BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.110 of 2010

M.Ramamurthy ... Appellant/Petitioner

Vs.

Mohamed Thaiyuf ... Respondent/Respondent

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records and set aside the order of acquittal in S.T.C.No.225 of 2007, dated 22.12.2009 passed by the learned District Munsif, Pudukkottai and convict the accused in accordance with law.

For Appellant : Mr.R.Murali

JUDGMENT

This appeal has been filed as against the order of acquittal passed in S.T.C.No.225 of 2007, dated 22.12.2009, on the file of the learned District Munsif, Pudukkottai.

2.The appellant is the complainant and the respondent is an accused in the complaint lodged for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the respondent borrowed a loan for a sum of Rs.5,00,000/- in order to develop his business from the appellant on 16.12.2004. On the same date, he issued a post-dated cheque for the said sum. The said cheque was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, he lodged the complaint.

4. On the side of the appellant, he had examined P.W.1 and P.W.2 and marked Exs.P.1 to P.11 and on the side of the respondent, no one was examined and no documents were marked.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted him and dismissed the complaint. Aggrieved by the same, the present Appeal.

6.The learned counsel appearing for the appellant would submit that the respondent lodged the complaint as against the appellant alleging that the appellant charged exorbitant interest and also threatened him with dire consequences. On the said complaint, the Inspector of Police, Ganeshnagar Police Station registered the FIR in Crime No.759 of 2005 for the offences under Sections 452 and 506(i) of I.P.C and Sections 4 and 9 of the Tamil Nadu Exorbitant Interest Act, 2003. After completion of the investigation, filed a final report and the same has been taken cognizance in C.C.No.330 of 2007 on the file of the learned Judicial Magistrate, Pudukottai. In that case, the respondent categorically admitted that he signed in the cheque and issued it in favour of the appellant herein. That apart, the said case was ended in acquittal. The respondent categorically admitted his signature and issuance of the cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. However, the respondent failed to rebut the presumption and as such, the respondent ought to have been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act. The trial Court also acquitted the appellant on the ground that the cheque was issued in favour of the partnership firm and as such the appellant ought to have issued notice to the partnership firm and also implead the partnership firm as an accused along with other partners. Therefore, non impleadment of the partnership firm as an accused is fatal to the case of the appellant. In spite of the cheque being drawn in favour of the partnership firm, it is not mandatory on the part of the appellant to implead the partnership firm as a party to the criminal proceedings.

7.The learned counsel appearing for the appellant also relied upon the Judgment of this Court in ***Crl.A(MD)No.523 of 2008, date 09.06.2010 (Ramaraju Vs. Mohammed Thaiyuf)***, in which, this Court referred the Judgment of the Honourable Supreme Court of India that even if the company is not prosecuted for one or the other reason the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged under Section 141 of the Negotiable Instruments Act. Therefore, he prayed for convicting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

8.Heard the learned counsel appearing for the appellant and perused the materials available on record.

9.Admittedly, the alleged cheque which was marked as Ex.P1 was issued for 'Tyba Granites' and is a partnership firm. It was signed by the managing partner on behalf of 'Tyba Granites'. Therefore, it was not issued in the personal capacity of the respondent herein. When the cheque was issued on behalf of the partnership firm, the appellant ought to have implead the partnership firm as an accused along with other partners. That apart, the appellant failed to state in the complaint that the respondent is the managing partner of 'Tyba Granites' partnership firm, and he actively participated in the day-to-day affairs of the partnership firm. It is necessary to specifically aver in the complaint that at the time of the offence committed, the present accused was in charge of the business and has to make any complaint. Without the said averments, the requirement under Section 141 of the Negotiable Instruments Act cannot be said to be satisfied. That apart, there is no averment in the complaint as to how and in what manner that respondent was responsible for the contact of the business partnership firm or otherwise responsible to it in regard to its functioning. The appellant failed to state how the respondent is responsible for dishonour of the cheque which was issued by the partnership firm.

10.That apart, the complainant failed to prove that the cheque was issued for any legally enforceable debt, since the appellant is being the Financier and doing money lending business. In fact, the respondent lodged a complaint as against the appellant for claiming exorbitant interest and the same was registered in Crime No.759 of 2005 for the offences under Sections 452 and 506(i) of I.P.C and Sections 4 and 9 of the Tamil Nadu Exorbitant Interest Act, 2003 and the same has been taken cognizance in C.C.No.330 of 2007 on the file of the learned Judicial Magistrate, Pudukottai. Though it was ended in acquittal, it revealed that the appellant doing a money lending business. When it being so, no moneylender lends money without any security purpose. In the case on hand, except the cheque which was marked as Ex.P.1, no other document was received by the appellant at the time of lending loan to the tune of Rs.5,00,000/-. Therefore, the trial Court rightly dismissed the complaint and acquitted the respondent. Hence, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, this Criminal Appeal is dismissed.

12.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

The District Munsif,
Pudukkottai.

G.K.ILANTHIRAIYAN, J.

ps

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