BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.01.2023**

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THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.7 of 2023

P.Manohar ... Appellant

Vs.

S.Selvi ... Respondent

Prayer : This Appeal is filed under Section 372 Cr.P.C. to call far the entire records pertaining to the order passed in S.T.C.No.708/2016 dated 26.12.2017, passed by the learned Judicial Magistrate, Sathankulam and set aside the same.

For appellant : Mr.K.Suyumbulinga Bharathi

For Respondent : No Appearance.

J U D G M E N T

This appeal has been preferred against the order of acquittal that was passed by the trial Court.

2.The facts in brief:

This appellant filed a complaint under Section 200 Cr.P.C. stating that the respondent herein borrowed a sum of Rs.4.70 lakhs on 04.05.2016 for his family expenses. Towards the discharge of the above said amount on the date itself, he issued a cheque. The complainant presented the same for payment on the date itself. But the accused requested the complainant not to present the cheque for payment. So it was returned back. Again that was represented on 22.06.2016. It was returned on 24.06.2016, as fund insufficient. After completing the statutory formalities, he filed the private complaint before the trial Court. On his side six documents were marked. At the conclusion of the trial process, the trial Court found that the offences under Section 138 of the Negotiable Instruments Act has not been proved. So he was acquitted. Against the acquittal, he filed revision before the learned Principal District and Sessions Judge, Thoothukudi. During the pendency of the above said revision due to the change of Law, as per the Judgment of the Honourable Full Bench of this Court in Crl.A.No.89 and 90 of 2020 and Crl.R.C.No.494 and 536 of 2019, the matter was transferred to this Bench and by the proceedings, dated 04.12.2021, of the learned Principal District and Sessions Judge, Thoothukudi, it was sent to this Bench and taken up as Criminal Revision Case in Crl.R.C.(MD).No.1029 of 2022. Later it was converted into Criminal Appeal by the order, dated 03.01.2023, by this Court.

3.Notice was ordered to both parties. Even though notice has been served upon the respondent, none appeared on behalf of him. Only the appellant was heard.

4.Records have been called from the concerned Court and perused.

5.It is a case of acquittal. Now let us straight away go to the finding that has been recorded by the trial Court. The first finding with regard to the date of alleged loan transaction, as per the notice that was issued by the complainant, dated 15.07.2016, it has been stated that the date of borrowal is 04.04.2016. But, against the above said averments, in the complaint it has been stated that the transaction took place on 04.05.2016. Next finding is with regard to the statutory notice. The notice was returned as refused. Why that was refused was not explained by examining the postal authorities. The third finding is with regard to the source of income. So on the above said grounds, it was held that the respondent has rebutted the presumption under Section 139 of N.I. Act, which is available. But against the above said rebuttal presumption no corroborative evidence was let by the appellant.

6.In the light of the above said finding, now let us go to the evidence of P.W.1 as to what happened actually between himself and the respondent herein. In the affidavit he stated that he demanded Rs.4.70 lakhs as loan amount on 22.03.2016, that was paid on 04.04.2016 and on 04.05.2016 he issued the cheque towards the discharge of the above said amount. It was presented for payment on 22.06.2016 at the request made by the respondent. Now let us go to the averments in the notice. The date of request is mentioned as 22.03.2016 and the date of transaction is mentioned as 04.04.2016. Cheque was issued on 04.05.2016. It was suggested to P.W.1 to the effect that only the after borrowal of a sum of Rs.40,000/- from the father, towards the above principal amount Rs.1 lakh was paid as interest. Only on that time, the accused gave the above said cheque in favour of the complainant. So these are the glaring defects with regard to the entire issue. Perusal of the original complaint shows that the date of transaction has been corrected as 04.05.2016. But, we find no initials in the corrected portions and who made the corrections is also not clear on record. Without properly amending the above said complaint, affidavit has been filed mentioning the transaction was on 04.04.2016. So this created doubt with regard to the very foundation of the transaction in the mind of the trial Court and coupled with the non examination of authorities with regard to the refusal of the statutory notice. Even though the reasons assigned by the trial Court with regard to the non service of statutory notice and the failure on the part of the complainant to prove the source of income, they are only secondary in nature. The primary reason itself is sufficient enough for dismissing the appeal.

7.As stated by the trial Court even though the presumption is in favour of the complainant under Section 139 of the N.I.Act, when there is admission on the part of the respondent regarding the signature because of the above said factual issues, the very liability of this respondent is under doubt. No doubt that a third person can issue cheque towards the discharge of the liability of other person that is perfectly legally and can be enforced also. But here, the foundation of transaction itself is under doubt for valid reasons. Therefore, I find no reasons to differ from the view that has been taken by the trial Court. This criminal appeal deserves to be dismissed and accordingly, **dismissed**.

04.01.2023

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

1.The Judicial Magistrate, Sathankulam.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J.

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