



Crl.A.No.668 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

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

Crl.A.No.668 of 2019

Sathya ... Appellant

Vs.

Prabhu ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973, against the judgement and orders dated 09.08.2019 passed in C.A.No.132/2017 by the learned III Additional District Judge, Salem, reversing the judgement and orders dated 03.05.2017 passed in S.T.C.No.09/2017 by the learned Judicial Magistrate (Fast Track), Attur.

For Appellant : Mr.M.Sridhar

For Respondent : Mr.Adeeb Mohammed

JUDGMENT

Challenging the order of acquittal dated 09.08.2019 passed in C.A.No.132/2017 by the learned III Additional District and Sessions



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Judge, Salem, 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 :

3.1. The accused borrowed a sum of Rs.7,30,000/- from the complainant on 02.09.2016 and issued a cheque bearing number 977041 dated 02.09.2016 (Ex.P1) for a sum of Rs.7,30,000/- drawn on Indian Bank, Attur Branch, in favour of the complainant.

3.2. When the complainant presented the cheque for collection on 25.10.2016 through her bankers, viz., State Bank of India, Attur Branch, the same was returned for the reason “Insufficient Funds”, as is seen from the cheque Return Memo dated 27.10.2016 (Ex.P3).



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3.3. Thereafter, the complainant issued a statutory notice dated 03.11.2016 (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 05.11.2016, but did not come forward to make good the payment. He did not also send any reply notice.

3.5. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track court, Attur, 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 S.T.C.No.9/2017.

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.



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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 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 herself and marked Ex.P1 to Ex.P7.

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 did not adduce any oral evidence, but marked a notice dated 01.11.2016 (Ex.R1) issued by his friend Kannan to the complainant .

3.10. The learned trial court judge after analysing the oral and documentary evidence on record convicted the accused for the offence punishable under Section 138 of N.I. Act and sentenced him to pay a fine of Rs.7,30,000/-, in default, to undergo simple imprisonment for a period of six months and further ordered for payment of the said amount to the



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complainant towards compensation under Section 357(1) Cr.P.C, vide his judgment and orders dated 03.05.2017.

3.11. Aggrieved over the same, the accused filed an appeal in C.A.No.132/2017 before the III Additional District and Sessions Judge, Salem. The learned Sessions Judge, after analysing the evidence on record, found the accused not guilty of the offence punishable under Section 138 of N.I. Act on the following grounds:

- 1) The trial court did not take into account the notice dated 01.11.2016 (Ex.R1) issued by Mr.Kannan, the friend of the accused, to the complainant, in which it is specifically averred that the complainant had misused the cheques given by him and also by the accused.
- 2) The complainant did not prove that she has financial capacity to lend a sum of Rs.7,30,000/- to the accused.
- 3) The Judicial Magistrate does not have powers to impose a fine amount of Rs.7,30,000/-.



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

4. Heard Mr.M.Sridhar, learned counsel for the appellant and Mr.Adeeb Mohammed, learned counsel for the respondent.

5. At the outset it may be observed that the accused did not deny his signature on the cheque Ex.P1. Once the signature is admitted, there is a presumption under Sections 118 and 139 of N.I. Act, unless the contrary is proved. In the instant case, the defence taken by the accused is that his friend Kannan had business transactions with the complainant and in order to tide over the financial crisis of his friend, the accused issued signed blank cheques in favour of the complainant and that one of the said cheques has been misused for the purpose of filing the present case. In order to substantiate his contention, he filed a copy of the reply notice dated 01.11.2016 (Ex.R1) issued by his friend Kannan to the complainant. A perusal of the said notice shows that the said Kannan had averred that he and the present accused issued signed blank cheques



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drawn on IDBI Bank, Attur Branch and ICICI Bank, Attur Branch in favour of the complainant. The cheque in the instant case is dated 02.09.2016 and it is drawn on Indian Bank, Attur Branch. The accused had not explained this in his 313 Cr.P.C. questioning. Therefore, merely based on Ex.R1 alone it cannot be concluded that the complainant had misused one of the cheques already issued by the accused.

5.1. The lower appellate court had also come to a conclusion that the complainant had not proved her financial capacity to lend a sum of Rs.7,30,000/- to the accused. The complainant, in the instant case, had filed her Bank statement (Ex.P5) as well as RC book of her two lorries bearing Registration numbers TN54 Y 9191 and KA01AE3335. In the bank statement of Ex.P5, the balance amount was indicated as Rs.5,00,000/-. Despite this, the lower appellate court had come to a conclusion that the complainant had not proved her means to lend a sum of Rs.7,30,000/- to the accused.



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5.2. The accused in the instant case had not rebutted the presumption which is in favour of the complainant by adducing acceptable evidence. The trial court had gone into this aspect of the case and had come to a definite conclusion that the accused is guilty of the offence punishable under Section 138 of N.I. Act. On the contrary, the lower appellate court even without perusing the contents of the notice Ex.R1 had come to the conclusion that the accused had handed over signed blank cheques in favour of the complainant.

5.3. It is true that the trial court had imposed a fine of Rs.7,30,000/- to the accused. This could have been set right by the lower appellate court while dealing with the appeal filed by the accused. On the contrary, the lower appellate court had acquitted the accused on this ground of imposing excessive fine amount beyond the powers of the Judicial Magistrate.

5.4. In view of the foregoing discussions, the judgment and orders passed by the lower appellate court is liable to be set aside. The



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respondent/accused is found guilty of the offence punishable under
Section 138 of N.I. Act.

6. In the result,

- i. The Criminal Appeal is allowed.
- ii. The judgment and orders dated 09.08.2019 passed in C.A.No.132/2017 by the learned III Additional District and Sessions Judge, Salem, is set aside.
- iii. The respondent/accused is convicted under Section 138 of N.I. Act and sentenced to undergo Simple Imprisonment for a period of six months and to pay compensation of Rs.7,30,000/-, in default, to undergo simple imprisonment for a period of four weeks.

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Index : yes/no
Speaking /Non speaking Order
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R. HEMALATHA, J.

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To

- 1.The Judicial Magistrate (Fast Track) Attur.
2. The III Additional District Judge, Salem.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

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