However, the trial Court acquitted the respondent. In fact, in order to rebut the presumption, the respondent did not examine any witnesses. After admitting his liability, he only paid Rs.70,000/-. Therefore, the learned counsel for the appellant prayed for conviction.

6.On perusal of documents revealed that the appellant and the respondent entered into an agreement for constructing a house for



CrI.A.(MD)No.108 of 2016

Rs.16,40,000, in which, Rs.12,00,000/- was given by the respondent.

For the balance amount, the respondent issued a cheque and the same was presented for collection. It was returned dishonoured for the reason that “funds insufficient”. Hence, the complaint. Even according to the appellant, after returning the cheque, the respondent paid Rs.70,000/- on 15.06.2014. The alleged cheque was not issued for any legal enforcement. Even after calculating the amount, which was arrived between the parties as per the agreement, the cheque amount was not tallied with the agreement entered between them. The appellant himself admitted that a sum of Rs.70,000/- was paid by the respondent and the same was not stated while issuance of notice.

7. Therefore, the Court below rightly acquitted the respondent and this Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, this criminal appeal is dismissed.

20.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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CrI.A.(MD)No.108 of 2016

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To
The Judicial Magistrate (Fast Track),
Srivilliputhur.



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CrI.A.(MD)No.108 of 2016

G.K.ILANTHIRAIYAN,J.

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CrI.A.(MD)No.108 of 2016

20.04.2023