



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.246 of 2013

Ganesan

... Appellant/Complainant

Vs.

Elangovan

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to set aside the judgment in STC.No.325 of 2011 passed by the Fast Track Judicial Magistrate, Thanjavur, dated 07.06.2013.

For Appellant

: Mr.M.S.Sureshkumar

JUDGMENT

This appeal has been preferred as against the order passed in S.T.C.No.325 of 2011 on the file of the learned Judicial Magistrate(Fast Track Court), Thanjavur, dated 07.06.2013, thereby dismissing the complaint and acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.



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

3. The appellant lodged a complaint alleging that on 03.01.2010 the respondent borrowed a sum of Rs.40,000/- from the appellant. Again on 04.02.2010, he borrowed another sum of Rs.40,000/-. In order to repay the entire amount, the respondent issued cheque for a sum of Rs.80,000/-, which was presented for collection and the same was returned dishonored for the reason 'Insufficient Funds'. After causing statutory notice, the appellant lodged a complainant.

4. On the side of the appellant, he himself was examined P.W.1 and marked Ex.P.1 to Ex.P.7. In order to rebut the presumption, the respondent had examined D.W.1 and D.W.2 and marked Ex.R.1 and Ex.R.2.

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



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6. The appellant averred that the respondent categorically admitted his signature and issuance of cheque. Therefore, the appellant had discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. The statutory presumption under Section 139 of Negotiable Instruments Act has to be drawn in favour of the appellant. Even then, the respondent failed to rebut the same and mechanically the trial Court acquitted him for the offence under Section 138 of Negotiable Instruments Act.

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

8. On perusal of the records revealed that on receipt of statutory notice, the respondent caused reply notice, which was marked as Ex.P.5. The appellant is an agent of one Selvi Natchiyar, who is the money lender. In fact, the respondent borrowed loan from the said Selvi Natchiyar and repaid the same. At the time of borrowal of loan, the alleged cheque along with other cheques were issued as security purpose. Infact, there are two unfilled promissory notes were also handed over to the said Selvi Nachiyar as security. After



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repaying the entire amount, the said Selvi Natchiyar failed to return the cheque, which was misused by the appellant and lodged the present complaint for offence under Section 138 of Negotiable Instruments Act. Further, P.W.1 categorically admitted that he never received any cheque from the respondent. In fact, he received cheque from the respondent for the sum of Rs.5,000/- which was marked as Ex.R.2. Therefore, the respondent raised reasonable defence in order to rebut the presumption. Therefore, the cheque was not issued for any legally enforceable debt. Hence, the trial Court rightly dismissed the complaint lodged by the appellant and this Court does not find any illegality or infirmity in the order passed by the trial Court. Accordingly, the Criminal Appeal stands dismissed.

26.04.2023

NCC : Yes/No
Index : Yes/No
rmk

To

The Judicial Magistrate,
Fast Track Court,
Thanjavur.



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G.K.ILANTHIRAIYAN, J.

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CRL.A.(MD).No.243 of 2013

26.04.2023