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Crl.A.(MD).No.70 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.10.2024

DELIVERED ON : 19.11.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.70 of 2022

Anburaja

... Appellant/Complainant

Vs.

Sivaraman

... Respondent/Respondent

Prayer: Criminal Appeal has been preferred under Section 378 Cr.P.C., to call for the records and allow the above appeal by setting aside the Judgment dated 08.11.2021 passed in C.C.No.54 of 2019, on the file of the Judicial Magistrate Cum Fast Track Court, Uthamapalayam, acquitting the respondent herein.

For Appellant : Mr.K.Rajeswaran

For Respondent : Mrs.K.Vidya

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside Judgment dated 08.11.2021 passed in C.C.No.54 of 2019, on the file of the Judicial Magistrate Cum Fast Track Court, Uthamapalayam, acquitting the respondent herein.



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2.The complainant filed a complaint with the following averments:

The accused approached the complainant for loan on 27.09.2018. He lent a sum of Rs.1,00,000/-. The accused promised to repay the same within two months. The accused issued a cheque dated 27.09.2018, towards the discharge of the loan amount. The cheque was presented for payment through his Banker on 01.10.2018. It was returned on the same day itself as insufficient fund. So after completing the statutory formalities, he filed the private complaint.

3.On the side of the complainant two witnesses were examined and 7 documents marked. On the side of the accused he himself was examined as RW1, but, no documents were produced.

4.The trial court at the conclusion of the trial process came to the conclusion that the guilt of the accused was not proved beyond all reasonable doubt. Accordingly, acquitted the accused. Against which, this appeal is preferred by the complainant.



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5.Heard both sides.

6.Only short point arises for consideration here. The trial Court recorded a finding that the complaint is a pre-matured one. The statutory notice is dated 16.10.2018. Before the completion of statutory period the complaint was presented on 26.10.2018. Since there is violation of statutory provision, complaint itself is not maintainable. Against which, this appeal is preferred.

7.At the time of appeal, the learned counsel for the appellant has brought to the notice of this Court a judgment of this court in ***Crl.O.P. (MD).No.5109 of 2018***, dated 20.06.2020, in the case of ***V.Vijayalakshmi Vs. R.Amaravathi***, wherein, a similar situation was dealt in. The demand notice was sent on 30.04.2013. The complaint was filed on 08.05.2013. Pending the trial process accused in that matter filed Crl.O.P.(MD).No.5109 of 2018 for quashing the complaint on the ground that it is pre-matured one. Noting that there were diverged view on that matter, it was referred to the Division Bench. After hearing the amicus curie and the parties, reference was answered that a pre-matured complaint is not a complaint at all, cognizance taken on such a complaint is non-est in law. But, however, another opportunity was granted to the complainant to present the complaint



after complying the statutory formalities. In that matter 6 months time was granted to the complainant to represent the same.

8.The learned counsel for the appellant on the strength of the above said judgment requests this Court to exercise that option and granting of liberty to the complainant to file a fresh complaint. But the Limitation under Section 468 Cr.P.C., will come into operation. This was also answered by the Honourable Supreme Court in the Judgment in ***Crl.A.No.1229 of 2022 arising out of SLPNo.1415 of 2019*** in the case of ***Gujanand Burange Vs. Laxmichand Goyal***, wherein, the following observation is made.

“41... Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very



same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly.””

9. After extracting the above said portion, the Honourable Supreme Court granted liberty to the complainant in that matter.

“10 Hence, the following order:

(i) The impugned judgment and order of the Single Judge of the High Court of Chhattisgarh dated 28 November 2018 shall stand set aside; and

(ii) The respondent would be at liberty to institute a fresh complaint and since the earlier complaint could not be presented within the time prescribed by Section 142(b) of the NI Act, the respondent would be at liberty to seek the benefit of the proviso by satisfying the trial court of sufficient cause for the delay in instituting the complaint.

11. In the event that the second complaint is filed within a period of two months from the date of this order, we request the trial court to dispose of the complaint within a period of six months.”



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10.In view of the above said settled position of law, liberty is granted to the appellant herein to file fresh complaint, of course, after satisfying the requirement as pointed out by the Honourable Supreme Court.

11.Accordingly, the judgment of acquittal passed by the trial Court is hereby confirmed. This criminal appeal stands dismissed with the above said liberty.

19.11.2024

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

- 1.The Judicial Magistrate, Fast Track Court at Magisterial Level,
Uthamapalayam,
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA, J

TM

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