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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.325 of 2010

Raveendran

... Appellant

-VS-

Selvanayagam

... Respondent

PRAYER : Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure praying this Court to set aside the judgement and order of acquittal passed by the learned Judicial Magistrate No.2, Trichy in C.C.No.235 of 2007, dated 19.07.2010 acquitting the respondent for the offences under Section 138 of Negotiable Instruments Act.

For Appellant : No appearance

For Respondent : Mr.V.Karthikeyan

JUDGMENT

No representation for the appellant, inspite of the case being notified in the advance list published on 19.02.2024. The learned counsel for the

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respondent is present.

2.The appeal against the acquittal was preferred by the complainant who initiated a criminal proceedings under Section 138 of NI Act, but failed to convince the trial Court.

3. The case is in respect of a cheque for Rs.6,00,000/- to discharge the partial liability of the loan received by the accused and his wife.

4. The specific case of the complainant is that the loan of Rs.5,00,000/- was given to the accused and Rs.1,00,000/- to the wife to meet out their lot of expenses, but they have not repaid inspite of the repeated requests and only the subject cheque for Rs.1,00,000/- was given on 10.03.2007, but that was also returned for insufficiency of funds. To the statutory notice, the accused has replied admitting the said transaction and had pleaded that loan was not Rs.6,00,000/- but only Rs.4,00,000/-. The subject cheque was given as a security for repayment. To the loan of Rs.4,00,000/-, a sum of Rs.8,85,933/- was repaid along with interest.



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5. The trial Court, after appreciating the evidence, accepted the defence that the cheque was given as security for the repayment of the loan. The defence witnesses along with the statement of account produced by the accused proves the fact of repayment, whereas the complainant failed to establish the fact that he advanced Rs.6,00,000/- as loan. The trial Court after appreciating the evidence let in by the defence rebutting the presumption has found that there is a preponderance of probability in the case of the defence. There is no evidence to disbelieve the case of the defence and mere presumption under Section 139 NI Act cannot be a reason for the complainant to stay away from establishing the foundational fact of advancing the loan. Therefore, this Court finds no error in the trial Court's Judgment. 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.IV,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

DR.G.JAYACHANDRAN,J.



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JUDGMENT MADE IN

CRL.A(MD) No.325 of 2010

01.03.2024