



Crl.A.No.90 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

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

Crl.A.No.90 of 2014

R. Murugan ... Appellant

Vs.

M. Vishvanathan ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973, against the judgement and orders dated 19.12.2013 passed in S.T.C.No.14/2013 by the learned Judicial Magistrate (FTC), Dharmapuri.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal dated 19.12.2013 passed in S.T.C.No.14/2013 by the learned Judicial Magistrate (FTC), Dharmapuri, the present appeal is filed by the appellant / 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 is that he was one of the trustees in Sri Subramaniasiva Memorial Trust. The accused borrowed a sum of Rs.2,50,000/- from him promising to repay the same. He also wanted the complainant to quit the trusteeship and in this regard he agreed to pay a sum of Rs.12,60,000/- to the complainant. Accordingly the accused issued a cheque bearing number 239525 dated 30.10.2012 (Ex.P2) for Rs.15,00,000/- drawn on Indusind Bank, Dharmapuri Branch, in favour of the complainant.

3.1. When the complainant presented the cheque for collection through his bankers, viz., Indian Bank, Papparapatty Branch, the same was returned for the reason “account closed”, as is seen from the cheque Return Memo dated 01.11.2012 (Ex.P3).



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3.2. Thereafter, the complainant issued a statutory notice dated 17.11.2012 (Ex.P5) to the accused calling upon him to pay the amount due under the cheque. Since no amount was forthcoming from the accused, the complainant filed a private complaint before the Judicial Magistrate (Fast Track Court), Dharmapuri, under Section 200 Cr.P.C. against the respondent / accused for an offence punishable under Section 138 of the Negotiable Instruments Act (in short N.I. Act) in S.T.C.No.14/2013.

3.3. 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.

3.4. 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.



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3.5. The complainant examined himself and marked Ex.P1 to Ex.P5.

3.6. 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. One Arun Ananth (D.W.1) was examined on the side of the accused. However, no documentary evidence was adduced.

3.7. 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 N.I. Act and acquitted him under Section 255(1) Cr.P.C., vide her judgment and orders dated 19.12.2013, aggrieved over which, the present appeal is filed by the complainant.

4. No representation for the appellant and the respondent.



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5. In the complaint, the complainant had averred that he lent a sum of Rs.2,50,000/- to the accused as hand loan and that the accused also promised to pay him Rs.12,60,000/- if he quits the trust. The amount of Rs.2,50,000/- was paid by the complainant in his individual capacity and not on behalf of the trust. However, a single cheque (Ex.P2) was allegedly issued by the accused for a sum of Rs.15,00,000/-. It is the specific case of the complainant that an agreement was entered into between him and the accused for payment of Rs.15,00,000/-. However, the said agreement was not produced by the complainant. The accused also on his part denied his liability to pay a sum of Rs.15,00,000/- to the complainant and in the circumstances the complainant has not proved that the accused is due and liable to pay Rs.15,00,000/- to him. Therefore, the accused is found not guilty of the offence punishable under Section 138 of N.I. Act.



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6. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The judgment and orders dated 19.12.2013 passed in S.T.C.No.14/2013 by the learned Judicial Magistrate (Fast Track Court), Dharmapuri, is confirmed.

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Index : yes/no
Speaking /Non speaking Order
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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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