



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.196 of 2014

V.Arokiasamy

... Appellant/Complainant

-VS-

S.Venkatachalam

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Criminal Procedure Code praying this Court to set aside the judgment made in S.T.C.No.1082 of 2012, dated 6.5.2014, on the file of Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai and allow this appeal and punish the respondent for the offence under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.C.Susikumar

For Respondent : No appearance

JUDGMENT

The learned counsel for the appellant, who has filed this Criminal Appeal present and reports that the bundle was handed over to the appellant. But none has appeared on behalf of the appellant



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today.

2.This Criminal Appeal is filed against the order of acquittal preferred by the private complainant arising under Section 138 of Negotiable Instruments Act. The complaint/appellant contended that after borrowing of Rs.7 lakhs on 3.3.1998 with a promise to repay it with 24% interest, the accused executed a promissory note and to discharge the debt, gave a cheque for Rs.9,30,000/-, dated 1.9.1999 and got back the promissory note. However, when the cheque was presented for collection, it returned with an endorsement as funds insufficient. Though statutory notice was issued to the accused, no reply was received from the accused. Hence the complaint.

3.To prove the contend of the complaint, the complainant was examined as P.W.1 and marked six documents and on the side of the accused, three witnesses were examined and five exhibits were marked.

4.The trial Court, after appreciating the evidence, has held that the complainant had failed to prove his capacity to lend Rs.7



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lakhs as loan and also the factum of lending was not proved by him.

Through the official of Southern Railway, D.W.2, the accused has established the fact that on the alleged date of executing the subject cheque, the accused was on duty and his attendance Register marked as Ex.B4 belies the case of the complaint that the subject cheque was issued by the accused on the date specified in the complaint. This probablise that he could not have been present at the place of the complainant to receive the loan.

5.This appeal is filed challenging the finding of the trial Court on the ground that having admitted the signature found in the cheque, presumption ought to have been drawn against the drawer of the cheque. The defense taken by the accused that the signed cheque was given for payment towards a third party namely, BSR Finance, believed by the trial Court to acquit the accused.

6.A perusal of the impugned order and the documents besides the testimony of the witnesses, this Court is of the view that the execution of the Cheque though admitted, the liability is denied and the same has been probalised by letting in the defense witness



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and documents. The complainant cannot still harp on Section 139 of the Negotiable Instruments Act to draw presumption. Rebuttal presumption in a statute cast reverse burden on the accused. The burden gets discharged once the accused probalises his defense. In this case, the accused has pleaded that the signed post-dated cheque was given to one BSR Rinance and it is meant for a third party and not to the complainant. Further, he has also contended that on the said date and time as alleged by the complainant, regarding the borrowing of Rs.7 lakhs, he was on duty and the same been spoken through documentary evidence namely, Attendance Register Ex.B4 and by the official who is in-charge of the Attendance Register.

7.While the fundamental fact which ought to be proved by the complainant, has been doubted and shaking, due to the rebuttal evidence. Thereafter the complaint cannot still rely upon Section 139 of the Negotiable Instruments Act to draw presumption.

8.The finding of the trial Court is based on the positive evidence let in by the accused which is sufficient to rebut the presumption. Whereas, there is no adequate evidence to hold that the



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subject cheque was issued by the accused for the discharge of the enforceable debt

9.Hence, the Criminal Appeal deserves no merit acceptance and accordingly dismissed.

01.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To:

- 1.The Judicial Magistrate No.I,
Fast Track Court at Magisterial Level,
Madurai
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

vsn

JUDGMENT MADE IN
CRL.A(MD) No.196 of 2014

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