WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.390 of 2013

S.Velmurugan ... Appellant

Vs.

1.M/S Sri Lakshmi Cards through its
Partner N.Shanmugarajan
S/o.Natarajan
17, Velayutham Road
Sivakasi,
Virudhunagar District.

2.S.Shanmugarajan

3.K.P.Mariappan

4.T.B.Selvarajan

5.K.Nagarajan ... Respondents

PRAYER : Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to allow the appeal by setting aside the Judgment of acquittal passed by the learned Judicial Magistrate, Sivakasi made in STC.No.5799 of 2008 dated 11.09.2013.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellant : Mr.M.Ashok Kumar

For R2 to R4 : Mrs.Lakshmi Gopinathan,
for M/S.Polex Legal Solutions

JUDGMENT

This Criminal Appeal has been filed as against the order of acquittal passed in STC.No.5799 of 2008 dated 11.09.2013 on the file of the learned Judicial Magistrate, Sivakasi, thereby dismissed the complaint and acquitted the respondents for the offence under Section 138 of the Negotiable Instruments Act.

2.The appellant is the complainant and the respondents are accused in the proceedings initiated under Section 138 of the Negotiable Instruments Act. The crux of the complaint is that on 20.03.2006, in order to develop the business and also settle small credits, the respondents borrowed a sum of Rs.1,20,000/-. They also agreed to pay interest at the rate of Rs.150/- per Rs.100/- per month. Thereafter, the respondents failed to pay any interest. On repeated demand, the

https://www.mhc.tn.gov.in/judis

WEB COPY

respondents issued four cheques and all the four cheques were presented for collection and the same was returned dishonoured for the reason that "funds insufficient". After causing statutory notice, the appellant lodged the complaint.

3.On the side of the appellant, they examined P.W.1 and marked Ex.P.1 to Ex.P.13. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found the respondents herein not guilty and dismissed the complaint. Aggrieved by the same, the appellant preferred the present appeal.

4.The learned counsel appearing for the appellant would submit that the respondents categorically admitted the signature found in the cheque and also issuance of the cheques. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of NI Act. The respondents also did not examined anybody in order to rebut the presumption and also no documents were marked. Though the some of the respondents claimed that they were retired from the partnership

https://www.mhc.tn.gov.in/judis

WEB COPY

firm, they have failed to prove the same before the trial Court. Only defence taken by the respondents is that they used to purchase material from the appellant on credit basis and therefore, the alleged cheques were given as security purpose. However, the appellant failed to return the same and misused them. However, the respondents failed to produce any material evidence in order to sustain the same. Therefore, the respondents failed to rebut the presumption as contemplated under Section 139 of NI Act. Even then, the trial Court mechanically acquitted the respondents. Hence, the learned counsel for the appellant prayed for conviction.

5.The learned counsel appearing for the respondents would submit that there were material contradiction in all four cheques, which were marked as Ex.P.1 to Ex.P.4. All the cheques were issued on 20.10.2008 or 23.10.2008, for a sum of Rs.15,000/-, Rs.20,000/-, Rs.75,000/- and Rs. 23,052/-. All the cheques were received by the appellant for the purpose of security purpose while purchasing material. After repayment of entire amount, the appellant failed to return the same. Thereafter, the cheques were misused by the appellant and initiated proceeding under Section

https://www.mhc.tn.gov.in/judis

WEB COPY

138 of NI Act.

6.Heard both sides and perused the materials available in the record.

7.On perusal of documents revealed that in all the four cheques, there were material alteration. The cheques were issued in the year 2006. however, the cheques were corrected as if they were issued in the year 2008. It is also seen that there was business transaction between the appellant and the respondent. Even before five years the business transactions were over between them and when they were in the business transaction, the cheques were given as security purpose. Even after completion of business transaction, the cheques were not returned to the respondents. There were material alteration in the cheques and their stand was very clear that the cheques were not issued any legal enforcement. That apart, fourth and fifth respondents were issued reply notice for statutory notice and their specific stand is that at the time of issuance of cheques, they were not partners of the first respondent company. Therefore, the respondents rebutted the presumption by preponderance of probabilities.

https://www.mhc.tn.gov.in/judis

WEB COPY

G.K.ILANTHIRAIYAN,J.

gns

8.In view of the above, the trial Court rightly acquitted the respondents and this Court finds no infirmity or illegality 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 / No
gns

To

The Judicial Magistrate,
Sivakasi.

Crl.A.(MD)No.390 of 2013

https://www.mhc.tn.gov.in/judis