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CRL.A.(MD).No.168 of 2013



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.168 of 2013

R.Kalaiselvan

... Appellant/Complainant

Vs.

A.T.Subramanian

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 372 of Cr.P.C to set aside the Judgment and acquittal order passed by the Fast Track Court at Magisterial Level, Thanjavur on 01.11.2012 in S.T.C.No.76 of 2011 and convict the accused for the offence under Section 138 of the Negotiable Instruments Act.

For Appellant

: Mr.M.Karunanithi

For Respondent

: Mr.V.Muthukamatchi



JUDGMENT

This appeal has been preferred as against the Judgment passed in S.T.C.No.76 of 2011 on the file of the Fast Track Court at Magisterial Level, Thanjavur, dated 01.11.2012, thereby acquitted the respondent for the offence under Section 138 of the Negotiable Instruments Act.

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

3. The appellant lodged the complaint alleging that the respondent borrowed a sum of Rs.8,00,000/- on 27.08.2007 and on the same date of borrowal, the respondent had also executed a promissory note for the loan amount in favour of the appellant. On the date of execution of the pro-note, the respondent also agreed to repay the same with interest at the rate of 12% per annum. However, the respondent did not pay the interest and on demand, the respondent issued a cheque for the sum of Rs.8,00,000/-. It was presented for collection. However, the same was returned for the reason 'funds insufficient' and also payment was stopped by the respondent. After causing statutory notice, the appellant filed the complaint.



4. On the side of the appellant, he had examined P.W.1 to P.W.5 and marked Exs.P.1 to P.10 and on the side of the respondent, he had examined D.W.1 and marked Exs.R.1 to R.11.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted him and dismissed the complaint. Aggrieved by the same, the present Appeal.

6. The appellant raised the grounds that the signature of the cheque and the issuance of the cheque were not denied by the respondent. Therefore, the appellant discharged his initial burden in order to prove the offence under Section 138 of the Negotiable Instruments Act. The transaction between the parties is also admitted by the respondent and even then, the trial Court acquitted the respondent. The appellant as a holder of the cheque and the discharge of the legally enforceable debt, the cheque in question was signed by the respondent and as such, he is liable to be punished for the offence under Section 138 of the Negotiable Instruments Act. In fact, on the date of borrowal, the respondent also executed pro-note which was marked as Ex.P.1. In order to



discharge the same, the cheque was issued by the respondent.

Therefore, the appellant categorically proved his case.

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7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.On perusal of the records revealed that the respondent and the appellant along with another were partners and were running the rice mill. The appellant was looking after the accounts of the business. In order to purchase paddy from the farmers, for which the respondent used to issue his blank cheques to them. After payment, he would take back the blank cheques from them. For the said purpose, he used to carry three blank signed cheques in his handbag. However, the complainant informed the partners that they had incurred a loss to the tune of Rs.7,00,000/- and they also stopped the partnership business. Therefore, there was a misunderstanding between them and the respondent demanded money for the loss. While being so, the appellant attempted to kidnap the respondent and had stolen away the cheque which was carried by the respondent. Therefore, immediately, the respondent issued a letter to the banker to stop payment. In fact, the appellant attempted to kidnap another partner Anbalagan, for which Anbalagan's wife Anandhi had lodged a



complaint and the same was marked as Ex.R.1. That apart, Anbalagan's son Aravindaraj also lodged the complaint, which was marked as Ex.R.2. The complaints were registered as against the appellant and both were marked as Ex.R.8 and R.9. The stop payment letter was also marked as Ex.R.4. Therefore, Ex.P.2- cheque was not issued for any legally enforceable debt. The respondent, by examining himself as D.W.1, categorically rebutted the presumption by marking Exs.R.1 to R.11. Therefore, the burden of proof was shifted to the appellant. Even then, the appellant failed to prove his case in the manner known to law, though the cheque was issued for any existing debt or liability. Hence, the trial Court rightly dismissed the complaint and acquitted the respondent and therefore, this Court finds no illegality or irregularity in the order passed by the trial Court. Accordingly, the Criminal Appeal is dismissed.

06.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

The Fast Track Court at Magisterial Level,
Thanjavur.



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