



Crl.A.No.745 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

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

Crl.A.No.745 of 2010

Gowardhan ... Appellant

Vs.

Rajasekar ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 21.07.2010 passed in C.C.No.855/2004 by the Judicial Magistrate, Tambaram.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

When the matter is taken up for hearing today, there is no representation for the appellant and the respondent.

2. Challenging the order of acquittal dated 21.07.2010 passed in



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C.C.No.855/2004 by the Judicial Magistrate, Tambaram, the present appeal is filed by the appellant / complainant.

3. 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.

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

4.1. The accused borrowed a sum of Rs.1,00,000/- from the complainant on 11.06.2003 and promised to repay the said amount within a period of one year. However, the accused did not keep up his promise and after much persuasion by the complainant, he issued a cheque (Ex.P1), dated 20.03.2004, bearing number 801371 for a sum of Rs.1,00,000/- drawn on State Bank of India, Thousand Light Branch, Chennai, in favour of the complainant.

4.2. When the complainant presented the cheque for collection



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on 20.03.2004 through his bankers, viz., Indian Bank, Rajakeelpakkam Branch, Chennai, the same was returned for the reason “Insufficient Funds”, as is seen from the cheque Return Memo (Ex.P2) dated 22.03.2004 and Debit Advice (Ex.P3).

4.3. Thereafter, the complainant issued a statutory notice dated 07.04.2004 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque within fifteen days from the date of receipt of the notice.

4.4. The accused received the statutory notice as is evidenced by the postal acknowledgement card (Ex.P5), dated 12.04.2004 but did not send any reply. He did not also come forward to make good the payment.

4.5. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Tambaram, under Section 200 Cr.P.C. against the respondent / accused for an offence punishable under Section 138 of the



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4.6. The learned Judicial Magistrate, took cognizance of the offence under Section 138 of N.I. Act and issued summons to the accused under Section 204 Cr.P.C.

4.7. 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 he pleaded not guilty, the case was posted for trial.

4.8. The complainant examined himself and one another witness and marked Ex.P1 to Ex.P6.

4.9. 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. He examined himself as DW.1.



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4.10. 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 N.I. Act and acquitted him under Section 255(1) Cr.P.C., vide his judgment and orders dated 21.07.2010.

4.11. Aggrieved over the same, the present appeal is filed by the complainant.

5. There was no representation on behalf of the complainant and though the criminal complaint was filed in the year 2010. The respondent has also not been served with notice by the complainant.

6. At the outset, it may be observed that the accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved. The specific contention of the accused before the Trial Court was that there was a



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business transaction between him and the complainant and the complainant along with his men trespassed into his office and took away signed cheques, one of which was misused by the complainant for the purpose of filing the complaint. The accused who examined himself as D.W.1 was not cross examined by P.W.1 and therefore, his evidence remains unrebutted.

7. It is seen from the records that the complainant is a money lender and he had filed several complaints against various persons before the very same Court under Section 138 of N.I Act. In the circumstances, the complainant should have filed the records maintained by him during the course of business transactions. Thus, the complainant had not adduced any evidence to show that there was a legally enforceable debt on the date of presentation of the cheque (Ex.P1). Therefore, the order of acquittal passed by the trial court judge is perfectly in order and I do not see any reason to interfere with the same.



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8. In the result,

i This Criminal Appeal is dismissed.

ii The judgement and orders dated 21.07.2010 passed in C.C.No.855/2004 by the Judicial Magistrate, Tambaram, is confirmed.

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Index : Yes/No
Internet: Yes/No
Neutral Citation Case: Yes/No
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To

- 1.The Judicial Magistrate,
Tambaram.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Section Officer,
Criminal Section,
Madras High Court, Chennai.

R. HEMALATHA, J.



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