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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.336 of 2013

P.Sudha Purusotham

... Appellant/Complainant

Vs.

Hakeema

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the entire records and set aside the judgment passed by the learned Judicial Magistrate (Fast Track Court at Magisterial Level), Srivilliputhur, Virudhunagar District, in S.T.C.No.3 of 2013 vide his judgment dated 12.07.2013 and consequently convict the accused by imposing maximum punishment provided under the law.

For Appellant : Mr.R.Anand

For Respondent : No appearance



JUDGMENT

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This appeal has been filed as against the order of acquittal passed in S.T.C.No.3 of 2013 on the file of the learned Judicial Magistrate (Fast Track Court at Magisterial Level), Srivilliputhur, Virudhunagar District, dated 12.07.2013.

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

3. The crux of the complaint is that on 09.03.2012, due to urgent needs, the respondent borrowed a sum of Rs.7,50,000/- from the appellant. In order to repay the same, the respondent issued cheque. On presentation of the same, it was returned dishonored for the reason 'Insufficient Funds'. After causing statutory notice, the appellant lodged complaint.

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



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5. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence under Section 138 of Negotiable Instruments Act and acquitted him. Aggrieved by the same, the present appeal has been filed.

6. The learned counsel for the appellant submitted that the respondent categorically admitted his signature and also issuance of cheque. Therefore, the appellant had discharged her initial burden as contemplated under Section 138 of Negotiable Instruments Act. The respondent failed to rebut the presumption arising under Sections 118 and 139 of Negotiable Instruments Act.

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

8. On perusal of records revealed that though the respondent admitted her signature, which was found in the cheque, she denied that the said cheque was not issued for any legally enforceable debt, since she never borrowed any amount as alleged in the complaint. In order to rebut the presumption, she had examined D.W.1 to D.W.4. She had issued the



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said cheques in order to join her as a partner in the Sivakasi Steels Corporation. The appellant was also the partner in the said concern and there was a dispute between them. Therefore, the appellant had taken the cheque, which was issued by the respondent and initiated proceedings under Section 138 of Negotiable Instruments Act as if she had borrowed loan. Except the cheque, the appellant failed to prove the loan transaction between the appellant and the respondent herein. Therefore, the respondent reasonably rebutted the presumption and as such, the trial Court rightly dismissed the complaint and acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. Hence, this Court finds no infirmity or illegality in the order passed by the trial Court. Accordingly, this Criminal Appeal is dismissed.

26.04.2023

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NCC : Yes/No
Index : Yes/No
rmk



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To

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- 1.The Judicial Magistrate
(Fast Track Court at Magisterial Level),
Srivilliputhur, Virudhunagar District
- 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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