



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.327 of 2011

L.Ashok Kumar

... Appellant

-VS-

V.Kulodungan

... 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. 321 of 2008 dated 30.09.2011 on the file of the learned Judicial Magistrate No.III, Trichy and set aside the same.

For Appellant : Mr.C.Susikumar

JUDGMENT

The appellant is the complainant in a private complaint initiated under Section 138 of NI Act. Being aggrieved by the dismissal of the complaint, the present appeal is filed.



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2. The sum and substance of the private complaint is that the complainant and the accused were friends. A sum of Rs.2,00,000/- was borrowed by the accused on 24.01.2007 on the promise that it will be repaid with interest at the rate of 12% within six months. To discharge the debt, four cheques were given by the accused for a total sum of Rs.1,75,000/- as part payment. When the cheques were presented for collection, the same was bounced with the note 'insufficiency of fund'. When statutory notice dated 04.12.2007 was sent to both the accused, though the accused received the statutory notice, he did not reply and hence, the complaint.

3. To prove the complaint, the complainant entered into the witness box and examined himself as P.W.1 and 11 exhibits were marked, which are four cheques, four return memos, legal notice and the acknowledgment card. On the side of the accused, Tmt.Indira was examined as D.W.1 and five exhibits, which are hand written chits, were marked.

4. The trial Court framed the point for consideration as to whether the complainant has proved the case against the accused and whether the



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accused has rebutted the same.

5. Though Section 139 of NI Act was pressed into service by the complainant, harping on the point that the accused failed to reply in spite of receiving the statutory notice. The trial Court had relied upon the defence exhibits and defence witness, which have probalised the case of the defence sufficient to rebut the presumption. For that purpose, the trial Court has relied upon the judgment of the Honourable Supreme Court, which has clarified that the presumption under Section 139 of NI Act can be rebutted the preponderance of probabilities. The trial Court while considering the defence theory referring Ex.D1 to Ex.D5, the hand written chits, has concluded that the accused has business transactions with the complainant on purchase of gold ornaments for credit and repay it in installments. Under such circumstances, there is a possibility of giving the cheques as security, as contended.

6. Contrarily, there is no possible evidence on the side of the complainant to substantiate the averments made in the complaint that the



subject cheques Ex.P1 to Ex.P4 were given to discharge the loan borrowed from the complainant on 24.01.2007. The trial Court has also doubted that when the cheques were given between 04.06.2007 and 06.06.2007, no reason was attributed by the complainant for presenting the cheques on 03.11.2007, after five months from the date of the cheques. As has been clarified by the Hon'ble Supreme Court, the presumption under Section 139 of NI Act is a rebuttable presumption. The reverse burden on the accused can be discharged by preponderance of probabilities, whereas to draw the presumption under Section 139 of NI Act, the complainant has to first establish the foundational fact regarding issuance of cheque and the cheque was issued for discharging debt. When the debt is disputed by preponderance of probabilities, the complainant is found to adduce evidence as to how the debt has incurred and such evidence shall be either oral or documentary and mere a self- serving oral statement of the complainant may not be adequate to hold that the complainant has proved the foundational fact.

7. In this case, the complainant has failed to substantiate his claim



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that there was a money transaction between him and the accused and for that, he himself issued the cheques Ex.P1 to Ex.P4 to discharge the debt. As noted, out of 11 exhibits filed and relied on by the complainant, there is no document which could substantiate that there was any money transaction between the complainant and the accused. Contrarily, on the basis of the ocular evidence of D.W.1 and the documentary evidence, Ex.D1 to Ex.D5, the accused has probalised the defence. Therefore, this Court finds no merit in the appeal. 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.III,
Trichy.
- 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.327 of 2011

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