



Crl.A.(MD).No.9 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

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M/S.Add-Inn Advertisement Services Pvt. Ltd.,
Rep. By its Proprietor P.Ramesh,
Plot No.29,1st Cross Street,
Vanamamalai Nagar,
Madurai-625 010.

... Appellant

Vs.

1.Ravichandran

2.M/s.Speed Adds,
31-C, Thangam Compound,
Madurai-16,
rep. By its Proprietor Ravichandran.

... Respondents

PRAYER: Criminal Appeal has been filed under Section 372 of Cr.P.C., to call for the records pertaining to the judgment in C.A.No.49 of 2015 on the file of the IV Additional District Sessions Judge, Madurai, dated 31.08.2017 reversing the judgment passed by the learned Judicial Magistrate No.2/Fast Track Court, Madurai, in S.T.C.No.645 of 2013, dated 06.10.2015, and set aside the same.

For Appellant : Mr.P.Karunanidhi

For Respondents : Mr.N.Anandha Padmanaban
Senior Counsel
for Mr.Srikanth



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ORDER

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This appeal has been filed to set aside the Judgment of the Appellate Court passed by the IV Additional District and Sessions Judge, Madurai, in C.A.No.49 of 2015, dated 31.08.2017, reversing the conviction and sentence imposed in S.T.C.No.645 of 2013, dated 06.10.2015 by the learned Judicial Magistrate No.II/Fast Track Court, Madurai.

2.The appellant is the complainant in S.T.C.No.645 of 2013, who filed the complaint under Section 138 of Negotiable Instruments Act, (hereinafter, for the sake of brevity, referred to as “NI Act”) before the learned Judicial Magistrate No.II/Fast Track Court, Madurai, with allegation that the appellant was doing business of advertisement in the name and style of “Add-Inn Advertisement Service Private Limited”. The first respondent has given a cheque for Rs.50,000/- towards part of advertisement charges out of the total due amount of Rs.2,95,750/- for the vehicle advertisement work. To settle the balance amount, after repeated demands, the first respondent had issued two cheques bearing No.089763, dated 30.12.2012 for Rs.1 lakh and No.089764 dated 15.01.2023 for Rs.1,45,750/- to the complainant, which were presented



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for collection in Tamil Nadu Mercantile Bank Limited, on 06.02.2013, and the same was returned on 07.02.2013 and 13.02.2013 respectively with an endorsement “funds in-sufficient”. Thereafter, the first respondent promised to settle the due shortly and as requested by the first respondent, the above two cheques were presented for collection on 08.03.2013 and the same were returned with the same endorsement. Hence, the appellant issued the legal notice on 11.03.2013. The first respondent received the notice on 13.03.2013. Without making any payment, he sent a reply notice with false allegations. In such circumstances, the appellant filed a complaint under Section 138 before the learned Judicial Magistrate No.II/Fast Track Court, Madurai. The learned Judicial Magistrate took the complaint on file in S.T.C.No.645 of 2013.

3. Thereafter, on receipt of the summons, the respondent appeared and contested the case. The complainant examined himself as PW.1 and exhibited 14 documents as Ex.P1 to Ex.P.14 and the accused neither produced any documents nor examined any witnesses on his side and the trial court passed the conviction under Section 138 of Negotiable Instruments Act and sentenced respondent to undergo 1 year Simple



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Imprisonment and directed to pay compensation of Rs.2,45,750/- (Rupees Two Lakhs Forty Five Thousand and Seven Hundred and Fifty only), within a period of three months from the date of Judgment, dated 06.10.2015.

4. Aggrieved over the same, the first respondent filed the Criminal Appeal in C.A.No.49 of 2015 on the file of the learned IV Additional District and Sessions Judge, Madurai. The learned Appellate Judge reversed the conviction and sentence passed by the trial Court and acquitted the first respondent from the offence under Section 138 of Negotiable Instruments Act. Hence, the appellant/complainant preferred this appeal before this Court.

5.Mr.P.Karunanidhi, learned counsel for the appellant made the following submissions:-

5.1. Issuance of cheque was admitted. Complainant has produced “mail communication” to prove that he had reformed “Road Show”. Hence there was legally enforceable debt. Legal presumption; under section 139 of Negotiable Instrument Act also comes into play. No rebuttable evidence was adduced to dispel the same. Therefore, the



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learned Appellate Judge erroneously reversed the well considered the judgment of the trial court and hence, he seeks to allow the appeal.

5.2. The learned Senior Counsel appearing for respondent/Accused would submit that the appellant received the cheque to perform road show “advertisement”. But he failed to conduct the same and without conducting road show advertisement he has filled the cheque and presented the same. Therefore, the learned Appellate Judge, correctly acquitted accused. The appellate Court's view is possible view and hence he seeks to confirm the same.

5.3. Further it was argued that the complainant has not produced sufficient materials to prove the legally enforceable debt namely, either through document or through oral evidence that there was liability on the respondent. Their own case is that they collected amount for showing road show for which they did not produce any police permission nor produced any documents. Only based on the email proceedings, this Court can not entertain the appeal. Hence, the learned appellate judge correctly acquitted the accused on appreciation of facts and the same is not liable to be interfered by this Court.



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6. This Court considered the rival submissions and perused the records and the impugned judgment passed by the learned trial Judge and the precedents relied upon them.

7. The question arising for consideration in this appeal is *whether the impugned judgment passed by the learned trial Judge by acquitting the respondents needs interference?*

8. This appeal has been filed by complainant against the acquittal judgment. This court reminds itself the principles laid down by Hon'ble Supreme Court relating to scope of interference in appeal against acquittal.

9. The case of the appellant is that he entered into an agreement with the respondents to conduct road show advertisement. As per the agreement, the appellant conducted the road show advertisement. To meet out the cost for the said show, the respondents had issued the cheques for value of Rs.2,45,750/-. The appellant presented the said cheque and the same was dishonored and hence, he filed a complaint before the learned Judicial Magistrate No.II, Fast Track, Madurai, under



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Section 138 of Negotiable Instrument Act and the same was taken on file in S.T.C.No.645 of 2013. The learned Judicial Magistrate No.II, Fast Track, Madurai, convicted the first respondent by the judgment dated 06.10.2015 and sentenced him to undergo 1 year Simple Imprisonment and directed to pay compensation of Rs.2,45,750/- (Rupees Two Lakhs Forty Five Thousand and Seven Hundred and Fifty only), within a period of three months from the date of Judgment, dated 06.10.2015. Aggrieved over the same, the respondent filed an appeal before the IV Additional District and Sessions Judge, Madurai, in C.A.No.49 of 2015 and the same was allowed by the impugned judgment dated 31.08.2017. The learned Appellate Judge has held that the appellant has not produced any material to prove the performance of road show advertisement. Therefore, the cheques were not proved to have been issued for the legally enforceable debt. Challenging the said judgment, the appellant filed this appeal.

10. It is the specific case of the appellant that he conducted road show advertisement and hence, the first respondent gave the cheques for the cost of the road show advertisement. The case of the respondents is that they had issued the cheques at the time of entering of contract as



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security and the same was filled and the appellant filed the complaint under Section 138 of Negotiable Instrument Act without performing the road show advertisement. Therefore, the crux of the issue is *whether the appellant proved his case of performance of the road show?*. This Court perused all the documents and oral evidence. But, unable to find out any material to prove that the appellant had performed the road show advertisement. To prove the performance of road show, the appellant has not produced any material, except the mail communication. The own case of the appellant is that he collected the amount for conducting road show advertisement after obtaining permission from the police. However, he has not produced any document to prove the same. Further, he also has not produced any evidence to substantiate his case that road show advertisement was conducted by him. Therefore, the cheque is not proved to be issued in discharge of legally enforceable debt. The learned appellate judge correctly appreciated the evidence and found that the appellant has not produced any material to prove that he had conducted “*the road show advertisement*”. Therefore, the view taken by the learned Appellate Judge that without any evidence to prove that the appellant has conducted the road show advertisement, and the cheque was not supported with legally enforceable debt is possible view and hence,



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benefit of doubt goes towards the appellant. Therefore, this court finds no perversity or erroneous finding in the judgment of the learned Appellate Judge. Hence, this Court is not inclined to interfere with the acquittal judgment.

11. Accordingly, the appeal is dismissed. The acquittal judgment passed by the learned IV Additional District Sessions Judge, Madurai, in C.A.No.49 of 2015 dated 31.08.2017, reversing the judgment passed by the learned Judicial Magistrate No.2/Fast Track Court, Madurai in S.T.C.No.645 of 2013 dated 06.10.2015, is hereby confirmed.

11.12.2024

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

1. The Judicial Magistrate No.2/ Fast Track Court,
Madurai.
2. The Section Officer,
Record Section (Crl.)
Madurai Bench of Madras High Court, Madurai.



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K.K. RAMAKRISHNAN. J.,

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