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Crl.A(MD)No.182 of 2010



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.182 of 2010

Michael Vimal Roksan

... Appellant/Complainant

vs.

T.M.George

...Respondent/Accused (Single)

PRAYER : This Criminal Appeal has been filed under Section 378 Cr.P.C., to set aside the Judgment and Acquittal order passed by the learned Additional District Munsif cum Special Judicial Magistrate, Valliyoor, Tirunelveli District, dated 01.12.2009 in C.C.No.28 of 2006 and consequently convict the accused by imposing maximum punishment provided under the law.

For Appellant : Mr.R.Anand

For Respondent : Mr.P.Andiraj

JUDGMENT

This Criminal Appeal is filed against the order of acquittal passed in C.C.No.28 of 2006, on the file of the learned Additional District Munsif cum Special Judicial Magistrate, Valliyoor, Tirunelveli District , dated 01.12.2009.



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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.50,000/- on 06.09.2003 and assured that he will repay the said amount within a period of one year. On 26.09.2004, when the appellant asked to repay the said amount, the respondent had issued a cheque, dated 01.05.2005 and the same was presented for collection, it was returned as dishonored for the reason that “payment stopped”. After issuance of statutory notice, the appellant had lodged a complaint under Section 138 of the N.I Act.

3.In order to prove his case, he examined himself as P.W.1 and exhibited 7 documents as Ex.P.1 to Ex.P.7. On the side of the respondent, he examined himself as D.W.1 and exhibited 15 documents as Ex.D.1 to Ex.D.15.

4.On perusal of the oral and documentary evidence, the trial Court found 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 learned counsel for the appellant would submit that the respondent admitted his signature and also issuance of cheque.

Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the N.I. Act. The respondent has failed to rebut the presumption in the manner known to law and as such, the trial Court ought to have convicted the respondent for the offence under Section 138 of N.I. Act. Hence, he prayed for allowing this appeal.

6.A perusal of the records revealed that the case of the appellant is that he had lend a sum of Rs.50,000/- to the respondent on 06.09.2003. However, he asked to repay the same only on 26.09.2004, whereas, he deposed that he had deposited a sum of Rs.1,00,000/- with one Paul David. Ex.D.1 is the receipt, which was given by the said Paul David. When the appellant was asked to return the same, the said Paul David had executed a pro-note and the same was marked as Ex.D.2. Therefore, he had lodged a complaint and the same was marked as Ex.D.3. The case of the respondent is that as per the complaint, that the appellant borrowed a sum of Rs.1,00,000/- and he had dropped the repayment of the said amount in favour of the respondent, dated 23.06.2004, which was marked as Ex.D.3. While that being so, the appellant had lend money and the respondent also had issued the alleged cheque. Therefore, the said



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cheque was not issued for legally enforceable debt and the Court below has rightly acquitted the respondent.

7.In view of the above, this Court finds no infirmity or illegality in the order of acquittal passed by the Court below. Hence, the Criminal Appeal stands dismissed.

05.04.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1.The Additional District Munsif cum Special Judicial Magistrate,
Valliyoor, Tirunelveli District.

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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G.K.ILANTHIRAIYAN , J.
sji

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