



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.193 of 2013

S.Gnanapandithan

... Appellant

-VS-

T.Senthilkumar

... Respondent

PRAYER : Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure praying this Court to call for the records in S.T.C.No. 571 of 2007 on the file of the learned Judicial Magistrate No.2, Trichy and set aside the judgment of said Court dated 06.05.2013, by allowing this appeal.

For Appellant : Mr.R.Sundar

JUDGMENT

The learned counsel for the appellant states that the parties are taken back the bundle. However, this Court finds that the appellant has not



engage a new counsel and there is no representation for him.

2. The appeal is preferred being aggrieved by the dismissal of the private complaint initiated by the appellant. While it is contended by the appellant that the subject cheque for Rs.2,75,000/- was given by the accused to discharge the loan liability, the same was contested by the accused that the cheque was given in blank as security for the loan availed. Towards the discharge of the loan, already he has paid Rs.1,50,000/- in cash and the cheque given for a security being misused. While the specific case of the complainant is that the accused borrowed Rs.4,00,000/- on 04.09.2003 with promise to repay it with 12% interest, the same is denied by the accused saying that he borrowed only Rs.2,00,000/- and for that he has already repaid Rs.1,50,000/- and the cheque was only given as security and not to discharge the debt.

3. The trial Court considering the evidence, particularly, the cross examination of P.W.1 coupled with the documentary evidence relied by the defence, namely, Ex.D1 to Ex.D3 has held that the presumption that the



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cheque was drawn towards discharge of legally enforceable debt being rebutted by the accused. The cheque was presented after knowing that the drawer of the cheque has instructed his bank to stop the payment. The trial Court has reasoned his judgment by pointing out that the liability of Rs.4,00,000/- attempted to be proved by marking pronote Ex.P1. However, the complainant has failed to prove the pronote by examining the attesting witnesses and therefore, concluded that the foundational fact has not been proved to draw the presumption under Section 138 of NI act. If the case of the complainant *per se*, issuance of cheque to discharge the liability and proof of the foundational facts would have been sufficient to draw the presumption under Section 139 of NI Act. However, in this case, the accused has not only denied the liability and also questioned the validity of the pronote, which was marked as Ex.D1.

4. In such circumstances, it is the duty of the complainant to prove Ex.D1 pronote in the manner known to law, which unfortunately in this case, he failed to do so. Except the complainant no other witnesses being examined and the self serving statement of the complainant, without



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corroboration, as far as the execution of pronote, is concerned, it has become fatal to the case of the complainant. This Court has to confirm the judgment of the trial court, since it is based on reasoning and law. Accordingly, this Criminal Appeal is dismissed.

01.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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To:

- 1.The Judicial Magistrate No.II,
Trichy.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

cp

JUDGMENT MADE IN

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