



CrI.A.(MD)No.116 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM

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

CrI.A.(MD)No.116 of 2016

Vasanthan

... Appellant

Vs.

Hameetha @ Hameetha Ammal

... Respondent

PRAYER : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment dated 14.09.2015 passed in STC.No.301 of 2014 on the file of the Judicial Magistrate (Fast Track Court)No.1, Nagercoil.

For Appellant : Mr.Vasik Ali
for M/S.R.Murugan

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 14.09.2015 passed in STC.No.301 of 2014 on the file of the Judicial Magistrate (Fast Track Court)No.1, Nagercoil.



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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 on 27.06.2012 the respondent borrowed a sum of Rs.25,000/-and ascertained that she will repay the same within three months and a cheque was also issued by her. The cheque was presented for collection on 28.09.2012 and the same was returned dishonoured for the reason that “funds insufficient”. After causing statutory notice, the appellant lodged the complaint. On the side of the appellant, he had examined himself as P.W.1 and marked Ex.P.1 to Ex.P.4. On the side of the respondent, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found the respondent not guilty and acquitted her. Aggrieved over the same, the present appeal has been filed.

4.The learned counsel appearing for the appellant would submit that the respondent admitted her signature and issuance of cheque.



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Therefore, the appellant discharged his initial burden as contemplated under Section 138 of NI Act. However, the respondent failed to rebut the presumption. In fact, the respondent did not examine any witnesses and did not produce any documents to rebut the presumption. He would further submit that on 15.06.2012 already the respondent borrowed a sum of Rs.25,000/- and she issued a cheque dated 17.09.2012 again on 27.06.2012, she borrowed a sum of Rs.25,000/- and again issued cheque dated 27.09.2012. The cheque was presented for collection and it was returned and as such, the appellant discharged his initial burden as contemplated under Section 138 of NI Act. Therefore, he prayed for conviction.

5.On perusal of records revealed that the respondent borrowed a sum of Rs.25,000/- on 15.06.2012 and she ascertained to repay the same within three months and she issued cheque vide cheque No.522340 dated 17.09.2012. Again on 27.06.2012, she borrowed a sum of Rs.25,000/-, for which she issued cheque vide No.522341 dated 27.09.2012. The said cheque was also presented for collection and the same was returned dishonoured for the reason that “funds insufficient”.



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6.It is seen that first cheque dated 17.09.2012 was presented and the same was returned. Therefore, if the respondent issued another cheque on 27.09.2012 for the subsequent borrowal of Rs.25,000/-, no prudent man will receive the cheque. Therefore the appellant failed to prove his case beyond any doubt. It is also not in dispute that the appellant received cheques from the respondent. Both cheques are continuously got bounced. In fact, if the appellant initiated proceedings under Section 138 of NI Act, while the first cheque got bounced, the respondent may get convicted. However, the appellant failed to do so.

7.Therefore, the Court below rightly acquitted the respondents 3 to 5 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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To

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The Judicial Magistrate (Fast Track Court)No.1,
Nagercoil.



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G.K.ILANTHIRAIYAN,J.

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