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Crl.A.(MD).No.129 of 2018



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.10.2024

DELIVERED ON : 10.01.2025

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.129 of 2018

Janardhanan

... Petitioner/Respondent/Complainant

Vs.

Karunamoorthi

... Respondent/Petitioner/Accused

Prayer: Criminal Appeal has been preferred under Section 372 Cr.P.C., to call for records in order of acquittal passed by the 3rd Additional District & Sessions Judge, Trichy in C.A.No.128 of 2007 dated 20.04.2017 reversing the order passed in C.C.No.58 of 2007 on the file of the Judicial Magistrate, Trichy, dated 17.09.2007.

For Appellant : Mr.C.Susikumar

For Respondent : Mr.M.Jothibas

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside the order of acquittal passed by the 3rd Additional District & Sessions Judge, Trichy in C.A.No.128 of 2007 dated 20.04.2017 reversing the order passed in C.C.No.58 of 2007 on the file of the Judicial Magistrate, Trichy, dated



17.09.2007.

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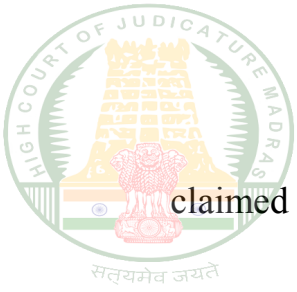


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2.The appellant is the complainant before the trial Court. He filed the private complaint under Section 200 Cr.P.C. to punish the accused for the offence punishable under Section 138 of the Negotiable Instruments Act with the following averments:

2.1.The accused is his elder brother. A joint business in the name of Raj and Sasi Auto Agency was conducted by them jointly. Later there was an agreement between the family members of the accused and the complainant in respect of the joint family properties and as well as joint business as per the oral agreement between the parties. Towards the settlement the accused issue a cheque bearing No.342096 drawn on Indian Bank, Cantonment, Tiruchirappalli in favour of the complainant for a sum of Rs.5,00,000/ the cheque is dated 26.08.1999. The cheque was presented for payment on 18.11.1999 through his Banker. Cheque was returned as payment stopped by the drawer by the memo dated 18.11.1999. After completing the statutory formalities, he filed the private complaint.

3.After completing the formalities of issuing summons as the case may be and after the appearance of the accused, he was put on questioning about the allegation made against him. He denied the allegations and



claimed to be tried.

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4.On the side of the complainant he himself was examined as PW1. 9 documents were marked on his side. On the side of the accused none was examined. But, four documents were marked.

5.At the conclusion of the trial process the trial Court found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly, convicted him and sentenced him to undergo one year rigorous imprisonment and payment of Rs. 5,00,000/- as compensation within a period of three months from the date of judgment. No fine was imposed.

6.Against which, the accused preferred appeal before the appellate Court namely III Additional Sessions Judge, Tiruchirappalli in Crl.A.No. 128 of 207. It differed from the finding of fact recorded by the trial Court. Accordingly, reversed the same and acquitted the accused.

7.Against which this appeal is preferred by the complainant.

8.Heard both sides.



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9.This is an issue between the brothers. The specific case of the complainant is that a joint business owned by them got disturbed by way of partition. At the time of making settlement, the accused was liable to pay a sum of Rs.5,00,000/- to him. To discharge the above said liability, he issued the present cheque, which got dis-honoured. That is the sum and substance of the complainant's case.

10.A defence was taken to the effect that the Raj and Sasi Agency belongs to the complainant. Later they became the partners. After that there was dissolution of the partnership and complainant retired from the same. At the time of making settlement, the complainant gave a writing that he received all the amounts become liable to paid by the firm. For the purpose of making the business smooth running he kept the signed cheques in the office. That was misused by the complainant and foisted this case. This is the sum and substance of the defence story.

11.Since it is a case of reversal judgment, we will straight away go to the judgment of the appellate Court as to find out on what prompted to the appellate Court to differ from the view taken by the trial Court. The reason being that the accused has not denied and disputed the signature



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found in the cheque. But, what has been contended by him is that it was not issued towards any legally enforceable liability. In fact no liability existed on the date of Ex.P1. The cheque was kept by him in the course of regular business for smooth functioning. That was stealthily taken by the complainant and foisted the case.

12.The trial Court as well as the appellate Court has gone deep into the composition of the partnership Firm. Whether it is a joint family business or partnership Firm or separate Firm are all alien to the discussion. It must be decided only in civil suit. In a criminal case such an exercise that has been taken by the appellate Court as well as the trial court may not be proper. Because there are some confusion with regard to the very existence of the partnership Firm. Two companies allegedly existed. One is called K.J.Automobiles and other is called Raj and Sasi Auto Agency. At one point, the complainant says that both are one and the same and for practical and Tax purpose they were treated as separate companies or firm as the case may be. In view of the own contradictory statement of the complainant, the appellate Court found that the case of the appellant is not proved beyond all reasonable doubt.

13.So without going into the aspect of the partnership Firm, we



will concentrate mainly upon whether the disputed cheque was issued towards any legally enforceable liability.

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14.As mentioned above, it is the simple case of the complainant that the cheque was issued towards joint undertaking business settlement. So it is the duty of the complainant to establish the foundational facts, that there existed a partnership firm, in which, the complainant himself is a partner and dissolution took place and in that dissolution or retirement, as the case may be, he was issued with the cheque. If it is so, without adding the partnership firm as a party, the complaint itself is not maintainable. Because a retiring partner, even though is entitled to get the share, only the partnership firm is liable to pay the due amount and not in the individual Partners. So, this is the first defect, which is available in the case of the complainant.

15.Now, we will go into other aspects. The inconsistent statement has been made by the complainant. During the course of evidence, he would say that the total liability incurred by the partnership towards him is Rs.15,00,000/-. Out of the Rs.15,00,000/- Rs.10,00,000/- was paid in cash. Balance amount of Rs.5,00,000/- was paid through this disputed cheque. The settlement was reached between them on 31.12.1998. But, this fact is

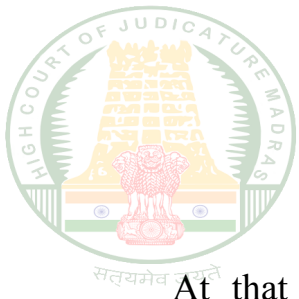


not mentioned in the complaint.

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16.The complaint is very cryptic in nature stating that as per the oral settlement between them in respect of the firm, the cheque was issued. During the course of cross examination, he has stated some other thing. He lodged a complaint with the police against the accused before the Thuraiyur police station. Based upon the above said complaint, a case was tried before the Judicial Magistrate No.IV, Tiruchirappalli. During the course of trial, the Investigating Officer has informed the Court that the complainant himself appeared and has acknowledged that he received Rs.4,00,000/- and so, no further action is required. That was the evidence let in. But, this fact is denied by him. But all these facts were mentioned by the accused in the reply notice. Stating that the time of settlement, the complainant did not return the disputed cheque. Over which, the accused presented a complaint before the Judicial Magistrate No.IV, Tiruchirappalli under Section 156(3) Cr.P.C.

17.All those things are denied by the complainant during the course of evidence. So this was the another defence taken during the course of cross examination.

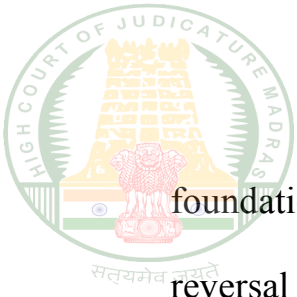


18.He was recalled and examined in further chief on 26.09.2003.

At that time, he has given particulars which was not pleaded in the complaint. He would say that out of the Rs.15,00,000/- that was agreed to paid, accused issued three cheques for Rs.3.80 lakhs, Rs.6.20 lakhs and Rs.5 lakhs. Out of the above said three cheques, two cheques for Rs.3.80 lakhs and Rs.6.20 lakhs were encashed, by way of cash payment. The accused received back the above said two cheques. The third cheque is the present one. But was not pleaded as mentioned above in the complaint.

19.Reading of the evidence of the complainant does indicate that he is making contradictory and inconsistent statements. He has not stated the proper particulars in the complaint. So *prima facie* it is seen that as mentioned by the appellate Court the complainant has not approached the Court with clean hands and with the full particulars. In a criminal complaint, it is the duty of the complainant to plead and mention all the relevant facts. Suppression or omitting to mention the relevant facts will create doubt.

20.So without going into other aspects, in view of the above said defects in the complaint, I am of the considered view that it is not safe to restore the judgment and conviction rendered by the trial Court. Since the



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foundational facts are not properly pleaded and proved by the complainant,

reversal finding recorded by the appellate Court is perfectly legal, which

requires no interference at all. So the appeal fails.

21. Accordingly, this criminal appeal stands dismissed. The judgment of acquittal passed by the appellate Court in Crl.A.No.128 of 2007 is hereby confirmed.

10.01.2025

NCC: Yes/No
Index: Yes/No
Internet: Yes/No
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To

1. The III Additional District & Sessions Judge, Trichy.
2. The Judicial Magistrate No.V, Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN, J

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