



Crl.A.No.741 of 2011

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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.741 of 2011

S. Prabhukumar ... Appellant

Vs.

R. Palanimurugan ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973, against the judgement and orders dated 29.08.2011 passed in C.C.No.671/2008 by the learned Judicial Magistrate No.I, Erode.

For Appellant : No appearance

For Respondent : Mr. J. Kannan

JUDGMENT

Challenging the order of acquittal dated 29.08.2011 passed in C.C.No.671/2008 by the learned Judicial Magistrate No.I, Erode, 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 complainant and the accused are doing business in textiles at Erode and Tiruchengode respectively. The accused used to have business transactions with one M/s. Muthukumar Fabrics, having its office at 191, Kallupillaiyar Koil Street, Karungalpalayam, Erode. The accused, in order to discharge his liability to M/s. Muthukumar Fabrics, issued a cheque bearing number 000009 dated 31.07.2008 (Ex.P1) for a sum of Rs.89,860/- drawn on City Union Bank, Tiruchengode, in favour of M/s. Muthu Kumar Fabrics, who in turn assigned the cheque in favour of the complainant.



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3.2. When the complainant presented the cheque for collection through his bankers, viz., ING Vysya Bank Limited, Erode Branch, on 11.08.2008, the same was returned for the reason “opening balance insufficient”, as is seen from the cheque Return Memo dated 12.08.2008 (Ex.P3).

3.3. Thereafter, the complainant issued a statutory notice dated 23.08.2008 (Ex.P4) 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 26.08.2008, as is evidenced by the postal acknowledgement card (Ex.P5) 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.I, Erode, under Section 200 Cr.P.C. against



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the respondent / accused for an offence punishable under Section 138 of the Negotiable Instruments Act (in short N.I. Act) in C.C.No.671/2008.

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.P5.

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. However,



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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 punishable under Section 138 of N.I. Act and acquitted him under Section 255(1) Cr.P.C., vide his judgment and orders dated 29.08.2011, aggrieved over which, the present appeal is filed by the complainant.

4. No representation for the appellant. Heard Mr. J. Kannan, learned counsel for the respondent.

5. The complainant in order to prove that the cheque Ex.P1 was assigned in his favour by M/s. Muthukumar Fabrics, had relied on his evidence as P.W.1. There is no endorsement on the cheque Ex.P1 that the cheque was assigned in favour of the complainant as contemplated under Section 50 of N.I. Act. Moreover, the complainant in his complaint has not stated as to when the cheque was assigned in his favour by M/s.



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Muthukumar Fabrics. The complaint itself is bereft of those particulars and therefore, the order of acquittal passed by the Trial Court Judge is perfectly in order.

6. In the result, the Criminal Appeal stands dismissed. The judgement and orders dated 29.08.2011 passed in C.C.No.671/2008 by the learned Judicial Magistrate No.I, Erode, is confirmed.

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Index : yes/no
Speaking /Non speaking Order
bga

To

- 1.The Judicial Magistrate No.I, Erode
- 2.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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