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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.226 of 2013

A.Ramraj

... Appellant/Complainant

Vs.

R.Gnanasekar

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to set aside the order in CC.No.13 of 2013 dated 05.06.2013 on the file of the Fast Track Court(Magistrate Level), Srivilliputhur.

For Appellant : Mr.G.Mariappan

For Respondent : Mr.M.Jothibas

JUDGMENT

This appeal has been filed as against the order of acquittal passed in CC.No.13 of 2013 on the file of the Fast Track Court(Magistrate Level), Srivilliputhur, dated 05.06.2013.



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

3. The crux of the complaint is that in order to develop the business the respondent borrowed a sum of Rs.3,00,000/- from the appellant as recommended by one Alagarsamy, who is the uncle of the complainant and running a jewelry shop in the name and style of 'Boopathi jewellers'. The respondent also agreed to pay interest at the rate of Rs.1/- per 100. In order to repay the said amount, he issued cheque and the same was presented for collection. However, it was returned as dishonored for the reason 'Insufficient Funds'. After causing statutory notice, the appellant lodged a complaint.

4. On the side of the appellant, he himself was examined P.W.1 and had examined P.W.2 and marked Ex.P.1 to Ex.P.6. On the side of the respondent, he himself was examined D.W.1 and marked Ex.D.1.

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.



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6. The learned counsel for the appellant submitted that the trial Court dismissed the complaint only on the ground that the said Alagarsamy was not examined and the appellant failed to prove that the respondent borrowed the said amount and alleged cheque was issued for legally enforceable debt. Infact, the respondent categorically admitted his signature and also issuance of cheque. Therefore, the appellant had discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. Even then, the trial Court dismissed the complaint.

7. The learned counsel for the respondent would submit that the cheque was issued for security purpose to the said Alagarsamy, while purchasing the jewel. Even after returning of the entire amount, the said Alagarsamy handed over the cheque to the appellant herein and misused the same. Therefore, there was no absolutely legally enforceable debt in favour of the appellant. In fact, after receipt of statutory notice, the respondent replied the same, which was marked as Ex.P.6. Therefore, the Court below rightly dismissed the complaint and it does not warrant any interference by this Court.



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

9. A perusal of records revealed that while the respondent borrowed a sum of Rs.3,00,000/- as recommended by one Alagarsamy and also in front of the said Alagarsamy, in order to repay the said amount, he issued cheque and the same was presented for collection, however, it was returned as dishonored. Hence, the complaint. Whereas, the case of the respondent is that the respondent never borrowed any amount from the appellant. He purchased jewels from one Alagarsamy, who is running jewelry shop in the name and style of 'Boopathy jewellers'. At the time of purchasing jewels, he handed over the cheque for security purpose. Even after paying the entire amount, the cheque has been misused by the appellant, since the said Alagarsamy is none other than the uncle of the appellant. Even then, in order to prove the borrowal of the amount, the appellant failed to examine the said Alagarsamy. That apart, the appellant also failed to produce any document to show that the respondent borrowed a sum of Rs.3,00,000/- as loan from the appellant except cheque. Therefore, the appellant failed to discharge



his initial burden as contemplated under Section 138 of Negotiable Instruments Act. Though the respondent admitted his signature in Ex.P.1, which was not issued for any legally enforceable debt in favour of the appellant herein. Further the appellant categorically admitted that on the date of alleged borrowal itself, he issued cheque as security. Therefore, the said cheque was not issued for legally enforceable debt. Hence, the trial Court rightly acquitted the respondent and this Court finds no illegality and irregularity in the order passed by the Court below. Accordingly, this Criminal Appeal is dismissed.

26.04.2023

NCC : Yes/No
Index : Yes/No
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To

- 1.The Fast Track Court(Magistrate Level), Srivilliputhur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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