



WEB COPY

CRL.A.(MD).No.342 of 2013



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.342 of 2013

R.Padmanaban

... Appellant/Complainant

Vs.

R.Boopathi

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records pertaining to CC.No.102 of 2011 on the file of the Fast Track Court at Magisterial Level, Thanjavur, set aside the judgment of acquittal of the accused in convict the accused.

For Appellant

: Mr.S.Venkatesan

For Respondent

: Mr.C.Padmaraj

JUDGMENT

This appeal has been preferred as against the order of acquittal passed in CC.No.102 of 2011 on the file of the Fast Track Court at Magistrate level Thanjavur, thereby, acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act.



WEB COPY

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

3. The crux of the complaint is that the respondent borrowed a sum of Rs.2,00,000/- from the complainant for his family expenses and also agreed to repay the same with interest. In order to discharge the said amount, the respondent issued cheque for a sum of Rs.2,00,000/- dated 15.01.2007. The said cheque was presented for collection and the same was returned for the reason 'Account closed'. Hence, the appellant issued statutory notice and thereafter, lodged a complaint.

4. On the side of the appellant, he himself was examined P.W.1 and had also examined P.W.2 and marked Ex.P.1 to Ex.P.8. On side of the respondent, he himself was examined D.W.1 and no document was marked.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and dismissed the complaint



filed by the appellant. Aggrieved by the same, the present appeal has been filed.

WEB COPY

6. The learned counsel for the appellant submitted that the respondent categorically admitted his signature found in the cheque and also the issuance of the same. Therefore, the appellant had discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. He further submitted that it is not the case of the respondent that he never issued any cheque for the debt, which is legally enforceable one. Though the respondent had taken a specific stand that at the time of borrowal of Rs.35,000/-, he issued cheque for the purpose of security in the year 1996, even then, the respondent did not produce any material evidence to prove the same. That apart, the original cheque was misplaced after filing of the complaint. Non-production of original cheque before trial Court is not fatal to the case of the complainant/appellant. Without considering those aspects, the trial Court mechanically acquitted the respondent.



WEB COPY

enforceable debt, since the appellant himself admitted that the said Rs.2,00,000/- amount was received by the respondent by 8-10 instalments. Therefore, the respondent reasonably rebutted the presumption and the appellant failed to prove the case beyond any reasonable doubt. Therefore, the Court below rightly acquitted the respondent and this Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, this Criminal Appeal is dismissed.

26.04.2023

NCC : Yes/No
Index : Yes/No
rmk

To

1.The Fast Track Court at Magisterial Level, Thanjavur.

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



WEB COPY



CRL.A.(MD).No.342 of 2013

G.K.ILANTHIRAIYAN, J.

rmk

CRL.A.(MD).No.342 of 2013

26.04.2023