



WEB COPY

Crl.A.(MD)No.341 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.341 of 2013

Senthilvel Murugan
Represented by his Power Agent
Mariammal

... Appellant/Complainant

vs.

Andi

... Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378(4) of Cr.P.C., to call for the records relating to the judgment dated 04.10.2013 made in S.T.C.No.3592 of 2011 on the file of the learned Judicial Magistrate Court, Rajapalayam and set aside the same as illegal.

For Appellant : Mr.J.Karthikeyan

For Respondent : Mr.T.Pon Ram Kumar

JUDGMENT

This Criminal Appeal is directed against the order passed in S.T.C.No.3592 of 2011, on the file of the learned Judicial Magistrate Court, Rajapalayam, dated 04.10.2013.



WEB COPY

2.The appellant is the complainant and the respondent is the accused. The complaint was lodged by the appellant for the offence under Section 138 of N.I Act.

3.The case of the appellant is that the respondent borrowed a sum of Rs.5,00,000/- on 03.02.2007 and also agreed to pay interest at 1% per month for Rs.100/-. Thereafter, he paid interest till December 2007 and in order to repay the principal amount, he issued a cheque for a sum of Rs.5,00,000/-. When the said cheque was presented for collection, the same was dishonored for the reason “insufficient funds”. After causing statutory notice, the appellant filed a complaint under Section 138 of N.I Act.

4.On the side of the appellant, he had examined P.W.1 and P.W.2 and exhibited 7 documents as Ex.P.1 to Ex.P.7. On the side of the accused, no one was examined and exhibited 3 documents as Ex.D.1 to Ex.D.3.

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



WEB COPY

6.The learned counsel for the appellant would submit that he had no instructions from the appellant. The appeal is of the year 2013 and as such, this Court is entitled to pass orders on merits on going through the records. The appellant raised grounds that the respondent after receipt of statutory notice, has failed to reply and as such, the respondent has failed to rebut the presumption as contemplated under Section 139 of N.I. Act. That apart, the respondent has categorically admitted the signature and issuance of cheque and as such, the appellant discharged his initial burden in order to prove the offence under Section 138 of N.I Act.

7.According to the appellant, the respondent borrowed a sum of Rs.5,00,000/- and in order to repay the said amount, he issued a cheque which was marked as Ex.P.1. It was not honoured and as such, the appellant caused statutory notice, which was marked as Ex.P.4 and Ex.P.

5. The specific case of the respondent is that the appellant had no source of income to lend such a huge amount of Rs.5,00,000/-. It is settled law that when the person while lending loan, that too, without receiving any documents as security, he has to prove his financial capacity in order to lend huge amount as loan. In the case on hand, admittedly, the appellant while allegedly lending loan to the tune of Rs.5,00,000/-, he did not receive any documents from the respondent as security. That apart, the



case of the respondent is that he is one of the subscribers of the chit conducted by the appellant herein. While conducting the chit, the alleged cheque was given as security. After repayment of entire chit amount, the cheque was misused by the appellant. Admittedly, the appellant as well as the respondent are working as Teachers and also close relatives. Therefore, the respondent categorically rebutted the presumption and the burden of proof shifted on the shoulder of the appellant. However, the appellant has failed to prove his case and as such, the Court below has rightly acquitted the respondent for the offence under Section 138 of N.I. Act and 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

To

1.The Judicial Magistrate Court, Rajapalayam.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



Crl.A.(MD)No.341 of 2013

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.341 of 2013

G.K.ILANTHIRAIYAN , J.

sjj

Crl.A.(MD)No.341 of 2013

30.03.2023