



CrI.A.No.117 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

CrI.A.No.117 of 2017

V.Deivasigamani

... Appellant

Vs.

Jayalakshmi

... Respondent

Prayer : Criminal Appeal filed under Section 378 (4) of Criminal Procedure Code, to set aside the Judgment and orders, dated 09.09.2015 passed in S.T.C.No.543/2013 by the Judicial Magistrate (Fast Track Court No.I), Erode.

For Appellant : Mr.K.Suresh

JUDGMENT

Challenging the Judgment and orders, dated 09.09.2015 passed in S.T.C.No.543/2013 by the learned Judicial Magistrate (Fast Track Court No.I), Erode, the present Criminal Appeal is filed by the complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the appellant / complainant in a nutshell is as



Crl.A.No.117 of 2017

follows:

WEB COPY

- i. The Respondent / accused has to repay a sum of Rs.98,000/- to one Selvi.
- ii. In order to discharge the said loan amount, the accused handed over the following three cheques (Ex.P1 series) drawn on Tamilnadu Mercantile Bank Ltd., Erode Branch to the said Selvi:

<i>S.No.</i>	<i>Date</i>	<i>Cheque No.</i>	<i>Amount</i>
1	10.07.2012	883495	Rs.33,000/-
2	18.07.2012	883496	Rs.33,000/-
3	26.07.2012	883497	Rs.32,000/-

- iii. Selvi in turn assigned the cheques in favour of the complainant.
- iv. When the complainant presented the Cheques for collection on 05.10.2012, 09.10.2012 and 12.10.2012 through his bankers viz., City Union Bank, Erode Branch, the same were returned for the reason 'insufficient funds' as is evidenced from the Cheque Return Memos (Ex.P2 series).
- v. Thereafter, the complainant issued a statutory notice (Ex.P6) to the accused on 06.11.2012, demanding her to pay the amount due



Crl.A.No.117 of 2017

under the cheques (Ex.P1 Series) within fifteen days from the date of receipt of the notice.

- vi. The accused sent a reply notice on 16.11.2012 (Ex.P3) which according to the complainant contained false allegations.
- vii. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.543/2013 before the Judicial Magistrate (Fast Track Court No.I), Erode.
- viii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.
- ix. On the appearance of the accused, the copies of records were furnished to her under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since she pleaded not guilty, the case was posted for trial.
- x. In order to bring home the guilt of the accused, the complainant examined himself and marked Ex.P1 to Ex.P6.



Crl.A.No.117 of 2017

WEB COPY

- xi. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence. She examined one witness and marked her bank statement for the period from 01.04.2012 to 31.12.2012 (Ex.D1).
- xii. The learned trial court judge after analysing the oral and documentary evidence on record, found the accused not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted her under Section 255 (1) Cr.P.C.,
- xiii. Aggrieved over the same, the present appeal is filed by the complainant

4. Heard Mr.K.Suresh, learned counsel for the appellant.

5. The notice sent to the address of the respondent / accused returned with the postal endorsement that there is no such addressee.

6. In the instant case, the accused had not denied her signatures on the cheques (Ex.P1 series). Once the signature is admitted, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act,



Crl.A.No.117 of 2017

unless the contrary is proved.

WEB COPY

7. However, in the instant case, the accused had stated that she had not handed over the cheques (Ex.P1 series) to the complainant. The complainant also in his evidence had stated that the cheques were assigned to him by one Selvi. A perusal of the cheques clearly shows that except the signature of one Selvi on the reverse of the cheques, no endorsements were found for assignment of the cheques in favour of the complainant.

8. It is settled law that mere signature of the drawee on the reverse of the cheque without any further details, is not sufficient to constitute proper endorsement. Therefore, the complainant cannot be considered as the holder of the cheques or holder in due course, so as to maintain a private complainant under Section 200 Cr.P.C., There is no Privity of contract between the complainant and the accused and on this ground alone, the present case fails. A perusal of the records further shows that the complainant had not also issued the statutory notice



Crl.A.No.117 of 2017

(Ex.P6) dated 06.11.2012, within thirty days as contemplated under Section 138 of the Negotiable Instruments Act for one of the cheques (Ex.P1 series).

9. In the facts and circumstances, the order of acquittal passed by the trial Court is perfectly in order.

10. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 09.09.2015 in S.T.C.No.543/2013 passed by the Judicial Magistrate / Fast Track Court No.I, Erode, is confirmed.

27.06.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

To

1. The Judicial Magistrate / Fast Track Court No.I, Erode.
2. The Section Officer,
VR Section,
Madras High Court,

Page 6 of 8



CrI.A.No.117 of 2017

R.HEMALATHA, J.

vum



WEB COPY



Crl.A.No.117 of 2017

Crl.A.No.117 of 2017

27.06.2024