BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.03.2024

Coram

The Honourable Dr. Justice G.JAYACHANDRAN

Crl.A.(MD).No.277 of 2015

M.Patturajan

....Appellant/ Complainant

vs.

G.Marimuthu

....Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the order passed by the Judicial Magistrate No.II, Tiruchirappalli dated 28.01.2014 made in STC No.493 of 2008.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : No appearance

JUDGMENT

The appeal, against the acquittal, preferred by the complainant/appellant, who has lost his complaint initiated under Section 138 of the Negotiable Instruments Act.

2. The trial Court had dismissed the complaint on two grounds. The first ground is that the cheque was presented after the closure of the account and so, it was retuned with an endorsement 'Account Closed' and the second ground for dismissal of the complaint is that the accused had rebutted the presumption and shifted the burden on the complainant to prove foundation fact that the cheque was issued to discharge the debt, whereas, the complainant has failed to prove lending of money or issuance of cheque to discharge the debt.

3. The short point in this case is that for a borrowing Rs.2,00,000/- on 15.12.2005 with promise to repay with interest, the respondent/accused alleged to have issued the cheque dated 01.11.2008 for Rs.3,32,000/-. On presentation of the cheque, it was returned with an endorsement 'Account

Closed'. To prove the fact that the account got closed, D.W.2 Assistant Manager of the Bank, in which, the account was maintained by the accused, was examined and he categorically deposed from the bank records that the account was opened on 01.07.1999 and closed the same on 30.03.2004. Whereas, the subject cheque is dated 01.11.2008 and it was about four years after the closure of the account. Furthermore, from the evidence let in by the complainant and the accused, the trial Court has held that the complainant failed to discharge the onus upon him, whereas the accused has probable defence. The failure of the complainant to examine the witnesses for the borrowing, though he admits that there were witnesses, is fatal for the case of the complainant. More particularly, the case of the complainant is that apart from the cheque, there was a loan document executed by the accused in the presence of the witnesses. The said loan document has not seen the light of the day.

4. This Court on perusing the records and on hearing the submission made by the learned counsel appearing for the appellant/complainant, finds that the reasoning given by the trial Court cannot be considered as a perverse or without any legal substance. The view of the trial Court is

possible view and therefore, this Court is not inclined to substitute any other alternative view to set aside the finding of the trial Court.

5. Hence, this Criminal Appeal stands dismissed.

08.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
skn

To
1.The Judicial Magistrate No.II, Tiruchirappall.

Dr.G.JAYACHANDRAN, J.

skn

Judgment made in
Crl.A.(MD).No.227 of 2015

08.03.2024