



Crl.A.No.516 of 2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

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

Crl.A.No.516 of 2012

K.Arumugam

... Appellant

Vs.

B.Rajendran

... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 21.06.2012 passed in C.C.No.130/2008 by the District Munsif Cum Judicial Magistrate, Perundurai.

For Appellant : No appearance

For Respondent : Mr.S.Kaithamalai Kumaran

JUDGMENT

Challenging the order of acquittal dated 21.06.2012 passed in C.C.No.130/2008 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.2,00,000/- from the complainant on 05.02.2008 and issued a post dated cheque bearing number 013298 on 05.03.2008 (Ex.P1) for a sum of Rs.2,00,000/- drawn on State Bank of India, Agraharam Branch, Erode, in favour of the complainant.

3.2. When the complainant presented the cheque for collection on 13.03.2008 through his bankers, viz., State Bank of India, Melapalayam Branch, the same was returned for the reason “Account Closed”, as is seen from the cheque Return Memo dated 15.03.2008 (Ex.P3).



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3.3. Thereafter, the complainant issued a statutory notice dated 24.03.2008 (Ex.P4) 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. The accused received the statutory notice on 27.03.2008, as is evidenced by the postal acknowledgement card (Ex.P6) and sent a reply notice dated 08.04.2008 (Ex.P7), which according to the complainant contained false allegations.

3.5. Therefore, 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.130/2008.

3.6. 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.

3.7. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of



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accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.

3.8. The complainant examined himself and marked Ex.P1 to Ex.P8.

3.9. 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 one witness on his side and marked Ex.D1.

3.10. 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 21.06.2012.

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

4. Heard Mr.S.Kaithamalai Kumaran, learned counsel for the respondent.



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5. Though notice was served on the appellant and his name is printed in the cause list, there is no representation on his behalf.

6. In the instant case, the accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved. The specific contention of the accused was that the cheque (Ex.P1) issued to one Kalpatharu Finance towards security for the loan amount obtained by the accused was misused by the present complainant. In order to substantiate his contention, he examined the Sub Inspector of Police, Chennimalai Police Station, Erode, as D.W.1.

7. A perusal of the evidence of D.W.1 shows that the present complainant had lodged a complaint with the Inspector of Police, Chennimalai Police Station, Erode, stating that the accused borrowed a sum of Rs.1,85,000/- from Kalpatharu Finance and is not repaying the amount borrowed by him. He had therefore requested the Inspector of



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Police to recover the amount from the accused. This complaint was lodged on 07.03.2008. It is pertinent to point out that it not the case of the complainant that there are several transactions between him and the accused. The present cheque (Ex.P1) is dated 05.03.2008 and on 07.03.2008 the complainant had lodged a police complaint stating that the accused borrowed a sum of Rs.1,85,000/- from Kalpatharu Finance and is not repaying the same. He also admitted that Kalpatharu Finance was run by him and others. In the cheque (Ex.P1) amount is mentioned as Rs.2,00,000/- and as already observed it is dated 05.03.2008. The specific contention of the complainant in his complaint is that the accused approached him on 05.02.2008 and borrowed a sum of Rs.2,00,000/- from him and issued a post dated cheque (Ex.P1) dated 05.03.2008. Thus, the complainant had not proved any legally enforceable debt on the date of presentation of the cheque (Ex.P1). In the circumstances, the order of acquittal passed by the trial court judge is hereby confirmed.

8. In the result,

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i. This Criminal Appeal is dismissed.

ii. The judgement and orders dated 21.06.2012 passed in C.C.No.130/2008 by the District Munsif Cum Judicial Magistrate, Perundurai, is confirmed.

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- 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.



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