



Crl.A(MD)No.289 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A(MD)No.289 of 2015

M.Goutamchand ... Appellant/Complainant

Vs.

S.Vengatesh ... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure, to set aside the Judgment and acquittal order passed by the learned I Additional District cum Sessions Judge (PCR), Thanjavur, dated 08.10.2014 in C.A.No.7 of 2014 and convict the respondent herein for the offence under Section 138 of the Negotiable Instruments Act with maximum punishment and to award a compensation of twice the cheque amount.

For Petitioner : Mr.B.Anandan

For Respondent : Mr.N.Subramani



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JUDGMENT

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This appeal has been preferred as against the order of acquittal passed in Crl.A.No.7 of 2014 on the file of the learned I Additional District cum Sessions Judge (PCR), Thanjavur, dated 08.10.2014, reversing the findings of the conviction passed in S.T.C.No.323 of 2006 on the file of the learned Judicial Magistrate, Kumbakonam, dated 08.01.2014, thereby convicted 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.

3.The crux of the complaint is that the respondent is doing jewelry business in the name and style of 'V.S.N jewelry'. He was introduced by one Hemanth Kumar, who is working in 'Iswarya Jewelry', to the appellant herein. The respondent used to borrow money from the appellant and repay the said amount with interest. Finally, he borrowed a sum of Rs.2,00,000/- from the appellant for the improvement of his business on 20.10.2005. He also agreed to



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repay the said amount with interest at the rate of 18% per month.

On the date of borrowal itself, the respondent issued post-dated cheque for the said sum. On instruction, the said cheque was presented for collection and the same was returned dishonoured for the reason "funds insufficient". After causing statutory notice, the appellant lodged the complaint.

4.In order to prove his case, on the side of the appellant, he himself was examined as P.W.1 and marked Exs.P.1 to P.9 and on the side of the respondent, he himself was examined as D.W.1 and marked Ex.D.1 to Ex.D.3.

5.On perusal of the oral and documentary evidence, the trial Court found the respondent guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo three months Simple Imprisonment. Aggrieved by the same, the respondent preferred an appeal in Crl.A.No.7 of 2014 on the file of the learned I Additional District cum Sessions Judge (PCR), Thanjavur and the Appellate Court set aside the conviction and sentence imposed by the trial Court and acquitted the respondent for the offence punishable under Section 138 of the



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Negotiable Instruments Act. Aggrieved by the same, the complainant preferred this revision.

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6.The learned counsel appearing for the appellant would submit that the respondent admitted the signature found in the cheque and also issuance of the cheque. Therefore, the appellant discharged his initial burden and the respondent failed to repay the same by probable defence. According to the respondent, he had issued the cheque to one Hemanth Kumar. After settling the entire amount, the said Hemanth Kumar failed to return the said cheque to the respondent and the appellant snatched the same and initiated the proceedings under Section 138 of the Negotiable Instruments Act. Further, the respondent failed to substantiate the same with any material evidence. He failed to examine the said Hemanth Kumar. Therefore, the trial Court rightly convicted the respondent. However, without considering the above facts and circumstances, the Appellate Court set aside the conviction and acquitted the respondent.

7.The learned counsel appearing for the appellant would further submit that the said Hemanth Kumar and respondent



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colluded together and created documents as if the cheque was issued to the said Hemanth Kumar and it was snatched by the appellant herein. Therefore, he prayed for setting aside the Judgment passed by the Appellate Court.

8. On perusal of records revealed that even according to the appellant the respondent only introduced the said Hemanth Kumar to him. The specific defence taken by the respondent is that he borrowed a loan from the said Hemanth Kumar. At the time of borrowal of loan, he issued the alleged cheque for security purposes. Even after repaying the entire amount, the said Hemanth Kumar failed to return the same. He informed that the cheque was misplaced and its whereabouts were not known. At that juncture, to his shock and surprise, he received statutory notice from the appellant and on receipt of the same, the respondent sent a reply notice, which was marked as Ex.P.6. He categorically rebutted the presumption that the cheque was not issued to the appellant for any legally enforceable debt, since the appellant is a stranger to him and he never borrowed any loan from the appellant. Immediately, after receipt of the notice, he had issued notice to the said Hemanth Kumar on 16.01.2006 which was marked as Ex.D.2, thereby calling



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upon him to return the cheque which was marked as Ex.P.1. The same was duly received by the said Hemanth Kumar and he had also sent reply notice. Therefore, the respondent raised the reasonable defence in order to rebut the presumption arising out of Sections 118 and 139 of the Negotiable Instruments Act. Therefore, the entire burden again shifted on the shoulder of the appellant to prove his case beyond any doubt. However, except the cheque, no other materials were produced by the appellant to prove that the respondent borrowed a loan from the appellant and in order to repay the said sum, the respondent issued the alleged cheque. Even according to the appellant, the respondent only introduced the said Hemanth Kumar to him and he is working in another jewelry shop called 'Iswarya Jewelry'. In fact, the respondent issued a reply notice and categorically stated that the said alleged cheque was not issued to the appellant for any legally enforceable debt. Even then, the appellant did not choose to examine the said Hemanth Kumar in order to prove his case. The trial Court, without considering these aspects, convicted the respondent on the mere fact that the respondent did not dispute the signature.



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9.It is settled law that the presumption under Sections 118 and 139 of the Negotiable Instruments Act is rebuttable in nature. The respondent herein categorically rebutted the presumption by sending a reply notice, which was marked as Ex.P.6, by examining himself as D.W.1 and notice issued to the said Hemanth Kumar, which was marked as Ex.D.2. Therefore, the Appellate Court rightly reversed the findings of the trial Court and acquitted the respondent. Hence, this Court finds no infirmity or illegality in the order passed by the Appellate Court. Accordingly, this Criminal Appeal is dismissed.

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(3/3)

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

1.The I Additional District cum Sessions Court (PCR),
Thanjavur.

2.The Judicial Magistrate,
Kumbakonam.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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