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Crl.A.No.300 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.300 of 2021

S.Esudian
Rep. by his Power of Attorney Holder
Mr.C.Rajakumar ... Appellant

Vs.

T.Justin Rani ... Respondent

Prayer:

Appeal filed under Section 378 of Criminal Procedure Code seeking to call for the records in C.C.No.155 of 2018 on the file of the Judicial Magistrate Court, Fast Track, Ambattur and set aside the Judgment dated 09.02.2021 in the interest of justice.

For Appellant : Mr.V.K.Sathiamurthy
For Respondent : Mr.S.Santhosh

J U D G M E N T

The criminal appeal has been filed seeking to set aside the order dated 09.02.2021 passed in C.C.No.155 of 2018 by the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Ambattur.



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2.The case of the appellant is that the respondent borrowed a sum of Rs.50,000/- on 12.01.2016, for which, the respondent issued a cheque bearing no.069690 dated 18.03.2016 drawn on Axis Bank, Mogappair Branch. The said cheque when presented for collection was dishonoured on 19.03.2016. The appellant informed about the same to the respondent. Thereafter, the respondent issued a cheque bearing no.077160 dated 07.03.2018 drawn on Axis Bank, Korattur Branch. The said cheque when presented for collection was returned as 'funds insufficient' on 08.03.2018. Hence the appellant filed complaint under Section 138 of the Negotiable Instruments Act before the trial Court and the said complaint was dismissed. Hence, this appeal.

3.The learned counsel appearing for the appellant submitted that the respondent and her husband used to purchase materials from the petitioner's shop for which, they cleared the debts then and there. The disputed amount was borrowed by the respondent for her daughter's marriage. Since the respondent came forward to settle the amount, the appellant did not file the complaint when the earlier cheque was dishonoured, however, the second cheque given by the respondent was also dishonoured, thereby the appellant filed the complaint.



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4.The learned counsel appearing for the appellant further submitted that the initial burden lies upon the appellant to show that there is legally enforceable debt and the appellant established the same by marking exhibits, however, the trial Court arrived at a conclusion that immediately after dishonour of the earlier cheque, the amount was encashed by the appellant through another cheque dated 31.03.2016, whereas, the amount collected through cheque bearing no.77112 dated 31.03.2016 issued by the respondent is related to business transaction and not related to the loan amount. The trial Court mis-construed that the said cheque was issued for loan amount and dismissed the complaint given by the appellant.

5.Per contra, the learned counsel appearing for the respondent submitted that there was only business transaction between the petitioner company and respondent company and the respondent and her husband utilized the cheques for purchasing the materials from the petitioner and cleared the debts then and there and there is no due with respect to the materials purchased during the business transaction. They use the cheques as security and whenever, they inform the appellant, the appellant used to present the cheques and



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collect the amount. In the present case, the cheque bearing no.069690 dated 18.03.2016 was dishonoured, for which, the respondent issued another cheque bearing no.77112 dated 31.03.2016 and the amount was encashed by the appellant. Further, the appellant states that the respondent borrowed a sum of Rs.50,000/- on 12.01.2016 for her daughter's marriage, whereas, the respondent's daughter's marriage was performed during July, 2017 and there is no necessity for borrowing the amount prior to 1-1/2 years. This itself shows that the appellant did not approach the trial Court with clean hands and hence the trial Court dismissed the complaint filed by the appellant which warrants no interference.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent.

7.Perusal of records reveal that there was business transaction between the petitioner company and respondent company and the respondent and her husband utilized the cheques for purchasing the materials from the petitioner and cleared the debts then and there and there is no due with respect to the materials purchased during the business transaction. They use the cheques as security and whenever,



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they inform the appellant, the appellant used to present the cheques and collect the amount. In the present case, the cheque bearing no.069690 dated 18.03.2016 was dishonoured, for which, the respondent issued another cheque bearing no.77112 dated 31.03.2016 and the amount was encashed by the appellant. Further, the appellant states that the respondent borrowed a sum of Rs.50,000/- on 12.01.2016 for her daughter's marriage, whereas, the respondent's daughter's marriage appears to have been performed during July, 2017. Hence, there is no necessity for borrowing the amount prior to 1-1/2 years. This itself shows that the appellant did not approach the trial Court with clean hands and hence the trial Court dismissed the complaint filed by the appellant which warrants no interference.

8.The criminal appeal is dismissed. The order dated 09.02.2021 passed in C.C.No.155 of 2018 by the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Ambattur, is confirmed.

25.04.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

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1.The Judicial Magistrate, Fast Track Court, (Magisterial Level),
Ambattur.

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M.DHANDAPANI,J.
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