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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.366 of 2013

A.Tamilraj ... Petitioner/Complainant

Vs.

Mercy Rani ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records from the lower Court and to set aside the order made in C.C.No.30 of 2013 dated 25.09.2013 on the file of the Fast Track Judicial Magistrate, Srivilliputhur.

For Appellant : Mr.M.Thirunavukkarasu
For Respondent : Mr.M.Jothibasu

JUDGMENT

This appeal has been filed as against the order passed in C.C.No.30 of 2013 dated 25.09.2013 on the file of the learned Judicial Magistrate (Fast Track Court), Srivilliputhur, thereby dismissed the complaint lodged by the appellant and acquitted the respondent for the offence under Section 138 of Negotiable Instruments Act.



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

3. The crux of the complaint is that on 13.01.2013 a sum of Rs.3,00,000/- was borrowed by the respondent and agreed to repay the same within one month. In order to repay the said amount, on 14.02.2023 the respondent issued cheque for a sum of Rs.3,00,000/-, which was presented for collection and the same 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 as P.W. 1 and also had examined P.W. 2 and P.W.3 and marked Ex.P.1 to Ex.P.8. On the side of the accused, one witness was examined as D.W.1 and marked Ex.D.1 to Ex.D.4.

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



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6. The learned counsel for the appellant submitted that the respondent categorically admitted her signature and also issuance of cheque. Therefore, the appellant had discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. Though it is rebuttable in nature, the respondent failed to rebut the same by preponderance of probability. Even then, the trial Court, without considering the same, mechanically acquitted the respondent.

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

8. On perusal of the records revealed that the respondent had taken a specific stand that on 22.12.2010 itself, the wife of the appellant lodged a complaint as against the respondent alleging that she cheated 5 sovereigns of jewels and also a sum of Rs.80,000/-. On receipt of the said complaint, the Inspector of Police, Srivilliputhur Police Station registered FIR in Crime No.141 of 2012 for the offence under Section 406 of IPC on 09.03.2012. That apart, the husband of the respondent was already facing the proceedings initiated under



Section 138 of Negotiable Instruments Act in STC.No.139 of 2011, in which, he was convicted and sentenced by order dated 28.09.2012.

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These facts were categorically admitted by the appellant. While it was being so, on 13.01.2013, the appellant would not have lent a sum of Rs.3,00,000/- as loan to the respondent, that too without receiving any documents for security. Further specific stand of the respondent was that she never borrowed any amount and the cheque was not issued for any legally enforceable debt. Therefore, the respondent by way of preponderance of probability rebutted the presumption under Section 139 of the Negotiable Instruments Act. Hence, the trial Court rightly dismissed the complaint and this Court finds no illegality or infirmity in the order passed by the trial Court. Accordingly, this Criminal Appeal is dismissed.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
rmk



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To

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- 1.The Judicial Magistrate,
Fast Track Court,
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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