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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.318 of 2011

Nalinasekaran

... Appellant

-VS-

Pandi Teacher,
East Kottai Street,
Paravai,
Madurai.

... Respondent

PRAYER : Criminal Appeal is filed under Section 397 r/w Section 401 of the Code of Criminal Procedure praying this Court to call for the records of the learned Judicial Magistrate No.I, Madurai, in S.T.C.No.903 of 2005 and set aside the order dated 09.08.2010.

For Appellant : No appearance

For Respondent : No appearance



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JUDGMENT

Though the matter was listed in advance on 19.02.2024, no representation for the appellant, when the case taken up for hearing today.

2. Being aggrieved by the dismissal of the private complaint initiated under Section 138 of NI Act, the present appeal is filed.

3. In the grounds of appeal, it is contended that the Court below ought to have considered the evidence let in by the complainant in a proper prospective. Though no substantial evidence was let in by the respondent/accused to rebut the presumption, the Court below has assumed that the accused has rebutted the presumption.

4. The case of the appellant/complainant is that the respondent herein borrowed Rs.1,50,000/- on 16.06.2002 with a promise to repay it within a year and gave a post dated cheque dated 16.06.2003. When the said cheque was presented for collection, the same was returned on 24.06.2003 with the



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endorsement 'funds insufficient'. To the statutory notice, there was no reply by the accused, though it was duly served on him. Therefore, the complaint under Section 138 of NI Act was filed alleging that the cheque was issued for legally enforceable debt, but was issued without adequate fund in the account.

5. To prove the complaint, the complainant was examined as P.W.1 and six documents were marked. To rebut the presumption and disproved the case of the complainant, on the side of the accused three witnesses were examined and three exhibits were marked.

6. The trial Court has held that the accused has established that the complainant had no wherewithal to advance the loan of Rs.1,50,000/-. The contention of the complainant that he borrowed loan from IOB to lend loan to the accused, which was not being proved through document. It is case of the complainant that the subject cheque was issued on the same day, when the money was lent. It is a post-dated cheque.



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7. The ocular evidence let in on behalf of the accused has probalised that the loan was availed only by one Kumaraguru. The subject cheque was obtained under threat by the complainant. The said cheque was a blank signed cheque, which has been misused. The trial Court has suspected the manner in which the cheque was issued, since the signature and the writing found to be in two different colors and taking note of the fact that the accused has intimated the bank to stop payment much before the issuance of statutory notice.

8. The contention of the complainant that the loan of Rs.1,50,000/- was borrowed on 16.06.2002 and the cheque was issued for the very same amount on the same day with post dated, found to be suspicious contention, which lacks bona fide. Though some of the reasonings given by the trial Court may not clear the test of reasoning, through the defence witness the accused has probalised that there was no liability to pay. Contrarily the complainant has not let in any evidence how, when and where the loan of Rs.1,50,000/- advanced to the accused. The complaint as well as the testimony of the complainant is bereft of those basic details.



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9. In the light of such lack of evidence, the theory projected by the accused that the cheque was obtained in blank and presented after filling it out, gains relevancy and significance. Therefore, this Court holds that the dismissal of the private complaint for want of proof need not be interfered with. 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.I,
Madurai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

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JUDGMENT MADE IN

CRL.A(MD) No.318 of 2011

01.03.2024