



Crl.A.No.456 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

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

Crl.A.No.456 of 2017

Madhaiyan

... Appellant

Vs.

A.Kaliappan

... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders, dated 18.10.2016 passed in S.T.C.No.90/2013 by the Judicial Magistrate, Fast Track Court, Dharmapuri.

For Appellant : Mr.V.Sakkarapani

For Respondent : Mr.M.Karthik

JUDGMENT

Challenging the order of acquittal, dated 18.10.2016 passed in S.T.C.No.90/2013 by the learned Judicial Magistrate, Fast Track Court, Dharmapuri, the present Criminal Appeal is filed by the complainant.



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2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

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

- i. The accused A.Kaliappan agreed to sell his wife's property in Survey No.352, Elakkiyampatti Village in favour of the complainant. An agreement of sale was executed on 17.08.2012 and the accused received a sum of Rs.18,00,000/- towards advance from the complainant.
- ii. Subsequently, the sale agreement was cancelled and the accused repaid a sum of Rs.14,00,000/-. For the balance amount, he issued a cheque bearing number 095555 dated 21.04.2013 (Ex.P1) for Rs.6,00,000/- drawn on IDBI Bank, Dharmapuri Branch in favour of the complainant.
- iii. When the complainant presented the cheque for collection through his bankers viz., City Union Bank, Dharmapuri branch, it was



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returned for the reason 'payment stopped by the drawer' as is evidenced by the cheque return memo, on 04.07.2013 (Ex.P2).

- iv. Thereafter, the complainant issued a statutory notice, dated 01.08.2013 to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of receipt of the notice.
- v. The accused received the notice on 02.08.2013 as is evidenced by the postal acknowledgement Card (Ex.P4), but did not come forward to make good the payment and did not also issue any reply notice.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court, Dharmapuri 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.90/2013.
- vii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.



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- viii. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.
- ix. The complainant examined himself and marked Ex.P1 to Ex.P5.
- x. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. The accused examined himself and another witnesses and marked Ex.R1 to Ex.R4.
- xi. The learned trial court judge after analysing the oral and documentary evidence on record found the accused not guilty of the offence under Section 138 of Negotiable Instruments Act and acquitted him under Section 255(1) Cr.P.C., vide his judgment and orders dated 18.10.2016, aggrieved over which, the present appeal is filed by the complainant.



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4. Heard Mr.V.Sakkarapani, learned counsel for the appellant and Mr.M.Karthik, learned counsel for the Respondent.

5. It is seen from the Sale Agreement dated 17.08.2012 (Ex.P5) that a sum of Rs.18,00,000/- was paid to the accused by the complainant towards advance. The balance amount to be paid by the accused is only a sum of Rs.4,00,000/- However, the complainant in his complaint had stated that the accused issued the cheque (Ex.P1) for a sum of Rs.6,00,000/-. During the course of cross examination, P.W.1 admitted that the balance amount to be paid by the accused is only Rs.4,00,000/- and after the Police complaint lodged by the accused, he lent another sum of Rs.2,00,000/- to the accused. This contention of P.W.1 does not find place either in the private complaint or in his statutory notice (Ex.P3). Thus the complainant has not come to Court with clean hands and not also clear on the amount payable by the accused. Therefore the order of acquittal passed by the trial Court, cannot be interfered with in this appeal.



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6. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 18.10.2016 in S.T.C.No.90/2013 passed by the Judicial Magistrate, Fast Track Court, Dharmapuri, is confirmed.

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

To

1. The Judicial Magistrate,
Fast Track Court, Dharmapuri.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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R.HEMALATHA, J.

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