



Crl.A(MD)No.44 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.44 of 2011

Rajasekar

... Appellant/Complainant

vs.

T.Michael Augustin

...Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378 Cr.P.C., as against the Judgment passed by the learned Judicial Magistrate Court, Nanguneri on 03.07.2008 in C.C.No.129 of 2007, thereby acquitted the respondent/accused giving benefit of doubt for an offence under Section 138 of N.I Act.

For Appellant : Mr.S.Mani

For Respondent : Mr.G.Prabhu Rajadurai

JUDGMENT

This Criminal Appeal is filed against the order of acquittal passed in C.C.No.129 of 2007, on the file of the learned Judicial Magistrate Court, Nanguneri, dated 03.07.2008.



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2.The appellant is the complainant and the respondent is the accused. The appellant had lodged a complaint alleging that the respondent borrowed a sum of Rs.7,00,000/- in the year 2005. When the appellant asked to repay the said amount, the respondent had issued cheque for the said sum on 28.02.2007. The said cheque was presented for collection and the same was returned as dishonored for the reason that “insufficient funds”. After causing statutory notice, he lodged a complaint.

3.In order to prove his case, he examined himself as P.W.1 and exhibited 3 documents as Ex.P.1 to Ex.P.3. On the side of the respondent, he examined himself as D.W.1 and exhibited 21 documents as Ex.D.1 to Ex.D.21.

4.On perusal of the oral and documentary evidence, the trial Court found that the respondent is not guilty and acquitted him for the offence under Section 138 of N.I Act. Challenging the said order of acquittal, the appellant has filed the present appeal.

5.The appellant has raised grounds that the trial Court had acquitted the respondent only for the reason that the appellant and the



respondent had no acquaintance and the appellant has also failed to prove his friendship with the respondent. The appellant has also failed to get any document in order to secure the loan of Rs.7,00,000/-. Therefore, no prudent man will lend such a huge amount as a loan without any security. The Court below also noted that the appellant had failed to prove his case and the respondent rebutted the presumption arising out of Section 139 of N.I Act.

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

7.On perusal of the records revealed that the appellant lodged a complaint alleging that the respondent borrowed a sum of Rs.7,00,000/- as loan and in order to repay the same, he had issued a cheque. The said cheque was presented for collection and the same was returned as dishonored for the reason that “funds insufficient”. After receipt of the statutory notice, the respondent issued a reply notice, which was marked as Ex.D.4. It revealed that the respondent categorically denied the borrowal from the appellant. In fact, he did not even know about the appellant. Since he is a stranger to him, he had not insisted for borrowal of such huge amount. Therefore, the respondent admitted his signature



and also issuance of cheque. Therefore, Ex.D.9 was never issued by him for any legally enforceable debt in favour of the appellant herein. Further, it is the case of the respondent that he had money transaction with one Peter to whom, he had given unfilled cheque, which was used by him through the appellant herein. Even then, the appellant had failed to examine the said Peter in order to disprove the fact that the respondent created a doubt and the case of the respondent can be highly probable. The respondent also marked Ex.D.1 to Ex.D.21, which are unfilled stamp papers stands in the name of the respondent. Therefore, he categorically rebutted the presumption arising out of Section 139 of N.I Act. That apart, the appellant stated in the complaint that the respondent borrowed a sum of Rs.7,00,000/- in the year 2005, whereas, he deposed that the respondent borrowed a sum of Rs.7,00,000/- in the year 2007. Therefore, no prudent man would forget the date, month and year of the loan, which was advanced by him. Therefore, on the whole, this Court finds that the trial Court 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 of acquittal passed by the Court below. Hence, the appeal is liable to be dismissed.



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8. Accordingly, the Criminal Appeal stands dismissed.

05.04.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The Judicial Magistrate Court, Nanguneri.

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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