



Crl.A.(MD)No.176 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A(MD)No.176 of 2013

G.Panneerselvam

... Appellant/Complainant

vs.

V.K.Rengaraj

... Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378 of Cr.P.C., to call for the records pertaining to S.T.C.No.219 of 2011, on the file of the Fast Track Court at Magisterial Level, Thanjavur and set aside the judgment of acquittal of the accused and convict the accused.

For Appellant : Mr.T.Sekar

JUDGMENT

This Criminal Appeal is directed against the order passed in S.T.C.No.219 of 2011, on the file of the Fast Track Court at Magisterial Level, Thanjavur, dated 04.03.2013 and thereby, convict the respondent for the offence under Section 138 of the N.I Act.



2.The appellant/complainant has lodged a complaint as against the respondent/accused for the offence under Section 138 of the N.I Act.

3.The case of the appellant is that the appellant used to purchase Sarees from the respondent and as such, he had acquainted with the respondent. While being so, the respondent requested a loan for a sum of Rs.2,50,000/- on 22.11.2010. The appellant advanced a loan of Rs. 2,50,000/- to the respondent and the respondent also promised to repay the said amount with interest at the rate of 18% per annum and the respondent and his wife have also duly signed a receipt for the same. After several demands, the respondent issued a cheque, dated 20.12.2010 in favour of the appellant. When the same was presented for collection, it was returned as dishonored for the reason “exceeds arrangements”. After issuance of statutory notice, the appellant lodged a complaint.

4.On the side of the appellant, he had examined himself as P.W.1 and exhibited 6 documents as Ex.P.1 to Ex.P.6. On the side of the accused, he had examined himself as D.W.1 and exhibited 16 documents as Ex.R.1 to Ex.R.16.



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5. On perusal of the oral and documentary evidence, the trial Court found the respondent/accused not guilty for the offence under Section 138 of the N.I. Act and acquitted him. Hence, the present appeal.

6. The learned counsel for the appellant submitted that the respondent categorically admitted his signature and also issuance of cheque. Therefore, the appellant discharged his initial burden in order to convict the respondent. The presumption under Sections 118 and 139 of N.I. Act is attracted and the cheque is presumed to be issued by the respondent to the appellant in discharge of the pre-existing legally enforceable debt. Even then, on wrongful presumption, the trial Court has acquitted the respondent herein.

7. A perusal of the records revealed that though the respondent admitted his signature found in Ex.P.1, in order to rebut the presumption, the respondent himself was examined as D.W.1 and marked 16 documents as Ex.R.1 to Ex.R.16. The mortgage deed was executed in favour of one K.Prabhakaran. At that juncture, the respondent gave two blank cheques to him as security and the said Prabhakaran demanded exorbitant interest. The respondent lodged a police complaint as against the said Prabhakaran. The specific case of the respondent is that the



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appellant is a stranger to him and no way connected with him. He never borrowed any loan and he never issued any cheque (Ex.P.1) in favour of the appellant for any legally enforceable debt. The alleged cheque was handed over to one Prabhakaran, while borrowing the loan. The said cheque was misused by the appellant by presenting the same for collection. That apart, another cheque was handed over as security in favour of the said Prabhakaran and the same was misused by one Paulraj. Those documents were also marked by the respondent as Ex.R.5 to Ex.R. 8 and R.10. Therefore, the respondent categorically rebutted the presumption and the appellant has failed to prove his case.

8.Hence, the trial Court has rightly dismissed the complaint and this Court finds no infirmity or illegality in the order passed by the Court below. The appeal is liable to be dismissed and accordingly, it is dismissed.

30.03.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No



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To

- 1.The Fast Track Court at Magisterial Level, Thanjavur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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