



Crl.A.No.419 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

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

Crl.A.No.419 of 2011

P.Subramani

... Appellant

Vs.

P.Rajendran

... Respondent

Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code 1973, against the judgement and orders dated 12.07.2010 passed in C.C.No.1531/2007 by the learned Judicial Magistrate No.III, Coimbatore.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal dated 12.07.2010 passed in C.C.No.1531/2007 by the learned Judicial Magistrate No.III, Coimbatore, 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 in a nutshell is as follows :

3.1. The accused borrowed a sum of Rs.75,000/- from the complainant on 29.12.2006 and issued a cheque bearing number 044127 dated 18.01.2007 (Ex.P1) for a sum of Rs.75,000/- drawn on Indian Bank, Mettupalayam Branch, in favour of the complainant.

3.2. When the complainant presented the cheque for collection through his bankers, viz., Indian Bank, Mettupalayam Branch, the same was returned for the reason “Insufficient Funds”, as is seen from the cheque Return Memo dated 02.02.2007 (Ex.P2).



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3.3. Thereafter, the complainant issued a statutory notice dated 28.02.2007 (Ex.P3) 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.

3.4. The accused received the statutory notice on 14.03.2007, as is evidenced by the postal acknowledgement card (Ex.P4) but did not come forward to make good the payment. He did not also send any reply notice.

3.5. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.III, Coimbatore, 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 C.C.No.1531/2007.



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3.6. 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.

3.7. 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.

3.8. The complainant examined himself and marked Ex.P1 to Ex.P14.

3.9. 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 and three other witnesses and marked Ex.R1 to Ex.R8.



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3.10. 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 12.07.2010, aggrieved over which, the present appeal is filed by the complainant.

4. No representation for the appellant and the respondent.

5. It is seen from the records that the cheque (Ex.P1) was returned on 02.02.2007 for the reason 'Insufficient Funds' and the statutory notice (Ex.P3) was issued on 28.02.2007. However, the complainant did not file the private complaint within the statutory period as contemplated under clause(c) of the Proviso to Section 138 of the N.I. Act as he had filed the complaint only on 23.04.2007. On this sole ground the present appeal is liable to be dismissed. In the circumstances, the order of acquittal passed by the trial court judge is hereby confirmed.



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6. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The judgment and orders dated 12.07.2010 passed in C.C.No.1531/2007 by the learned Judicial Magistrate No.III, Coimbatore, is confirmed.

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Index : yes/no
Speaking /Non speaking Order
mtl



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- To
- 1.The Judicial Magistrate No.III, Coimbatore.
 - 2.The Public Prosecutor, High Court, Madras.
 - 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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