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Crl.A.No.422 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

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

Crl.A.No.422 of 2012

K.Manimegalai

... Appellant

Vs.

Peter Issac

... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders dated 16.02.2012 passed in C.C.No.193/2011 by the Judicial Magistrate, Fast track Court at Magisterial Level-II, Coimbatore.

For Appellant : Mr.C.D.Johnson

For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal dated 16.02.2012 passed in C.C.No.193/2011 by the learned Judicial Magistrate, Fast track Court at Magisterial Level-II, Coimbatore, the present Criminal Appeal is filed by the 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 :

- i. The accused Peter Issac is a family friend of the complainant and he borrowed a sum of Rs.2,50,000/- on 08.12.2009 and agreed to repay the same together with interest @ 12 % per annum.
- ii. Subsequently, on 23.05.2011, the accused issued a cheque bearing number 323597 dated 28.05.2011 (Ex.P1) for a sum of Rs.2,88,000/- drawn on State Bank of Hyderabad in favour of the complainant.
- iii. When the cheque was presented for collection through his bankers by the complainant on 01.06.2011, it was returned for the reason 'payment stopped by the drawer' as is evidenced by the Cheque Return Memo, dated 03.06.2011 (Ex.P2).



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- iv. Thereafter, the complainant issued a statutory notice, dated 22.06.2011 to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of receipt of the notice.
- v. 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.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.VII, Coimbatore, 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.640/2011.
- vii. This case was subsequently transferred to Fast track Court at Magisterial Level II, Coimbatore and renumbered as C.C.No.193/2011.
- viii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of N.I. Act and issued summons to the accused



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under Section 204 Cr.P.C.

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- ix. 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.
- x. The complainant examined herself as P.W.1 and marked Ex.P1 to Ex.P7.
- xi. 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 two witnesses and marked Ex.D1 to Ex.D7.
- xii. 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 her judgment and orders dated 16.02.2012, aggrieved over which, the present appeal is filed by the complainant.



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4. Mr.C.D.Johnson, learned counsel for the petitioner reported no instructions. The counsel on record for the respondent is not present today.

5. It is seen from the records that the accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of the Negotiable Instruments Act unless the contrary is proved.

6. In the instant case, the accused had sent a legal notice dated 03.06.2011 (Ex.P5) to the complainant, in which he had stated that he never borrowed any amount from the complainant and on the other hand, the complainant borrowed money from him. His further contention was that since the cheque (Ex.P1) went missing from his office, he sent a request to his bank to stop the payment with regard to the cheque (Ex.P5) on 27.12.2007 itself.



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7. One of the bank officials was examined on the side of the accused as D.W.2 and he produced the statement of accounts (Ex.D6) and the pass book of the accused which show that the bank has stopped the payment after deducting necessary charges from the accused bank account. It is also seen from the records that the complainant had lodged a complaint on 29.05.2011 with the Sub-Inspector of Police, Kuniyamuthur Police station against the accused and the same was registered as FIR in Crime No.469/2011. A Photostat copy of the FIR was filed by the complainant. The allegations in the police complaint was that the friends of the accused threatened the complainant and therefore she was unable to recover a sum of Rs.2,88,000/- from the accused. Though the complaint is dated 30.05.2011, there is no mention about the present cheque (Ex.P1) issued on 23.05.2011.

8. All these facts created a doubt as to whether the accused actually issued the cheque on 23.05.2011 since the relationship between the two got strained by that time. Thus the accused is able to rebut the presumption by adducing acceptable evidence. Moreover, the standard



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of proof for the accused in a case under Section 138 of the Negotiable Instruments Act is only a preponderance of probabilities. The trial Court had analysed all these aspects and by a well considered order, acquitted the accused and there is no reason for this Court to interfere with the same.

9. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 16.02.2012 in C.C.No.193/2011 passed by the Judicial Magistrate, Fast track Court at Magisterial Level - II, Coimbatore, is confirmed.

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Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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R.HEMALATHA, J.

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To

1. The Judicial Magistrate,
Fast track Court at Magisterial Level - II,
Coimbatore.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

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