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Crl. Appeal No. 660 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 17.07.2023

Delivered On : 02.08.2024

Coram

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl. Appeal No. 660 of 2016

S.Ganesan .. Appellant/Respondent/Complainant

Vs.

1. S.Krishnan .. First Respondent/Appellant/Accused

2. The State Rep. By
Public Prosecutor,
Erode District .. Second Respondent/second Respondent

Criminal Appeal filed under Section 378 Cr.P.C to set aside the Judgment dated 04.03.2016 passed in C.A.No.115 of 2015 on the file of the learned II Additional District and Sessions Judge, Erode reversing the Judgment dated 06.08.2015 passed in C.C.No.34 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode.



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For Appellant .. Mr.M.Karthik
for Mr.I.C.Vasudevan
For Respondent .. Mr.B.Singaravelu
for Mr.V.S.Kesavan for R-1

JUDGMENT

The learned Counsel for the Appellant submitted that the Appellant is the Complainant before the learned Judicial Magistrate, Fast Track Court No.I, Erode.

2. The case was filed as private Complaint under Section 138 of the Negotiable Instruments Act. The amount in the cheque was Rs.1,80,000/-. The cheque issued by the Respondent herein who was the Accused before the learned Judicial Magistrate, Fast Track Court No.I, Erode, returned with an endorsement “stopped payment”. Therefore, the Complainant herein issued statutory notice. Accused received the notice and sent a reply with false contentions, disputing the amount in the cheque. Therefore, the Complaint was lodged. After issue of summon, the Accused appeared



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before the learned Judicial Magistrate, Fast Track Court No.I, Erode. After appearance of the Accused, Accused was questioned and he denied the offence alleged against him. Therefore, the trial was ordered by the learned Judicial Magistrate, Fast Track Court No.I, Erode.

3. During the course of trial, the Complainant himself examined as P.W-1. The bounced cheque was marked as Ex.P-1. The memo regarding the return of the cheque from the Bank was marked as Ex.P-2. The statutory notice sent by the learned Counsel for the Appellant/Complainant was marked as Ex.P-3. The postal receipt for registration of the Registered Post was marked as Ex.P-4. The Acknowledgement card for proof of receipt of the statutory notice under Ex.P-3 was marked as Ex.P-5. The Respondent herein who is the Accused before the learned Judicial Magistrate, Fast Track Court No.I, Erode had sent a reply with false contentions which is marked as Ex.P-6. The Respondent/Accused examined one Mr.S.Jagan, the Deputy Manager of HDFC Bank as D.W-1, one Mr.M.Venkatesan, the Bank Manager of the HDFC Bank as D.W-2 and one Mr.S.Krishnan as D.W-3. In

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the course of the evidence, the documents were marked as Ex.D-1 to Ex.D-9.

4. On appreciation of evidence, the learned Judicial Magistrate, Fast Track Court No.I, Erode, by Judgment dated 06.08.2015 found the Accused guilty for the offence under Section 138 of the Negotiable Instruments Act and imposed sentence of imprisonment for a period of six months and a fine of Rs.5,000/-.

5. Aggrieved by the same, the Accused had preferred C.A.No.115 of 2015. After hearing the argument of the Appellant as the Respondent, the learned II Additional District and Sessions Judge, Erode by Judgment dated 04.03.2016, had allowed the Appeal and reversed the finding of conviction recorded by the learned Judicial Magistrate, Fast Track Court No.I, Erode. Aggrieved by the same, the Complainant had preferred this Appeal.

6. The learned Counsel for the Appellant/Defacto Complainant invited the attention of this Court to the deposition of D.W-1 and the



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Judgment of the learned Judicial Magistrate, Fast Track Court No.I, Erode and the learned II Additional District and Sessions Judge, Erode and sought for indulgence of this Court to reverse the finding of the acquittal by the learned II Additional District and Sessions Judge, Erode and to confirm the finding of guilt recorded by the learned Judicial Magistrate, Fast Track Court No.I, Erode.

7. The learned Counsel for the Respondent submitted his arguments. The learned Counsel for the Respondent invited the attention of this Court to the Judgment of the learned Judicial Magistrate, Fast Track Court No.I, Erode in C.C.No.34 of 2012 dated 06.08.2015. The cheque was issued for security for sending dress material. The cheque was given to the Complainant. The cheque was presented on 25.03.2012. The Accused sent a registered post seeking the Complainant to return the cheques. The letter addressed by the Accused to the Complainant dated 23.02.2012 was marked as Ex.D-6. Also, the learned Counsel for the Respondent invited the attention of this Court to the Judgment of the learned Judicial Magistrate,

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Fast Track Court No.I, Erode in C.C.No.34 of 2012 dated 06.08.2015. The Accused has a sufficient amount in his account. The Accused sent a notice to the Bank to stop payment. The Appellate Court had arrived at a conclusion that there is no liability. The signature is also found in the cheque. The learned Counsel for the Respondent invited the attention of this Court to the Judgment of the learned II Additional District and Sessions Judge, Erode in C.A.No.115 of 2015 dated 04.03.2016.

8. Also, the learned Counsel for the Respondent invited the attention of this Court to para 4,6,7 of the judgment in C.A.No.115 of 2015 dated 04.03.2016 of the learned II Additional District and Sessions Judge, Erode. The learned Appellate Judge had held that consideration not proved in evidence. Therefore, the learned Sessions Judge had allowed the Appeal and set aside the finding of the guilt recorded by the learned Judicial Magistrate, Fast Track Court No.I, Erode. The learned Counsel for the Respondent relied on the Judgment in A.S.No.24 & 25 of 2008 and also cheque dated 23.02.2012. The learned Counsel for the Respondent had



relied on the following rulings:

(i) ***Crl.A.No.693 of 2022 dated 23.12.2022 in the case of K.P.Senthilkumar Vs. R.Mohan.***

(ii) ***2011-1-L.W.(Crl.)542 in the case of Palaniappa Mills rep. By its Partner P.Natarajan and another Vs. A.Vaithiyalingam.***

(iii) ***2016 (1) MWN (Cr.) DCC 113 (Mad.) in the case of V.M.Ravi Chellamuthu Vs. K.Logu.*** The relevant portion is extracted hereunder:

“Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Dishonour of Cheques – Complaint – Conviction – Setting aside of, in Appeal – Legality – Case of Complainant that Accused borrowed money from one “R” and in discharge of said debt, Accused issued 2 Cheques to “R” - “R” received money from Complainant by discounting Cheques and made over Cheques in favour of Complainant - “R” not been examined by Complainant to prove alleged transaction with Accused – When vital facts not been established, it cannot be concluded that Cheques in question were issued in connection with legally enforceable debt/liability – Considering lack of evidence on side of Complainant, conviction rightly set aside by Lower Appellate Court.”



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9. The case of the Respondent is accepted by the learned Judge, nothing is found perverse in the judgment of the learned II Additional District and Sessions Judge, Erode in C.A.No.115 of 2015 dated 04.03.2016 dismissing the Complaint. Therefore, the learned Counsel for the Respondent seeks to dismiss this Criminal Appeal having no merits.

Point for consideration

Whether the Judgment dated 04.03.2016 passed in C.A.No.115 of 2015 on the file of the learned II Additional District and Sessions Judge, Erode reversing the Judgment dated 06.08.2015 passed in C.C.No.34 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode is to be set aside?

10. Perused the Judgment of the learned Judicial Magistrate, Fast Track Court No.I (Magisterial level), Erode and the learned Second Additional District and Sessions Judge, Erode.

11. On perusal of the Judgment of the learned Second Additional



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District Judge in C.A.No.115 of 2015 dated 04.03.2016, it is found that the Complaint had been instituted based on the signature on the Negotiable Instruments, cheque only. It is the specific case of the Accused that there was no prior liability for the Accused towards the Complainant. Originally, the cheque was issued as a security for the supply of goods, Textiles by one Anbukarasu. After defaulting for non-supply of the goods, the Accused had given instructions to the Bank by addressing the letter to his Bank to stop payment. It is the clear case of the Accused that there were sufficient funds towards the payment of goods supplied. Since the said Anbukkarasu did not supply the goods(textiles) the Accused sought return of cheque from Anbukkarasu. Instead Anbukkarasu had handed over the same to the Complainant as though he had authorised the Complainant to lodge a Complaint. It is the case of the Complainant that he had paid Rs.1,80,000/- towards Anbukkarasu and Anbukarasu had authorised him to lodge a Complaint. It is the defence of the Accused before the trial Court that there is no prior liability for the Accused with the Complainant.



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The prior liability for the Accused towards Anbukkarasu for which the Complaint had been registered or filed had to be proved by the Complainant by summoning Anbukkarasu as Complainant's witness. He had not done so. It is the contention of the Accused before the trial Court that he had already informed Anbukkarasu not to present the cheque as he failed to deliver the goods as was ordered by the Accused to Arasu Textiles. Therefore, the Accused had informed Anbukkarasu that he shall not present the cheque furnished by him as security for the goods to be delivered. The Accused had also informed the complainant not to present the cheque as the Accused had intimated the same to the Bank not to disburse the amount on the presentation of cheque and requested to stop payment.

12. It is the contention of the Accused as Appellant before the learned Second Additional District and Sessions Judge that the Complainant failed to adduce the evidence to prove prior liability. Mere signature of the Appellant's on the cheque, Negotiable Instruments cannot help the Complainant to file the Complaint under Section 138 of the Negotiable

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Instruments Act seeking relief against the Accused. The claim of the Complainant is that he is the holder in due course for the liability. If that be so, there shall be an endorsement in favour of the Complainant from Anbukkarasu. Anbukkarasu ought to have been examined as a witness. The learned Second Additional District and Sessions Judge had on re-appreciation of evidence, arrived at a conclusion that the cheque marked as Ex.P-1 had only the signature of the Accused and no endorsement or indorsement favouring the Complainant by Anbukkarasu or from the Accused to Anbukkarasu or holder in due course by the Accused. The Accused had adduced evidence through D.W-1 to D.W-3 and under Ex.D-1 to Ex.D-9 regarding the defence of the Accused which probablised the case of the Accused that there was no presumption in favour of the Complainant towards prior liability. The Complainant had marked only the documents as Ex.P-1-cheque, Ex.P-2 is the return of cheque for stop payment, Ex.P-3 is the Advocate Notice issued by the Complainant to the Accused, Ex.P-4 is the receipt for Registered Post sent to the Accused, Ex.P-5 is the Acknowledgement card and Ex.P-6 is the reply notice by the Accused. The



contents of the reply notice were probablised by the Accused by examining D.W-1 to D.W-3 and marking documents under Ex.D-1 to Ex.D-9. The learned Judicial Magistrate, Fast Track Court – I, Erode had rejected the defence of the Accused and convicted the Accused based on the presumption for signature found on the cheque. The learned Second Additional Sessions Judge in the discussion, on re-appreciation of evidence had placed reliance on the ruling reported in **2012 (2) MWN (Cr.) (DCC) 28 MAD in the case of G.B.Finance Vs. V.Jothi and another** wherein held that “passing of consideration also not proved by summoning Second Accused, whose signature found on back side of cheque – Complainant failed to prove that he is holder in due course and has no locus standi to maintain Complaint.”

13. Also, the learned II Additional District and Sessions Judge, Erode, in Judgment, had relied on the ruling reported in **2011 (1) Madras Weekly Notes Criminal DCC 76 in the case of Palaniappa Mills and another Vs.**



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Vaithialingam wherein it was stated mere endorsement on the reverse of Negotiable Instruments, cheque alone will not be sufficient. The person who made such endorsement had to be examined as a witness to prove the prior liability and the endorsement regarding the holder in due course, the transfer of liability. Therefore, the learned Second Additional Sessions Judge reversing the finding of the learned Judicial Magistrate is found justified.

14. In the light of the rulings relied by the learned Counsel for the Respondent/Accused, the submission of the learned Counsel for the Respondent/Accused is found acceptable in the facts and circumstances of the case in support of the Judgment of the learned Second Additional Sessions Judge in C.A.No.115 of 2015 dated 04.03.2016. Therefore, the well-reasoned Judgment of the learned Second Additional Sessions Judge allowing C.A.No.115 of 2015 and reversing the Judgment of the learned Judicial Magistrate -I, Fast Track Court, Erode cannot be interfered with.



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15. In the light of the above discussion, the point for consideration is answered in favour of the Respondent/Accused and against the Appellant/Complainant.

In the result, this *Criminal Appeal is dismissed*. The Judgment passed by the learned II Additional District and Sessions Judge, Erode in C.A.No.115 of 2015 dated 04.03.2016 reversing the Judgment of the learned Judicial Magistrate, Fast Track Court No.I, Erode in C.C.No.34 of 2012 dated 06.08.2015 is confirmed.

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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To
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1. The Judicial Magistrate,
Fast Track Court – I,
Erode.
2. The II Additional District and Sessions Judge,
Erode.



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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment made in
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