



Crl.A.No.442 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

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

Crl.A.No.442 of 2012

S.Vanangamudi ... Appellant / Complainant

Vs.

Jawahar @ Jawaharlal Nehru ... Respondent / Accused

Prayer : Criminal Appeal filed under Section 374 (2) Criminal Procedure Code, against the Judgment and orders, dated 05.01.2006 passed in C.C.No.20/2004 by the Judicial Magistrate No.1, Nagapattinam.

For Appellant : No appearance
For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal dated 05.01.2006 passed in C.C.No.20/2004 by the learned Judicial Magistrate No.1, Nagapattinam, 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.



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

- i. The respondent / accused borrowed a sum of Rs.1,70,000/- from the complainant on 10.11.2003 and promised to repay the same.
- ii. After much persuasion by the complainant, the accused issued two Cheques, one bearing number 09534 dated 10.11.2003 (Ex.P1) for a sum of Rs.50,000/- and another (not marked) bearing number 09535 dated 10.01.2004 for a sum of Rs.1,20,000/- drawn on Nagapattinam Urban Cooperative Credit Society Limited, Nagapattinam in favour of the complainant.
- iii. When the cheque (Ex.P1) was presented for collection on 19.11.2003 by the complainant through his bankers viz., Indian Overseas Bank, Nagapattinam, it was returned for the reason 'funds insufficient' as evidenced by the cheque return memos (Ex.P2 to Ex.P4).
- iv. Thereafter, the complainant issued a statutory notice, dated 16.12.2003 (Ex.P5) to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within fifteen days from the



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date of receipt of the notice.

- v. The accused received the notice, but did not come forward to make good the payment. However, he sent a reply notice on 26.12.2003 (Ex.P6), which according to the complainant contained false allegations.
- vi. Therefore, the complainant filed a private complaint, before the Judicial Magistrate No.1, Nagapattinam, under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.20/2004.
- vii. 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.
- viii. On the appearance of the accused, 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 pleaded not guilty, the case was posted for trial.
- ix. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P8.



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- x. 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. The accused examined five witnesses on his side and marked Ex.R1.
- xi. 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 his Judgment and orders, dated 05.01.2006. Aggrieved over the same, the present appeal is filed by the complainant.

4. There is no representation for the appellant as well as for the respondent.

5. The main defence taken by the accused before the trial Court was that he never had any transaction with the complainant and that one Rajarathinam (R.W.1) alone obtained loan from the complainant, for which, a Panchayat was convened on 02.10.2003 in the presence of



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Ramani (R.W.4) and others. On the date of Panchayat, a sum of Rs.5,000/- was repaid by the said Rajarathinam to the complainant and since R.W.1 did not have any bank account, the accused handed over two signed cheques to the complainant in the presence of panchayatdhars. According to the accused, one of the said cheques has been misused by the complainant for the purpose of filing the present complaint.

6. It is seen from the records that the 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 the Negotiable Instruments Act unless the contrary is proved.

7. However, in the instant case, the complainant, either in his complaint or in his statutory notice, has not stated as to when he lent a sum of Rs.1,70,000/- to the accused. The evidence of P.W.1 in this regard is very vague. Ex.R1 is the minutes of the panchayat that was convened on 02.10.2003. When a specific defence was taken by the



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accused that the cheques were given to the complainant only at the instance of the panchayatdhars and had also examined one of the panchayatdhars as R.W.4. The complainant who is expected to prove the foundational facts of the case, has failed to do so. Moreover, as already observed, the date of the borrowal itself is not indicated either in the complaint or in the statutory notice. In the circumstances, the order of acquittal passed by the trial Court cannot be found fault with.

8. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The Judgment and Orders, dated 05.01.2006 passed in C.C.No.20/2004 by the Judicial Magistrate No.1, Nagapattinam is confirmed.

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



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To

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



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R.HEMALATHA, J.

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