



Crl.A(MD)No.118 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

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A.Asaithambi

... Appellant/ Respondent / Complainant

Vs.

S.Murugesan

... Respondent / Appellant / Accused

Prayer : This Appeal is filed under Section 372 of Cr.P.C., to admit the appeal and call for the records pertaining to the judgment passed by the learned Fast Track Mahila Court, Dindigul in CA No.18 of 2016 dated 18.08.2017 and set aside the same and thereby consequently upheld the judgment of the learned Judicial Magistrate Court No.3, Dindigul.

For appellant : Mr.P.Vairava Sundaram

For Respondent : Mr.S.C.Herold Singh

J U D G M E N T

This Criminal appeal is filed to call for the records pertaining to the judgment passed by the learned Fast Track Mahila Court, Dindigul in CA No.



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18 of 2016 dated 18.08.2017 and set aside the same and thereby consequently upheld the judgment of the learned Judicial Magistrate Court No.3, Dindigul made in C.C.No.225 of 2011 dated 21.04.2016.

2. The complainant filed a private complaint under Section 200 of Cr.P.C., with the following averments:

(i) On 05.04.2011, the respondent herein borrowed a sum of Rs.2 Lakhs as hand loan. The assistance was rendered by the complainant on the same day itself in cash. He issued a post dated cheque on the same day itself, promising to honour the same. It was presented for payment on 27.06.2013 which came to be returned dishonoured with an endorsement 'no sufficient fund is available'. After completing the statutory formalities the private complaint came to be filed.

(ii) On the side of the complainant, two witnesses were examined and five documents were marked. On the side of the respondent four witnesses were examined and five documents marked. One document was marked as Ex.C1. At the conclusion of the trial process, the trial Court found the accused guilty and sentenced him to undergo six months simple imprisonment and two Lakhs as compensation.



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(iii) Against which an appeal was preferred by the respondent

before the learned Fast Track Mahila Court, Dindigul in C.A.No.18 of 2016.

The appellate Court differed with the finding of fact recorded by the trial Court, set aside the conviction and sentence imposed upon the accused by the trial Court and acquitted the accused. Against which the present appeal is filed by the complainant.

3. Heard both sides.

4. It is a judgment of reversal finding. Learned counsel for the appellant would submit that there was no response from the respondent herein to the statutory notice issued by him. A plea for benami was taken by the accused ; there was no endorsement in the cheque; There is no proper explanation on the part of the respondent whether it is a bearer or order cheque. No evidence was produced to prove. Apart from that it is also submitted that it is only a bearer cheque.

5. Per contra, learned counsel for the respondent would submit that D.W.3 clearly supports the case of the respondent herein. He probablised his defence and so the appellate Court order need not be interfered.



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6. In the light of the above said rival submission, we will go to the evidence available on records. As mentioned in the preamble portion, it is the case of the complainant that it is a hand loan. It is seen that both the accused and the complainant are known to each other. It is a case of the complainant that on 05.04.2011, the money was borrowed by the accused and on the very same date itself, the cheque was issued. The amount was given out of his own money.

7. During the course of cross examination, it was suggested to P.W.1 that on the date of the alleged transaction accused was on duty. So there is no possibility or probability for having obtained the loan. That was the first point raised by the accused.

8. The second point is that, he borrowed money from one Bairava Subramanian, from the said Bairava Subramanian, the complainant received the cheque on mortgage, filled up the same and filed the complaint. These are the two grounds raised by the accused.



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9. Considering the first point, the respondent during the course of evidence has stated that from 1.40 p.m., on 04.04.2011 to 05.04.2011 till 1.40 p.m., he was on duty in Tamil Nadu State Transport Corporation, Oddanchatram. On 05.04.2011 at about 3.30 p.m., he came out of the office. To show the same he has produced the duty register. This was the probable defence taken during the course of trial. D.W.3 is the branch manager of Tamil Nadu State Transport Corporation, Oddanchatram Branch. During his course of evidence he stated that the accused was a Conductor in the Corporation and his duty time was from 1.30 p.m., on 04.04.2011 up to 9.50 p.m., on that date. The next date on 05.04.2011, his duty time was between 4.45 a.m., and 1.20 p.m. He was on duty in bus route 702G. He has also produced the attendance register and duty register. From the evidence of D.W.3, the defence is probablized that there is no possibility for the respondent herein to borrow money from the complainant on 05.04.2011 at about 11 a.m. When the case of the respondent herein is probablized by way of documentary evidence, no exception can be taken over the finding of the appellate Court. I find no reason to interfere with the above said finding and it is confirmed.



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9. Recording the first aspect of benami, we cannot go much on that point. That Bairava Subramaniam to whom the respondent was indebted was examined. During the course of evidence, he stated that on 19.01.2011, the accused received a sum of Rs.10,000/- as hand loan. Towards discharge of the same, he handed over unfilled cheque. He demanded the money back. The accused expressed his inability and asked him to endorse the same in favour of some other persons and get the money. On 03.03.2011, the complainant by receiving the cheque gave Rs.15,000/- to him, acknowledgment was issued in a paper. It was signed in the presence of witness. That document was marked as Ex.D4. He approached the complainant several times for discharging the loan amount. But he filed the complaint by using the cheque. So as per his evidence, he made endorsement in favour of the complainant.

10. So we can take that the complainant is a holder in due course. That fact was not mentioned by the complainant either in his legal notice or in the complaint. A criminal prosecution, must be based upon the true facts. Here, the endorsement itself is denied and disputed by the complainant and says that the original consideration was paid by him to the respondent, which was disproved by the respondent. When there is disproof with regard to the



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passing of the consideration, I am of the considered view that the judgment made in CA No.18 of 2016 dated 18.08.2017 passed by the learned Fast Track Mahila Court, Dindigul, does not suffer from any illegality or perversity. It is based upon valid reasons and so no interference is called for.

11. Accordingly, this Criminal Appeal is dismissed, confirming the order of the to the judgment passed by the learned Fast Track Mahila Court, Dindigul in CA No.18 of 2016 dated 18.08.2017, reversing the judgment made in C.C.No.225 of 2011 by the learned Judicial Magistrate No.III, Dindigul.

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

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To

1. The Fast Track Mahila Court, Dindigul.
2. The Judicial Magistrate No.III, Dindigul.



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