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Crl.A.No.553 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

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

Crl.A.No.553 of 2013

C.Shanmugham

... Appellant

Vs.

B.Sundar

... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 07.05.2012 passed in C.C.No.12016 of 2009 by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

When the matter is taken up for hearing, there is no representation on behalf of the appellant and the respondent.



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2. Challenging the order of acquittal dated 07.05.2012 passed in C.C.No.12016 of 2009 by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, the present appeal is filed by the appellant/complainant.

3. 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.

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

4.1. The appellant/complainant and the respondent/accused entered into a Lease Agreement on 17.12.2008. The total lease amount was fixed at Rs.3,50,000/-, out of which, a sum of Rs.50,000/- was paid towards advance by the accused. The accused promised to repay the entire balance amount of Rs.3,00,000/-. Subsequently, he issued a cheque bearing No.009371 (Ex.P1) for a sum of Rs.3,00,000/- dated 02.04.2009, drawn on Union Bank of India, Tiruvanmiyur Branch, in favour of the complainant.



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4.2. When the complainant presented the cheque for collection through his bankers, viz., Bank of Maharashtra, Besant Nagar Branch, Chennai on 27.05.2009, the same was returned for the reason “Insufficient Funds”, as is seen from the cheque Return Memo dated 28.05.2009 (Ex.P2).

4.3. Thereafter, the complainant issued a statutory notice dated 23.06.2009 (Ex.P3) 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.

4.4. The accused received the statutory notice on 27.06.2009, and sent a reply notice dated 07.07.2009 (Ex.P5), which according to the complainant contained false allegations.

4.5. Therefore, the complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court -III, Saidapet, Chennai, under Section 200 Cr.P.C. against the respondent/accused for an offence punishable under Section 138 of Negotiable Instruments Act (in short N.I. Act) in C.C.No.12016/2009.



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4.6. The learned Metropolitan Magistrate, 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.

4.7. 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 he pleaded not guilty, the case was posted for trial.

4.8. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P5.

4.9. 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. However, he did not adduce any oral/documentary evidence on his side.

4.10. The learned trial court judge after analysing the oral and documentary evidence on record found the accused not guilty of the



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offence under Section 138 of N.I. Act and acquitted him under Section 255(1) Cr.P.C., vide her judgment and orders dated 07.05.2012.

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

5. It is seen from the records, 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 complainant is that the accused entered into a lease agreement with him for a sum of Rs.3,50,000/- in respect of his property and paid a sum of Rs.50,000/- on the date of agreement. However, he did not pay the balance amount of Rs.3,00,000/- for which he issued a cheque on 02.04.2009 and on its presentation got dishonored. A copy of the Lease Deed was filed by the respondent/accused. A perusal of the Lease Deed shows that the accused had paid a sum of Rs.3,50,000/- on the date of the lease deed itself.

6. The contention of the accused was that the cheque (Ex.P1) was issued to the complainant since the complainant agreed to sell his



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property in his favour and subsequently, he had misused the cheque for the purpose of filing the present complaint. The complainant had not denied his signature on the Lease Deed (Ex.R1). It is clearly stated in the Lease Deed that the entire amount of Rs.3,50,000/- was paid on the date of lease. Thus, the accused had rebutted the presumption under Section 139 of N.I. Act and on the other hand the complainant had not proved any legally enforceable debt on the date of presentation of the cheque (Ex.P1) for collection. Therefore, the order of acquittal passed by the trial court judge is perfectly in order.

7. In the result,

i. This Criminal Appeal is dismissed.

ii The judgement dated 07.05.2012 passed in C.C.No.12016/2009 by the Metropolitan Magistrate, Fast Track Court -III, Saidapet, Chennai, is hereby confirmed.

09.07.2024

Index : Yes/no

Internet: Yes/No

Neutral Citation Case: Yes/No

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To

- 1.The Metropolitan Magistrate,
Fast Track Court-III,
Saidapet, Chennai.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Section Officer,
Criminal Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.,

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