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Criminal Appeal Nos.547 & 548 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-01-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal Nos. 547 & 548 of 2015

Panneerselvam

.. Appellant in both
Criminal Appeals

Versus

Palani

.. Respondent in both
Criminal Appeals

Criminal Appeals filed under Section 378 of Code of Criminal Procedure, to set aside the Order of acquittal passed in C.C. Nos. 79 & 78 of 2011 dated 17.06.2015 on the file of learned Judicial Magistrate, Cheyyar, Thiruvannamalai District.

For Appellant : Mr. K.G. Senthilkumar
in both Appeals

For Respondent : Mr. V. Prabhakaran Theenadayalan
in both Appeals

COMMON JUDGMENT

These Appeals have been filed to set aside the Order of acquittal recorded in C.C. Nos. 79 & 78 of 2011 dated 17.06.2015 by the learned Judicial Magistrate, Cheyyar, Thiruvannamalai District.



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2. Both the Appeals have been preferred by the Complainant against the Respondent. As the issues involved in both the Appeals are inter-twined and inter-related with each other and the learned Counsel for both sides advanced common arguments, they are taken up for hearing together and disposed of by this common judgment.

3. The Appellant, as Complainant, has filed two complaints in C.C. No. 78 of 2011 and C.C. No. 79 of 2011. In both the Complaints, it was alleged that the Respondent/Accused obtained a hand loan of Rs.1,78,000/- and Rs.1,00,000/- respectfully from him and to repay the loan amount, two cheques bearing Cheque No. 684129 and 684130 drawn on State Bank of India, Thachur Branch have been issued. When the cheques were presented for clearance, they were returned with a return memo indicating “insufficient funds” to honour the cheque in the bank account maintained by the Respondent/Accused. Immediately, the Complainant/Appellant issued a legal notice dated 31.01.2011 intimating about the dishonour of the cheque and called upon the Respondent/Accused to repay the cheque amount. After issuing the notice dated 31.01.2011, the Appellant realised that the name of the Accused bank was erroneously mentioned as Thattacheri Branch, instead of



Thachur Branch. Therefore, the Complainant/Appellant once again issued another notice on 01.02.2011. For the notice dated 01.02.2011, a reply notice dated 17.02.2011 was issued by the Respondent/Accused repudiating the averments contained in the statutory notice. Therefore, the Complainant has filed the complaints in C.C. Nos. 78 and 79 of 2011.

4. The complaints were taken on file on 08.06.2011 and summons were issued to the Respondent/Accused. On his appearance, the copies of the complaint were furnished to him under Section 207 of Cr.P.C.. When the Respondent was questioned, he denied the charges and claimed to be tried. Therefore, trial commenced during which the Complainant/Appellant, along with one Muthukumaran were examined as P.W-1 and P.W-2 and Ex.P-1 to Ex.P-10 were marked. On behalf of the Respondent/Accused, the Respondent/Accused along with one Shankar examined themselves as D.W-1 and D.W-2 and Ex.D-1 to Ex.D-5 were marked.

5. The trial Court, on appreciating the oral and documentary evidence, concluded that the Complainant had taken a different stand during his examination as P.W-1 which is contrary to the pleadings in the complaint.

To be specific, in the complaint, there was nothing to show as to how the



amount was paid to the Respondent/Accused viz., by cheque or cash or any other mode. But in the deposition as P.W-1, he has stated that the loan amount was paid in cash. Further, the trial Court placed reliance on Ex.D-5, receipt issued by the Complainant himself to the effect that the loan amount taken from the Respondent/Accused has been received. Thus, after receiving the entire loan amount, the complaints have been filed in C.C. Nos. 78 and 79 of 2011. Further, on behalf of the Complainant, written arguments have been filed in which no reference was made to Ex.D-5. Therefore, the trial Court has concluded that the complaints have been filed after receipt of the entire loan amount and thereby wasted the precious judicial time of the Court. Accordingly, the trial Court dismissed both the complaints and acquitted the Respondent/Accused, with costs of Rs.10,000/- payable by the Complainant.

6. Challenging the judgment of acquittal dated 17.06.2015 passed in C.C. Nos. 78 and 79 of 2011, the present Criminal Appeals are filed by the Appellant.

7. The learned Counsel for the Appellant submitted that the trial Court placed heavy reliance on Ex.D-5, a receipt said to have been issued by the Appellant. According to the learned Counsel, in the reply notice dated



15.02.2011 under Ex.P-6, the Respondent/Accused has not stated anything about Ex.D-5. If Ex.D-5 was really issued by the Appellant/Complainant, then, there was no necessity for him to file the complaints at all. The trial Court ought not to have permitted to mark Ex.D-5 because it was disputed by the Appellant/Complainant. The signature in Ex.D-5 has been disputed by the Complainant/Appellant. While so, the trial Court ought to have ignored Ex.D-5 and proceeded to decide the case on merits. As per Sections 45, 46 and 73 of The Evidence Act the trial Court ought to have compared the signature of the Appellant in Ex.D-5 through an expert and without doing so, the signatures have been examined and verified by the Court itself. In such circumstances, the judgment of acquittal passed by the trial Court is legally not sustainable and it is required to be interfered with by this Court. Accordingly, the learned Counsel prayed for setting aside the judgment dated 17.06.2015 passed in C.C. Nos. 78 and 79 of 2015 and to allow the Criminal Appeals as prayed for.

8. Per contra, the learned Counsel for the Respondent/Accused submits that notwithstanding the receipt of the loan amount, the Complainant has filed the C.C. Nos. 78 and 79 of 2015 only to harass the Respondent. During trial, when Ex.D-5 was marked, there was no opposition raised by the Complainant. Even otherwise, during trial, if the Complainant/Appellant



disputes the signature in Ex.D-5, he ought to have taken necessary application to examine the signature in Ex.D-5 along with admitted signature. The Complainant/Appellant did not do so. In any event, the entire loan amount have been repaid and it was also acknowledged by the Complainant/Appellant under Ex.D-5. In such circumstances, the entire complaint in C.C. No.78 and C.C.No 79 of 2011 are false, vexatious and arbitrary. According to the learned Counsel for the Respondent/Accused, if the complaint of the Complainant/Appellant is acceptable, then the Respondent/Accused would suffer *double jeopardy* as already the loan amount has been paid and it was acknowledged under Ex.D-5. The trial Court, upon proper appreciation of the above facts, has rightly passed the judgment of acquittal and it does not call for any interference by this Court. Accordingly, the learned Counsel for the Respondent/Accused prayed for dismissal of the Appeals.

9. Heard the learned Counsel for the Appellant as well as the learned Counsel for the Respondent and perused the materials placed on record.

10. The point that arise for consideration in these appeals is whether the Order of acquittal recorded by the learned Judicial Magistrate, Cheyyar in C.C.Nos.79 & 78 of 2011 dated 17.06.2015 is to be set aside as perverse?



WEB COPY11. On consideration of the rival submissions and on perusal of the Judgment, it is found that the Complainant has filed the Complaints for the alleged offence punishable under Section 138 of The Negotiable Instruments Act, 1881. Both the complaints have been filed on 04.03.2011 in C.C. No. 78 of 2011 and C.C.No. 79 of 2011. Before filing the complaints, on 03.01.2011, the Complainant has received the entire loan amount of Rs.2,78,000/- in cash from the Respondent/Accused. The receipt of the amount was duly acknowledged by the Complainant. Notwithstanding the same, the complaints in C.C. No. 78 of 2011 and C.C.No. 79 of 2011 have been filed by the Complainant under Section 138 of The Negotiable Instruments Act. 1881. During trial in C.C. No. 78 of 2011 and C.C.No.79 of 2011, the Complainant disputed Ex.D-5 and therefore, the Accused stepped into the witness box, examined himself as D.W-1 along with one Shankar as D.W-2. Both D.W-1 and D.W-2 have categorically stated that the Complainant, upon receipt of the amount, assured to withdraw the case filed against the Respondent. Therefore, the trial Court, upon considering Ex.D-5, concluded that the amount covered under the two cheques have been received by the Complainant and therefore, the provisions under Section 138 of the Negotiable Instruments Act, 1881, will not get attracted. It is also seen that for the statutory notice dated 31.01.2011



sent by the Appellant, reply notices dated 15.02.2011 have been sent by the

Respondent/Accused repudiating the averments made thereof.

12. It is seen from the records that Ex.D5 was filed by the Respondent/Accused to disprove the averments in C.C.Nos. 78 and 79 of 2011. Even though the Complainant disputed his signatures in Ex.D5, he has not taken any steps to seek for comparison of his signature in Ex.D5 with his admitted signature. In fact, it is for the Complainant to take such a step to clear the air of controversy involved in the case. On the other hand, the Accused filed a Petition under Section 45 of the Indian Evidence Act in CMP. No. 1713 of 2013 in C.C. No.78 of 2011 and CMP. No. 1714 of 2013 in C.C.No.79 of 2011 to send Ex.D-5 to Forensic Laboratory to compare it with Ex.P-8-cheque issued by the Complainant. The Petition was allowed on 27.05.2014. Both documents were sent to Forensic Laboratory seeking an Expert's opinion. The Forensic Department had addressed the letter dated 28.01.2015 to the learned Judicial Magistrate seeking to furnish the document containing admitted signature. Therefore, the Court issued notice to both Counsels to file their respective documents containing admitted signature. Both the Accused and the Complainant, however, failed to produce any document. Under those circumstances, the learned Judge had arrived at a



conclusion that the Complainant failed to prove that the Accused had created

Ex.D-5. Therefore, on proper appreciation of evidence, the learned Judicial Magistrate had acquitted the Accused and also imposed costs of Rs.10,000/- towards compensation for bringing this case to Court after a long delay. On consideration of the entire facts, this Court is of the view that the Appeals preferred by the Complainant has no merit and they are liable to be dismissed.

13. The learned Counsel for the Appellant relied on the ruling of the Kerala High Court reported in **2019 SCC Online Ker 4220** in the case of **P.Chandran Vs. Pulikkottu** and submitted if the learned Judicial Magistrate is of the opinion that there was no reasonable ground for making accusation, then, before imposing costs of Rs.10,000/- on the Complainant, the trial Court ought to have issued a notice, as required under Section 250 (1) of the Code but it was not done in this case. In that case before the Kerala High Court, it was held that as per Section 250 of Code of Criminal Procedure, the Court is within its power to grant compensation to the affected party for false Complaint filed by the Complainant.

14. In that reported ruling, it was held that a show cause notice under Section 250 (1) of the Code is mandatory and if such a show cause notice is



not issued, it would amount to procedural irregularity. In the present case, admittedly, such a notice under Section 250 (1) of the Code has not been issued by the learned trial Magistrate. Therefore, this Court is of the view that imposition of costs of Rs.10,000/- is to be interfered with. At the same time, it was held in the same judgment that the jurisdiction of the trial Magistrate cannot be interfered with if the fine amount was upto Rs.2,000/-. In this case, after receipt of the entire loan amount under Ex.D5, the Complainant pursued the complaints, which would amount to abuse of process of law. Therefore, in the light of the above decision, this Court is of the view that the trial Court ought to have imposed only a sum of Rs.2,000/- and cannot grant more than that. Accordingly, the costs of Rs.10,000/- is modified to that of Rs.2,000/- in each case in C.C. No. 78 of 2011 and C.C.No. 79 of 2011.

15. In the light of the above discussion, the point for consideration is answered in favour of the Respondent/Accused and against the Appellant/Complainant.

In the result, **these Criminal Appeals are partly allowed.** The Order of acquittal in C.C.No. 78 of 2011 and C.C.No. 79 of 2011 dated 17.06.2015 by the learned Judicial Magistrate, Cheyyar, Thiruvannamalai District are



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confirmed. However, the fine amount of Rs.10,000/- imposed is modified to

Rs.2,000/- as per the ruling reported in **2019 SCC Online Ker 4220** in the

case of ***P.Chandran Vs. Pulikkottu.***

09-01-2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order
dh

To

The Judicial Magistrate,
Cheyyar, Thiruvannamalai.



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Criminal Appeal Nos.547 & 548 of 2015

SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment in
Crl.A Nos.547 & 548 of 2015

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