



CrI.A.No.148 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

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

CrI.A.No.148 of 2010

U.Girija

... Appellant

Vs.

Dellibabu @ Balaji

... Respondent

Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code, against the Judgment and orders, dated 25.01.2010 passed in C.C.No.269/2009 by the Judicial Magistrate, Tambaram.

For Appellant : No appearance
For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal dated 25.01.2010 passed in C.C.No.269/2009 by the learned Judicial Magistrate, Tambaram, the present Criminal Appeal is filed by the complainant.

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.



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3. Though the appeal was filed in the year 2010, till date the respondent has not been served. The learned counsel for the appellant is also not present.

4. The case of the appellant / complainant in a nutshell is as follows :

- i. The accused and the complainant are husband and wife. The accused/husband promised to pay a sum of Rs.10,00,000/- towards maintenance and issued a cheque bearing number 680355 dated 21.05.2008 (Ex.P1) for a sum of Rs.5,00,000/- drawn on Oriental Bank of Commerce, Selaiyur Branch in favour of the complainant/wife.
- ii. When the cheque was presented for collection through her bankers by the complainant, it was returned for the reason 'payment stopped by the drawer' as is evidenced by the Cheque Return Memo, dated 09.06.2008 (Ex.P2).
- iii. Thereafter, the complainant issued a statutory notice, dated 16.06.2008 (Ex.P3) to the accused calling upon him to pay the



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

- iv. The accused though received the notice on 23.06.2011 as is evidenced by the postal acknowledgement Card (Ex.P4), did not come forward to make good the payment and did not also issue any reply notice.
- v. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Tambaram under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.269/2009.
- 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 complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.



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viii. The complainant examined herself as P.W.1 and marked Ex.P1 to Ex.P8.

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 as R.W.1 and marked Ex.R1.

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 judgment and orders dated 25.01.2010, aggrieved over which, the present appeal is filed by the complainant.

5. In the trial Court, it was contended by the accused that he is legally not liable to pay any amount to the complainant and that he had not also received the statutory notice issued by the complainant. The case of the complainant is that she issued the legal notice dated 16.06.2008 to the accused and the same was served on him as is seen from the postal



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acknowledgement card (Ex.P4). Subsequently, she issued another notice dated 28.07.2008 (Ex.P5) after making certain corrections in her earlier notice dated 16.06.2008. The complainant had not adduced any evidence to show that this legal notice, dated 28.07.2008 (Ex.P5) was actually served on the accused. It is also seen that there was a compromise between the complainant and the accused in the Mediation and conciliation Centre (Ex.R1). The complainant had not stated this fact in her private complaint and therefore the order of acquittal passed by the trial Court cannot be found fault with.

6. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 25.01.2010 in C.C.No.269/2009 passed by the Judicial Magistrate, Tambaram, is confirmed.

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



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R.HEMALATHA, J.

vum

To

1. The Judicial Magistrate,
Tambaram
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

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