



Crl.A.No.636 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM

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

Crl.A.No.636 of 2016

Sumathi

... Appellant

Vs.

C.Sasikala

... Respondent

Prayer : Criminal Appeal filed under Section 378(2) of Criminal Procedure Code 1973 against the judgement dated 18.04.2016 passed in S.T.C.No.3/2013 by the Judicial Magistrate, Fast Track Court, Dharmapuri.

For Appellant : Mr.T.Balamurugan

For Respondent : Mr.K.Sudheer Ram

Legal Aid Counsel



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JUDGEMENT

Challenging the order of acquittal passed by the Judicial Magistrate, Fast Track Court, Dharmapuri on 18.04.2016 in S.T.C.No.3/2013, the present appeal is filed by the appellant / 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.

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

- i. The appellant is doing business and is a close friend of the respondent. According to her, the respondent / accused used to borrow hand loan from her and as on 25.11.2012 there was an outstanding amount of Rs.7,00,000/- due and payable by the accused.



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- ii. In order to discharge the said amount, the accused issued a cheque bearing number 023833 (Ex.P1) drawn on Union Bank of India, Dharmapuri Branch. When the cheque was presented by the complainant through her banker, viz., Bank of India, Dharmapuri Branch, on 28.11.2012, the same was initially returned for the reason "date required". Subsequently the accused filled up the date in the cheque and gave it back to the complainant.
- iii. When the complainant once again presented the cheque for collection on 30.11.2012 the same was returned for the reason "Funds Insufficient", as is seen from the cheque return memo (Ex.P2).
- iv. Therefore, the complainant issued a legal notice dated 22.12.2012 (Ex.P3) to the accused calling upon her to pay the amount due under the cheque within 15 days from the date of receipt of the notice.



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- v. Though the accused received the said legal notice, as is evidenced by the postal acknowledgement card (Ex.P4), she did not come forward to make good the payment and did not also send any reply.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court, Dharmapuri, under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in S.T.C.No.3/2013.
- vii. The learned Judicial Magistrate, Fast Track Court, Dharmapuri took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.
- viii. On the appearance of the accused, the copies of the records were furnished to her under Section 207 Cr.P.C. The substance of



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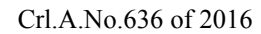
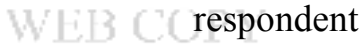
accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.

ix. On the side of the complainant, the complainant examined herself as P.W.1 and two other witnesses and marked Ex.P1 to Ex.P4.

x. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence. However, she did not adduce any evidence on her side.

xi. The learned trial court judge after analysing the oral and documentary evidence on record acquitted the accused vide his judgment and orders dated 18.04.2016, as against which the present criminal appeal is filed by the complainant.

4. Heard Mr.T.Balamurugan, learned counsel for the revision petitioner and Mr.K.Sudheer Ram, learned Legal Aid Counsel for the



respondent

5. Mr.T.Balamurugan, learned counsel appearing for the appellant would contend that the trial court judge failed to note that the complainant had proved the offence against the accused under Section 138 of N.I. Act beyond reasonable doubts and therefore, the order of acquittal passed by the trial court judge is liable to be set aside. His further contention is that when the accused had not denied her signature on the cheque, the trial court was wrong in acquitting the accused.

6. Per contra, Mr.K.Sudheer Ram, learned Legal Aid Counsel appearing for the respondent would contend that the trial court had highlighted the contradictions in the evidence of the complainant (P.W.1). When the complainant had deposed that she lent a sum of Rs.7,00,000/- on 25.11.2012, in her private complaint, she had stated that the respondent/accused used to borrow hand loans from her on various dates and as on 25.11.2012 a sum of Rs.7,00,000/- was due and liable to be paid by the respondent. According to him, the accused had

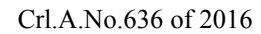


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successfully rebutted the initial presumption under sections 118 & 139 of the Negotiable Instruments Act and the trial court had rightly acquitted the respondent. He therefore, prayed for dismissal of the present criminal appeal filed by the complainant.

7. It is true that the accused did not deny her signature on the cheque (Ex.P1). However in the complaint, the complainant (P.W.1) had stated that the accused used to borrow hand loans from her and as on 25.11.2012 a sum of Rs.7,00,000/- was due and liable to be paid by the respondent and in order to discharge the same, the respondent issued a cheque (Ex.P1) on 28.11.2012. In her evidence, P.W.1 had deposed that the accused borrowed a sum of Rs.7,00,000/- from her on 25.11.2012. She had further added that the accused requested her to lend a sum of Rs.7,00,000/- on 23.03.2012 and on 25.11.2012, she lent a sum of Rs.7,00,000/-. Thus the complainant had contradicted her own versions in the complaint. In fact the accused had taken a defence before the trial court that the cheque was issued only as a security for the jewel loan obtained by her from the complainant.



9. The observations of the trial court are extracted hereunder :

As such of discrepancies in the complainant's case and in the absence of any material evidence to show that there is existence of legal enforceable debt and mere issuance of



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ex.P1 cheque itself were unclear and all this had scrambled the complainant's case against the accused. As such the statutory presumption as to the date of issuance of Ex.P1 cheque stands rebutted. Presumption under Section 139 does not arise. As such this Court holds that there is no legal enforceable debt and though the dishonour of Ex.P1 cheque by way Ex.P2 Return Memo were technically proper, the complainant had not proved his case by leading cogent oral and material evidence."

10. In the circumstances, I do not see any reason to interfere with the findings recorded by the trial court and the order of acquittal passed by the trial court judge is confirmed.

11. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 18.04.2016 in S.T.C.No.3/2013 passed by the Judicial Magistrate, Fast Track Court, Dharmapuri, is confirmed.



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iii. This Court places on record its appreciation to Mr.K.Sudheer Ram, learned Legal Aid counsel, for his valuable assistance in deciding this case. The Legal Services Committee is directed to pay a sum of Rs.10,000/- to the said counsel towards his fee.

18.04.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl

Copy to :

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai - 104.

To

1.The Judicial Magistrate, Fast Track Court, Dharmapuri.

2.The Section Officer, Criminal Section, Madras High Court, Chennai.

Note : As directed by RHJ, issue order copy on 02.05.2024

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R. HEMALATHA, J.

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