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Crl.A.Nos.174 and 175 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

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

Crl.A.Nos.174 and 175 of 2011

K.Loganathan

... Appellant / Complainant
in both Criminal Appeals

Vs.

M.P.V.Tamilarasan

... Respondent / Accused
in both Criminal Appeals

Common Prayer: Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders dated 15.12.2010 passed in S.T.C.No.1253/2008 and S.T.C.No.1258/2008 by the Judicial Magistrate, Fast track Court at Magisterial Level-II, Coimbatore.

in both Crl.As.

For Appellant : Mr.D.Shivakumaran

For Respondent : No appearance

COMMON JUDGMENT

Challenging the order of acquittal, dated 15.12.2010 passed in S.T.C.No.1253/2008 and S.T.C.No.1258/2008 by the learned Judicial Magistrate No.2, Salem, the present Criminal Appeals are filed by the complainant.



Crl.A.Nos.174 and 175 of 2011

WEB COPY

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 borrowed a sum of Rs.3,00,000/- from the complainant on 01.04.2008 and issued two cheques bearing numbers 608219 and 608223, dated 03.06.2008 and 13.07.2008 (Ex.P1) for a sum of Rs.1,50,000/- and Rs.1,00,000/- respectively, drawn on Punjab National Bank, Salem in favour of the complainant.
- ii. When the cheques were presented for collection by the complainant through his bankers viz., Bank of Baroda, Salem, the same were returned for the reason 'Account closed' as is evidenced by the Cheque Return Memo, dated 05.08.2008 (Ex.P2).
- iii. Thereafter, the complainant issued a statutory notice, dated 07.08.2008 (Ex.P3) to the accused calling upon him to pay the



Crl.A.Nos.174 and 175 of 2011

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

- iv. The accused received the notice as is evidenced by the postal acknowledgement Card (Ex.P5), but did not come forward to make good the payment and did not also issue any reply notice.
- v. Therefore, the complainant filed two private complaints before the Judicial Magistrate No.II, Salem, 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.1253/2008 and S.T.C.No.1258/2008.
- vi. 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.
- vii. 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 complaints was put to the accused and since the accused pleaded not guilty, the cases were posted for trial.



Crl.A.Nos.174 and 175 of 2011

WEB COPY

- viii. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P5. (in both the cases)
- ix. 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 and marked Ex.R1 to Ex.R4. (in both the cases)
- x. 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 judgments and orders dated 15.12.2010, aggrieved over which, the present Criminal appeals are filed by the complainant.

4. Heard Mr.D.Shivakumaran, learned counsel for the appellant. There is no representation for the Respondent.

5. The defence taken by the accused before the trial Court is that during the year 2006, he approached the complainant and requested



Crl.A.Nos.174 and 175 of 2011

WEB COPY

him to get a sum of Rs.1,00,000/- as a hand loan. Accordingly, the complainant introduced the accused to one Transport owner, Harur who obtained two signed blank cheques bearing numbers 608219 and 608223, dated 03.06.2008 and 13.07.2008 (Ex.P1) for a sum of Rs.1,50,000/- and Rs.1,00,000/- respectively, drawn on Punjab National Bank, Salem. According to the accused, he repaid the entire amount to the said fleet owner, but he did not return the cheques back to him. It is further contended by him that the complainant who is a police officer abused his position and obtained a signed promissory note (Ex.R1), two letters (Ex.R3 series) under threat and coercion from him. He also issued a notice (Ex.R2) to the accused.

6. In Ex.R2, the complainant had mentioned his name and also his official position as Deputy Superintendent of Police. The complainant had averred in that letter that though he helped the accused by getting a sum of Rs.1,00,000/-, he had spoilt his reputation by not repaying the said amount. He had further directed the accused to pay a sum of Rs.50,000/- together with interest within 18th of the coming month.



Crl.A.Nos.174 and 175 of 2011

WEB COPY

Section 139 of the Negotiable Instruments Act incorporates a Rule of presumption that the holder of the cheque has received the cheque for discharge of whole or part of debt or liability. The accused has to rebut the presumption. The standard of proof for doing so is that of preponderance of probabilities. Therefore, if the accused is able to raise a probable defence that creates doubts about the existence of a legally enforceable debt or liability, the prosecution would fail.

7. In the instant case, the accused is able to rebut the presumption by adducing Ex.R1 to Ex.R4. On the contrary, the complainant has not proved the foundational facts of the case. The trial Court had in fact analysed the evidence on record and by a well reasoned order dismissed the complaint filed by the complainant. I do not find any reason to interfere with the same.

8. In the result,

- i. This Criminal Appeals are dismissed.



Crl.A.Nos.174 and 175 of 2011

WEB COPY

ii. The judgments and orders dated 15.12.2010 in S.T.C.No.1253/2008 and S.T.C.No.1258/2008 passed by the Judicial Magistrate No.2, Salem, are confirmed.

26.07.2024

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

To

1. The Judicial Magistrate No.2,
Salem.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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Crl.A.Nos.174 and 175 of 2011

R.HEMALATHA, J.

vum

Crl.A.Nos.174 and 175 of 2011