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CRL.A.(MD).No.265 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.265 of 2023

Annammal ... Petitioner/Respondent/Complainant

Vs.

Arokiaraj ... Respondent/Petitioner/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records and set aside the order dated 18.08.2016 passed in Criminal Appeal No.7 of 2016 on the file of the III Additional District Judge, Trichirappalli against STC.No.4729 of 2015 dated 12.02.2016 on the file of the learned Judicial Magistrate, Manapparai, Trichy District by allowing this revision.

For Appellant : Mr.S.Vinayak

For Respondent : Mr.C.Jeganathan

JUDGMENT

This appeal has been preferred as against the order of acquittal passed in Crl.A.No.7 of 2016 dated 18.08.2016 on the file of the learned III Additional District Judge, Tiruchirappalli, thereby reversed the conviction and sentence imposed by the trial Court for



the offence punishable under Section 138 of NI Act in STC.No.4729 of 2015, dated 12.02.2016.

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2. The petitioner is the complainant and the respondent is the accused.

3. The petitioner lodged a complaint alleging that the respondent borrowed a sum of Rs.16,00,000/- and agreed to repay the said amount within five months. In order to discharge his liability, the respondent issued cheque for the said sum and it was presented for collection and the same was returned dishonored for the reason 'Fund Insufficient'. After causing statutory notice, the petitioner filed a complaint.

4. On the side of the appellant, he himself was examined P.W.1 and marked Ex.P.1 to Ex.P.6. On the side of the respondent, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent guilty for the offence punishable under



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Section 138 of Negotiable Instruments Act and sentenced him to undergo one year Rigorous Imprisonment and also to pay fine of Rs. 5,000/-, in default to undergo simple imprisonment of two months. Aggrieved by the same, the respondent preferred an appeal in Crl.A.No.7 of 2016 before the III Additional District Court, Tiruchirappalli. The first appellate Court found him not guilty and set aside the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present appeal.

6. The appellant raised ground that the respondent admitted his signature and issuance of cheque. Therefore, the appellant has discharged his initial burden in order to make out the case under Section 138 of Negotiable Instruments Act. The appellant proved that the cheque was issued only for legally enforceable debt and the respondent failed to rebut the same by probable defence. The respondent did not even enter into the box in order to disprove the case of the appellant. The probable defence raised by the respondent also not sustainable and as such, the trial Court rightly convicted the respondent. However, on wrong presumption, the appellate Court reversed the findings of conviction.



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7. The respondent had taken specific defence that he never borrowed any amount from the appellant. He borrowed a sum of Rs.2,00,000/- from one person called Rengaraj and issued blank signed cheque to him. After repayment of the entire loan amount, the said Rengaraj failed to return the cheque. The husband of the appellant and the said Rengaraj are friends. Therefore, the cheque was misused in the name of the appellant and presented for collection. In fact, on receipt of the statutory notice, the respondent categorically denied the borrowal and also questioning the source of income to lend such huge amount. Further stated that the cheque was issued only as security purpose to borrow the loan of Rs.2,00,000/- from the said Rengaraj. Even then, the appellant failed to prove her case in accordance with law, when the respondent categorically rebutted the presumption arose under Sections 118 and 139 of Negotiable Instruments Act.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.



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9. It is seen that the appellant deposed that the entire family was maintained by her husband and she had no income by any employment. She further deposed that after sold out the property to the tune of Rs.16,00,000/-, she had lent such huge money to the respondent. However, on the date of borrowal, no other document has received as security by the appellant. No prudent person would lend such huge amount without any document and without any security. Therefore, the respondent categorically rebutted the evidence of presumption arising out of Sections 118 and 139 of Negotiable Instruments Act. Hence, the first appellate Court rightly acquitted the respondent and this Court finds no illegality or irregularity in the order passed by the first appellate Court in Crl.A.No.7 of 2016. Accordingly, this Criminal Appeal is dismissed.

19.04.2023

NCC : Yes/No
Index : Yes/No
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To

1.III Additional District Judge, Trichirappalli.

2.The Judicial Magistrate, Manapparai, Trichy District.



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