



Crl.A.No.689 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

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

Crl.A.No.689 of 2015

A.Ramaraj

... Appellant / Complainant

Vs.

1. Uthrakaliamman Infrastructure Pvt. Ltd.,
Rep. by its Director,
Melkaraipatti,
Palani Taluk.

Now having address at
248, Thalakkarai Pallam,
Zamin Muthur (P.O)
Pollachi Taluk.

2. M.Arulmozhi

... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders, dated 22.05.2015 passed in S.T.C.No.377/2011 by the Judicial Magistrate No.II, Pollachi.

For Appellant : Mr.N.Ponraj

For Respondents : Mr.K.P.Anantha Krishna



Crl.A.No.689 of 2015

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JUDGMENT

Challenging the order of acquittal dated 22.05.2015 passed in S.T.C.No.377/2011 by the learned Judicial Magistrate No.II, Pollachi, 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.

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

- i. The 2nd accused on behalf of the 1st accused borrowed a sum of Rs.9,90,000/- on 22.10.2010 from the complainant and issued a cheque (Ex.P1) bearing number 356324 on the same day for a sum of Rs.9,90,000/- drawn on State Bank of India, Pollachi branch in favour of the complainant.
- ii. When the cheque was presented for collection by the complainant through his bankers viz., Indian Overseas Bank, Kottur branch on 22.12.2010, it was returned for the reason 'insufficient funds' as is



Crl.A.No.689 of 2015

evidenced by the cheque return memo, dated 27.12.2010 (Ex.P2).

- iii. Thereafter, the complainant issued a statutory notice to both the accused, calling upon them to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of receipt of the notice.
- iv. The accused received the notice on 23.06.2011 as is evidenced by the postal acknowledgement Cards (Ex.P3 to Ex.P7), but did not come forward to make good the payment and did not also send any reply notice.
- v. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.II, Pollachi, under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.377/2011.
- vi. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments 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



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Crl.A.No.689 of 2015

furnished to them 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.

viii. The complainant examined himself as P.W.1 and another witness as P.W.2 and marked Ex.P1 to Ex.P16.

ix. The accused, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. The second accused examined himself and two other witnesses and marked Ex.R1 to Ex.R6.

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 them under Section 255(1) Cr.P.C., vide his judgment and orders dated 22.05.2015, aggrieved over which, the present appeal is filed by the complainant.

4. Heard Mr.N.Ponraj, learned counsel for the petitioner and



Crl.A.No.689 of 2015

Mr.K.P.Anantha Krishna, learned counsel for the Respondents.

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5. At the outset, it may be observed that the second accused has not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act unless the contrary is proved.

6. In the instant case, the 2nd accused (R.W.3) in his evidence had deposed that he had a transaction with the son-in-law of the complainant and that certain blank cheques were issued to him. According to him, one of the said cheques has been misused by the present complainant for the purpose of filing this case. He has also stated that he lodged a complaint (Ex.R5) on 19.07.2010 before Pollachi Town Police Station in this regard and it came to be registered as FIR in Crime No.649/2010 (Ex.R5) against the son-in-law of the complainant for the offences punishable under Sections 147, 448, 294(b), 506 (ii) & 387 I.P.C., r/w. Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. The accused (son-in-law of the complainant) in the



Crl.A.No.689 of 2015

said case was arrested and the complainant stood as a surety for him. The Police also after concluding investigation, laid a final report in C.C.No.95/2011 (Ex.R6) against four accused, including the son-in-law of the present complainant for the offences punishable under Sections 147, 448, 294(b), 506 (ii) & 395 I.P.C., r/w. Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Thus, the relationship between the complainant and the accused would have definitely got strained and therefore it is difficult to believe that the complainant lent a sum of Rs.9,90,000/- to the accused on 22.10.2010, after these Police cases. Moreover, a perusal of the deposition of P.W.1 shows that the complainant does not know the 2nd accused and the business which he runs. It is intriguing that even without knowing the status of the 2nd accused, the appellant/complainant had lent a huge sum of Rs.9,90,000/- to the 2nd accused, that too without obtaining any supporting documents like promissory note.

7. In the circumstances, it has to be held that the complainant



Crl.A.No.689 of 2015

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has not proved the foundational facts of the case and on the other hand, the accused was able to rebut the presumption under Section 139 of the Negotiable Instruments Act. Therefore, the appeal fails and is therefore dismissed.

8. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 22.05.2015 in S.T.C.No.377/2011 passed by the Judicial Magistrate No.II, Pollachi, is confirmed.

24.07.2024

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

To

1. The Judicial Magistrate No.II,
Pollachi.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

R.HEMALATHA, J.



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Crl.A.No.689 of 2015

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Crl.A.No.689 of 2015

24.07.2024