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CRL.A.(MD).No.113 of 2010



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.113 of 2010

N.Sundarrajan

... Appellant/Complainant

Vs.

G.Saravana Kumar

... Respondent/Sole Accused

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C to set aside the Judgment and order of acquittal passed by the learned Judicial Magistrate No.I, Sattur in C.C.No.39 of 2006, dated 19.01.2009 and convict the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

For Appellant

: Mr.M.Thikvijayapandian

For Respondent

: Mr.M.Prabhu



JUDGMENT

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This appeal has been preferred as against the order of acquittal passed in C.C.No.39 of 2006, dated 19.01.2009 on the file of the learned Judicial Magistrate No.I, Sattur.

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 on 01.04.2004, the respondent borrowed a sum of Rs.1,00,000/- and on the same date, he issued a post-dated cheque. On instructions, it 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 himself was examined P.W.1 and marked Exs.P.1 to P.5 and on the side of the respondent, he had examined D.W.1 to D.W.3 and marked Ex.D.1 to Ex.D.5.



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 admitted his signature and issuance of the cheque. Therefore, the appellant has discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. The respondent failed to rebut the presumption and as such, he has to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act. In fact, the respondent duly received the statutory notice, and he did not choose to reply in order to rebut the presumption. Therefore, it can be presumed that the cheque was issued for legally enforceable debt. In order to substantiate his contention, he relied also upon the Judgment of the Honourable Supreme Court of India in ***Crl.A.Nos.230-231 of 2019 in the case of Bir Singh Vs. Mukesh Kumar***, in which, the Honourable Supreme Court of India held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118 thereof, the Court had to presume that the cheque had been issued for discharging a debt or



liability. The said presumption was rebuttable and could be rebutted by the accused by proving the contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. Therefore, he prayed for convicting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

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

8. On perusal of the records revealed that the appellant and the respondent were doing contract business. Both agreed to share the profit. The respondent was allotted a sub contract in which the profit was to be shared by the appellant and the respondent 60:40 share. During that business transaction, at the instance of the appellant, the account was opened in the name of the respondent. Three cheque leaves were received by the appellant for security purposes. After a period of three years, there was a dispute with regard to sharing the profits. Therefore, the appellant lodged a complaint. On the said complaint, an enquiry was conducted by the Sub-Inspector of Police, Sattur Town Police Station. He conducted enquiry and on enquiry, both agreed for the



sum of Rs.3,00,000/-. During the enquiry, under coercion, two cheque leaves were obtained from the respondent. From the said cheques, one cheque was presented for collection for a sum of Rs. 1,00,000/-. Therefore, the alleged cheque was not issued for any legally enforceable debt. Hence, the respondent categorically rebutted the presumption by a preponderance of probabilities. Hence, the trial Court rightly dismissed the complaint and acquitted the respondent. Therefore, the Judgment cited by the learned counsel appearing for the appellant is not helpful to the case on hand. 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 Judicial Magistrate No.I,
Sattur.



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