



Crl.A.No.477 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

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

Crl.A.No.477 of 2011

N.Ramanathan

... Appellant

Vs.

K.Raj Mohan

... Respondent

Prayer : Criminal Appeal filed under Section 378 of Criminal Procedure Code 1973 against the judgement dated 23.05.2011 passed in C.C.No.1792/2007 by the Judicial Magistrate No.III, Coimbatore.

For Appellant : Mr.R.Lokesh
for Mr.L.Palanimuthu
For Respondent : Mr.B.Singaravelu

JUDGMENT

Challenging the order of acquittal dated 23.05.2011 passed by the Judicial Magistrate No.III, Coimbatore in C.C.No.1792/2007, the present appeal is filed by the appellant / complainant.



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2. The appellant is the complainant in C.C.No.1792/2007 on the file of the Judicial Magistrate No.III, Coimbatore.

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 is that there was a Hire Purchase Agreement between the complainant and the accused for purchase of Ashok Leyland Lorry bearing registration number TN-39-AD-7337, 2002 model and during the course of transaction the accused was due and liable to pay a sum of Rs.6,21,500/- to the complainant.

4.1. In order to liquidate the said amount the accused issued a cheque bearing number 020850 dated 03.05.2007 (Ex.P2) for a sum of Rs.6,21,500/- drawn on ICICI Bank, Tiruppur Branch, in favour of the complainant.

4.2. When the complainant presented the cheque for collection



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through his bankers, namely, Karur Vysya Bank, Coimbatore Main Branch, the same was returned on 05.05.2007 for the reason “Funds Insufficient”, as is seen from the cheque return memo (Ex.P3).

4.3. Thereafter, the complainant issued a statutory notice dated 21.05.2007 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque within 15 days from the date of receipt of the notice.

4.4. According to the complainant, though the notice was sent to the residential address of the accused, it was returned with a postal endorsement 'intimation left on 23.05.2007'. He marked the returned cover as (Ex.P5).

4.5. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.III, Coimbatore, under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of Negotiable Instruments Act (N.I. Act) in C.C.No.1792/2007.

4.6. The learned Judicial Magistrate No.III, Coimbatore, took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under



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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 Power of Attorney holder of the complainant was examined as P.W.1 and Ex.P1 to Ex.P5 were marked.

4.9. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. He examined two witnesses and marked Ex.R1 to Ex.R3.

4.10. The learned trial court judge after analysing the oral and documentary evidence on record acquitted the accused under Section 255(1) Cr.P.C., aggrieved over which, the complainant filed the present appeal.



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5. Heard Mr.R.Lokesh, learned counsel for the appellant and Mr.B.Singaravelu, learned counsel for the respondent.

6. In the instant case, the accused had not denied his signature on the cheque (Ex.P2). It is needless to say that once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved. The contention of the complainant is that the accused is due and liable to pay a sum of Rs.6,21,500/-, in respect of hire purchase agreement between him and the accused for which a cheque for a sum of Rs.6,21,500/- dated 03.05.2007 (Ex.P2) drawn on ICICI Bank, Tiruppur Branch was issued by the accused. On the contrary, it is contended by the accused that the cheque issued as a security for prompt repayment of the loan amount has been misused by the complainant.

7. It is pertinent to point out that though the complainant had stated that he is running a finance business, he did not adduce relevant Registers to substantiate that the accused is actually liable to pay a sum of



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Rs.6,21,500/-, especially when the accused had stated that he handed over a blank cheque as a security while the Power of Attorney holder of the complainant was examined on the side of the complainant. Interestingly the complainant was examined on the side of the accused as D.W.1. and during the course of cross examination D.W.1 admitted that he lent a sum of Rs.5,50,000/- to the accused on 29.06.2006 and that the accused repaid a sum of Rs.30,000/- to him. Neither in the complaint nor in his statutory notice it is stated that the complainant lent a sum of Rs.5,50,000/- to the accused on 29.06.2006. The accused had filed two receipts Ex.R1 and Ex.R2 which show that he repaid a sum of Rs.42,460/-. The complainant who is running a finance business in the name and style of Thiru Murugan & Company is expected to maintain proper accounts and as already observed he did not adduce statement of accounts, Registers etc. to show the actual amount payable by the accused. Therefore, it has to be held that the complainant did not prove his case against the accused and the order of acquittal passed by the trial court judge is hereby confirmed.

8. In the result,



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- i. This Criminal Appeal is dismissed.
- ii. The judgement dated 23.05.2011 in C.C.No.1792/2007 passed by the Judicial Magistrate No.III, Coimbatore, is confirmed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl

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

R. HEMALATHA, J.

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