



CrI.A.No.375 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.375 of 2010

A.Sivakumar
S/o.Andy,
Represented as Power of Attorney Agent
of Mr.S.P.Jawanth Kumar
S/o.late Phoolchand,
Horasolai Hamet,
Nihung Post, Kotagiri Taluk,
Nilgiris District.

... Appellant/Complainant

Versus

T.M.Iyyasamy

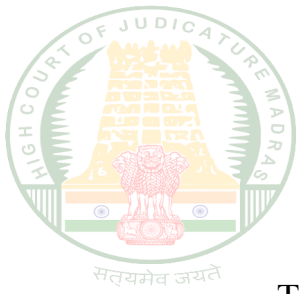
... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378(4) of Cr.P.C., against the judgment of acquittal passed in S.T.C.No.5 of 2006 dated 22.01.2010 by the learned Judicial Magistrate, Kothagiri.

For Petitioner : Mr.C.Prabhakaran
for Mr.R.Rajadurai

For Respondent : No appearance

ORDER



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The appellant, as complainant, filed a case in S.T.C. No.5 of 2006 for the offence under Section 138 of the Negotiable Instruments Act against the respondent/accused.

2. The case of the appellant is that the complaint was filed through his Power of Attorney Agent. The respondent had borrowed money from the complainant and, towards discharge of the said liability, issued a cheque for a sum of Rs.75,000/-, bearing No.106877, drawn on Nilgiris Central Cooperative Bank, Kotagiri Branch, dated 16.12.2003. When the cheque was presented through the complainant's banker, State Bank of India, Kotagiri Branch, it was returned unpaid on 17.12.2003 with the endorsement "insufficient funds." Thereafter, the appellant issued a statutory notice to the respondent on 29.12.2003, which was received by the respondent on 30.12.2003. However, the respondent neither replied to the notice nor paid the cheque amount. Hence, the complaint was filed.

3. During the course of trial, the complainant's Power of Attorney was examined as PW1, and the complainant himself was examined as PW2. On the complainant's side, Exs.P1 to P6 were marked (Ex.P1 – Cheque, Ex.P2 –

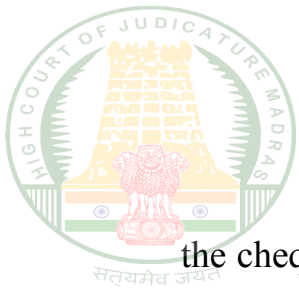


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Bank Memo of Cooperative Bank, Ex.P3 – Bank Memo of SBI, Ex.P4 – Statutory Notice, Ex.P5 – Acknowledgment Card, Ex.P6 – Power of Attorney). On the side of the accused, no witnesses were examined, but Exs.D1 to D4 were marked.

4. On conclusion of the trial, the learned Judicial Magistrate, Kothagiri, by judgment dated 22.01.2010 in S.T.C.No.5 of 2006, dismissed the complaint. Aggrieved by the same, the present appeal has been filed.

5. The learned counsel for the appellant contends that the accused had not disputed the issuance of the cheque or the signature thereon. The only defence raised was that the cheque was not issued for the alleged liability, but was issued earlier in the year 2004. It was also contended that the complaint was time-barred, as it was initially filed on 12.02.2004 and returned for certain defects, and thereafter re-presented in 2005 without filing any petition for condonation of delay. According to the appellant, this reasoning is erroneous. Though PW1, being the Power of Attorney, could not give complete details, PW2 (the complainant himself) had clearly explained that delay occurred as he was unwell and under treatment. These aspects were not considered by the Trial Court. Once the respondent admitted his signature in



the cheque, the burden shifted to him to disprove the complainant's case. The respondent, however, failed to examine any witness and only produced documents (Exs.D1 to D4), which related to different transactions and were irrelevant. The Trial Court failed to appreciate this, and hence its finding that the complaint was time-barred is unsustainable, perverse, and liable to be set aside.

6. On the other hand, the learned counsel for the respondent submitted that the complainant is a moneylender and pawnbroker who was charging exorbitant interest. It is further submitted that the alleged transaction took place in December 2003, but the Power of Attorney in favour of PW1 was executed only in 2005. Therefore, PW1 could not have been present at the time of the transaction. It was also argued that the earlier complaint filed in 2004 was returned, and a fresh complaint was filed in November 2005, which is barred by limitation. The Trial Court rightly dismissed the complaint as time-barred. There were also material contradictions in the evidence of PW1 and PW2. The respondent further relied on Exs.D1 to D4 to probabalise his defence regarding earlier transactions between the parties.

7. Heard both sides and perused the materials available on record.



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8. On consideration of the admitted facts, it is seen that the complainant had earlier filed a complaint on 12.02.2004, which was numbered as R.No.7 of 2004 but was returned. Ordinarily, in cases of delay, a criminal miscellaneous petition for condonation of delay would be filed, and only after hearing objections the complaint would be taken on file. In this case, such procedure not followed. Further, the complainant's chief-examination was recorded only in 2007, nearly two years after the case was taken on file, and cross-examination was completed after another two years, in 2009. No satisfactory explanation has been given for the delay. Moreover, the complaint was initially filed through the Power of Attorney, and later the complainant himself deposed as PW2. Their evidence is with material contradictions, particularly regarding earlier transactions and notice. Thus, it stands established that the complaint was not filed within the prescribed time, and the Trial Court was justified in dismissing the same.



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M.NIRMAL KUMAR, J.

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9. In view of the foregoing discussion, this Court finds no reason to interfere with the judgment passed by the learned Judicial Magistrate, Kothagiri, in S.T.C.No.5 of 2006 dated 22.01.2010, and the same is hereby confirmed.

10. In the result, this criminal appeal stands dismissed.

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Index : Yes/No

Neutral citation: Yes/No

Speaking order/Non-speaking order

To

The Judicial Magistrate, Kothagiri.

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