



CrI.A(MD)No.85 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 01.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.A.(MD)No.85 of 2016
and
CrI.M.P.(MD)No.2942 of 2016

M.N.Sakthivel

... Appellant/Complainant

vs.

M.Sundarapandiyan

...Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378 of Cr.P.C., to set aside the dismissal order in C.C.No.239 of 2013 on 25.11.2015 passed by the learned Judicial Magistrate, Aruppukottai.

For Appellant : Mr.J.Gunaseelan Muthiah

JUDGMENT

This Criminal Appeal is filed against the order passed in C.C.No. 239 of 2013 by the learned learned Judicial Magistrate, Aruppukottai, dated 25.11.2015 and thereby, acquitted the respondent/accused for the offence under Section 138 of N.I. Act.



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2.The appellant is the complainant and the respondent is the accused. The appellant lodged a complaint alleging that the respondent borrowed a sum of Rs.3,00,000/- as hand loan and also agreed to pay interest at the rate of Rs.2.00 per hundred and on the same day, he also executed pro-note in the said amount. Thereafter, the respondent has failed to pay any interest and also failed to pay the principal amount. On repeated request, the respondent issued cheque for a sum of Rs.3,00,000/- on 01.09.2013. The said cheque was presented for collection and the same was returned as “insufficient funds”. After causing statutory notice, the appellant lodged the complaint.

3.On the side of the appellant, he had examined P.W.1 and exhibited 7 documents as Ex.P.1 to Ex.P.7. On the side of the respondent, no one was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence under Section 138 of N.I Act and acquitted him. Aggrieved by the same, the appellant has filed the present appeal.



5.The appellant raised grounds that the de-facto complainant discharged his initial burden as contemplated under Section 138 of N.I. Act. The trial Court has failed to consider the signature of the respondent/accused and issuance of cheque in favour of the appellant. Therefore, the appellant proved his case beyond any doubt and the respondent also failed to rebut the presumption arose under Sections 118 and 139 of N.I. Act.

6.On perusal of the records it is revealed that the respondent had taken specific stand that while cross examining P.W.1 the appellant had no source of money in order to lend such a huge amount of Rs. 3,00,000/-. That apart, the respondent never borrowed such a huge amount and he did not even require any loan from the appellant herein. Further, the alleged cheque was issued to one Yovan and not to the appellant. It was also categorically admitted by the appellant that the said Yovan was known to him. Even then the appellant failed to examine the said person in order to prove his case beyond any doubt. Therefore, the respondent categorically rebutted the presumption arising under Sections 119 and 139 of N.I Act. Further, the appellant has failed to prove his source of income in order to lend such a huge amount of Rs.3,00,000/-. Though the appellant deposed that he borrowed a sum of Rs.1,50,000/-



from one Nagaraj and also he was keeping money to purchase wooden things from the said amount, he had lend a sum of Rs.3,00,000/- to the respondent herein. That apart, on the said borrowal, the respondent issued pro-note and the same was marked as Ex.P.7. However, it was not mentioned in the statutory notice, as if, on the borrowal of Rs.3,00,000/-, the respondent executed pro-note. Therefore, the appellant has failed to prove his case beyond any doubt and the trial Court has rightly acquitted the respondent. Hence, this Court finds no infirmity or illegality in the order passed by the trial Court and the appeal is liable to be dismissed.

7. Accordingly, the Criminal Appeal stands dismissed.
Consequently, connected miscellaneous petition is closed.

01.06.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The Judicial Magistrate, Aruppukottai.

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



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