



Crl.A.No.428 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

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

Crl.A.No.428 of 2010

Renganathan

... Appellant / Complainant

Vs.

Sarmilabanu

... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code, against the Judgment and orders dated 10.03.2010 passed in S.T.C.No.20/2009 by the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.R.Jawahar

For Respondent : Mr.I.Kowser Nissar

JUDGMENT

Challenging the order of acquittal dated 10.03.2010 passed in S.T.C.No.20/2009 by the learned Additional District Munsif cum Judicial Magistrate, Mayiladuthurai, the present Criminal Appeal is filed by the complainant.



Crl.A.No.428 of 2010

WEB COPY

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 accused borrowed a sum of Rs.1,50,000/- from the complainant and issued a cheque bearing number 199968 on 28.02.2008 (Ex.P1) for a sum of Rs.1,50,000/- drawn on City Union Bank, Kuttalam branch in favour of the complainant.
- ii. When the cheque was presented for collection by the complainant through his bankers viz., Union Bank of India, Mayiladuthurai on the same day, it was returned for the reason 'insufficient funds' as is evidenced by the cheque return memo, dated 03.03.2008 (Ex.P2).
- iii. Thereafter, the complainant issued a statutory notice, dated 27.03.2008 to the accused calling upon her to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of



Crl.A.No.428 of 2010

receipt of the notice.

- iv. Though the accused was in know of the issuance of the notice, she did not come forward to make good the payment.
- v. Therefore, the complainant filed a private complaint before the Additional District Munsif cum Judicial Magistrate, Mayiladuthurai, 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.20/2009.
- vi. The learned Judicial Magistrate took cognizance of the offence under Section 138 of 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 furnished to her 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 marked Ex.P1 to Ex.P4.



Crl.A.No.428 of 2010

- ix. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, denied of having committed any offence. The accused examined herself and marked Ex.D1 and Ex.D2.
- 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 her under Section 255(1) Cr.P.C., vide his judgment and orders dated 10.03.2010, aggrieved over which, the present appeal is filed by the complainant.

4. Heard Mr.B.Jawahar, learned counsel for the petitioner and Mr.I.Kowser Nissar, learned counsel appearing for the Respondent.

5. A perusal of the records shows that the complainant during the course of cross examination had admitted that he is a money lender. In the complaint he had stated that the accused issued the cheque (Ex.P1) for an existing liability, on 28.02.2008. On the other hand in his



Crl.A.No.428 of 2010

evidence, P.W.1 had deposed that he lent a sum of Rs.1,50,000/- to the accused on 28.02.2008, on which date, the accused issued the cheque (Ex.P1). Moreover, the complainant has not adduced any Register or Records maintained by him during the course of his business of money lending, to prove that the accused is due and liable to pay a sum of Rs.1,50,000/-. Thus, the complainant had not proved the foundational facts of the case. Therefore, the order of acquittal passed by the trial Court is perfectly in order and there is no good ground for this Court to interfere with the same.

6. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 10.03.2010 in S.T.C.No.20/2009 passed by the Additional District Munsif, Mayiladuthurai, is confirmed.

23.07.2024

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



Crl.A.No.428 of 2010

R.HEMALATHA, J.

vum

To

1. The Additional District Munsif,
Mayiladuthurai.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

Crl.A.No.428 of 2010

23.07.2024