



Crl.A.No.339 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

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

Crl.A.No.339 of 2010

S.Muthusamy ... Appellant

Vs.

K.Palanisamy ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 06.04.2010 passed in C.C.No.180/2007 by the District Munsif Cum Judicial Magistrate, Perundurai.

For Appellant : Mr.N.Manoharan

For Respondent : Mr.G.C.Nelson Britto

JUDGMENT

Challenging the order of acquittal dated 06.04.2010 in C.C.No.180/2007 passed by the District Munsif Cum Judicial Magistrate, Perundurai, 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.3,00,000/- from the complainant on 07.09.2005 and issued a cheque bearing number 033720 on 07.10.2005 (Ex.P1) for a sum of Rs.3,00,000/- drawn on Tamilnad Mercantile Bank Limited, Tiruchengode Branch, in favour of the complainant.

3.2. When the complainant presented the cheque for collection on 07.10.2005 through his bankers, namely, Union Bank of India, Vijayamangalam Branch, it was returned for the reason “Funds Insufficient”, as is seen from the cheque Return Memo dated 10.10.2005 (Ex.P2).



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3.3. Thereafter, the complainant issued a statutory notice dated 25.10.2005 (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. Since no amount was forthcoming, the complainant filed a private complaint before the District Munsif Cum Judicial Magistrate, Perundurai, 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.180/2007.

3.5. 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.

3.6. 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



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pleaded not guilty, the case was posted for trial.

3.7. The complainant examined himself and one another witness and marked Ex.P1 to Ex.P6.

3.8. The accused, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. He examined himself and marked Ex.D1 to Ex.D5.

3.9. 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 06.04.2010.

3.10. Aggrieved over the same, the present appeal is filed by the complainant.



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4. Heard Mr.N.Manoharan, learned counsel for the appellant and Mr.G.C.Nelson Britto, learned counsel for the respondent.

5. It is seen from the records that the complainant issued a statutory notice dated 25.10.2005 (Ex.P3) to the accused mentioning his father's name as Karuppanna Gounder instead of Kuppanna Gounder. Therefore, the postal department had returned the cover with an endorsement that 'there is no such addressee'. Thus, the accused has not been served with notice. It is appropriate to extract Clause (b) of proviso to Section 138 of N.I. Act :

" (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;]"

6. In the instant case, the statutory notice has not been served on the respondent / accused and therefore, the private complaint filed under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of N.I. Act is liable to be dismissed. Moreover, in the



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instant case, P.W.1 during the course of cross examination had admitted that his son-in-law is related to the accused and his father's name is not Karuppanna Gounder. The mistake committed by the complainant at the time of issuing the statutory notice (Ex.P3) was subsequently corrected by him while sending court summons. This is evidenced by the postal cover (Ex.R2) filed by the accused. In the statutory notice (Ex.P3), the complainant had mentioned the name of the father of the accused as Karuppanna Gounder and he did not take steps to amend it. In the circumstances, the order of acquittal passed by the trial court judge on the ground that the statutory notice has not been served on the accused, is perfectly in order and I do not see any reason to interfere with the same.

7. In the result,

i. This Criminal Appeal is dismissed.

ii. The judgement and orders dated 06.04.2010 passed in



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Perundurai, is confirmed.

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Index : yes/no
Speaking /Non speaking Order
mtl

To

- 1.The District Munsif Cum Judicial Magistrate, Perundurai.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.

mtl



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