



Crl.A.(MD)No.293 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.293 of 2013

R.Muruganantham

... Appellant/Complainant

vs.

S.Sakthivel

... Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378 of Cr.P.C., to call for the records pertaining to the Judgment in C.C.No.320 of 2011 on the file of the Fast Track Court at Magisterial Level, Thanjavur, dated 12.08.2013 and set aside the same.

For Appellant : Mr.T.A.Ebenezer

For Respondent : Mr.C.Arul Vadivel @ Sekar
Senior Counsel
for Mr.J.Selvam

JUDGMENT

This Criminal Appeal is directed against the order passed in C.C.No.320 of 2011, on the file of the Fast Track Court at Magisterial Level, Thanjavur, dated 12.08.2013 and thereby, acquitting the



respondent for the offence under Section 138 of the N.I Act.

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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 crux of the complaint is that the respondent borrowed a sum of Rs.5,00,000/- from the appellant as hand loan to meet out his family expenses. He also promised to repay the same within a period of one month. However, he did not repay the same and as such, after several demands, the respondent issued a cheque for a sum of Rs.5,00,000/-. When the cheque was presented for collection, the same was returned as dishonored for the reason “funds insufficient”. After causing statutory notice, he lodged a complaint.

4.On the side of the appellant, he had examined himself as P.W.1 and exhibited 7 documents as Ex.P.1 to Ex.P.7. On the side of the respondent, he had examined himself as D.W.1 and exhibited 1 document as Ex.R.1.

5.On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and acquitted him for the offence under



Section 138 of the N.I. Act. Aggrieved by the same, the present appeal has been filed.

6.The learned counsel for the appellant submitted that the respondent admitted his signature and issued a cheque and it was marked as Ex.P.1. Therefore, there is a presumption that Ex.P.1 was issued for legally enforceable debt. The respondent also failed to rebut the presumption in accordance with law. The evidence of the respondent and the documents which are produced by the respondent never created any reasonable doubt over the existence of legally enforceable debt. Unfortunately, the trial Court, without considering the above, acquitted the respondent. Hence, he prayed for allowing this appeal.

7.A perusal of the records revealed that though the respondent admitted Ex.P.1, the specific case of the respondent is that the appellant categorically admitted that an Omni Van was purchased in his name from Pillai and it was borrowed by availing loan from Mahendra Finance. He lost his original key. It is also corroborated from the evidence of P.W.1. Though the said Van was purchased in the name of the appellant, the respondent had issued 20 cheque leaves including Ex.P.1 and Ex.P.3 towards payment of EMI for the said car loan. Therefore, those



documents were issued for EMI purpose and not for any legally enforceable debt in favour of the appellant herein. That part, after receipt of the statutory notice, the respondent issued a reply notice, which was marked as Ex.R.1. Therefore, the respondent categorically rebutted the presumption arising out of the provision under Section 138 of the N.I. Act. Hence, the appellant has failed to prove his case. The respondent proved that the cheques were not issued for any legally enforceable debt or liability, by examining himself and marking Ex.R.1. He shifted the burden on the appellant to prove his case. In fact, the respondent stopped the payment and as such, the Court below has rightly dismissed the complaint for the reason that the appellant failed to prove that Ex.P.1 to Ex.P.3 were not supported by any consideration. Hence, this Court finds no infirmity or illegality in the order passed by the Court below and the appeal is liable to be dismissed. Accordingly, it is dismissed.

30.03.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No



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To

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- 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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