

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.416 of 2010

Judgment reserved on:26.02.2015

Judgment pronounced on: 04.03.2015

A.Krishna Kumar .. Appellant /2nd Respondent/Complainant

v.

1.P.Regina ...Respondent/Appellant/Accused

2.The Sate rep. By
Public Prosecutor. ... Respondents/Ist Respondent/3rd Party

Prayer:Criminal appeal filed under Section 378 (4) Cr.P.C., against the judgment of acquittal dated 26.02.2010 made in C.A.No.160 of 2009 on the file of the Additional District and Sessions Court, Fast Track Court No.I, Coimbatore, setting aside the judgment of conviction and sentence dated 06.11.2009 made in C.C.No.91 of 2006 on the file of the Judicial Magistrate No.I, Udumalpet, Coimbatore District (Presently Tirupur District).

For Appellant : Mr.V.T.Narendiran

For Respondents

R1 : Mr.L.Baskaran

R2 : Mr.V.Arul

Government Advocate (Crl. Side)

J U D G M E N T

The criminal appeal arises out of the judgment of acquittal dated 26.02.2010 made in C.A.No.160 of 2009 on the file of the Additional District and Sessions Court, Fast Track Court No.I, Coimbatore, setting aside the judgment of conviction and sentence dated 06.11.2009 made in C.C.No.91 of 2006 on the file of the Judicial Magistrate No.I, Udumalpet, Coimbatore District (Presently Tirupur District).

2.The appellant/complainant has preferred a private complaint against the respondent/accused for the offence under Section 138 of Negotiable Instruments Act stating that on 21.11.2005, the first respondent/accused obtained a loan amount of Rs.6,50,000/- from the appellant/complainant, for which, the respondent had issued Ex.P1/cheque dated 26.12.2005 drawn in Tamil Nadu Mercantile Bank Limited, Udumalpet Branch. When the appellant has presented the cheque for encashment, the same was returned as 'insufficient funds' on 27.12.2005 and the return memo was marked as Ex.P2. So the appellant issued a Statutory Notice under Ex.P3 and the same was returned with a postal endorsement as 'Not claimed returned to sender', as per return cover/Ex.P4. Hence, the appellant/complainant preferred a complaint against the respondent under Section 138 of Negotiable Instruments Act.

3.The learned Judicial Magistrate No.I, Udumalpet, has taken cognizance of an offence after recording the sworn statement and after following the procedure. Since the accused pleaded not guilty, the trial Court examined P.W.1 and marked Exs.P1 to P4 on the side of the complainant and on the side of the defence, examined D.W.1 and no documentary evidence was marked. The trial Court after considering the oral and documentary evidence, convicted the accused for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default in payment to undergo three months simple imprisonment.

4.Aggrieved by the same, the accused preferred an appeal in C.A.No.160 of 2009, wherein, the Additional District and Sessions Court, Fast Track Court No.I, Coimbatore, after considering the submissions made on both sides and the materials available on record, setting aside the judgment of conviction and sentence made in C.C.No.91 of 2006 and acquitted the accused. Against which, the complainant has preferred this appeal.

5.Challenging the judgment of acquittal passed in C.A.No.160 of 2009 by setting aside the conviction and sentence passed in C.C.No.91 of 2006 under Section 138 of Negotiable Instruments Act, the learned counsel appearing for the appellant would submit that the appellant as a complainant preferred a private complaint under Section 138 of Negotiable Instruments Act stating that the respondent herein borrowed Rs.6,50,000/- for his business purpose and agreed to repay the said amount within a month on 21.11.2005. Since she was unable to pay that amount she issued a cheque/Ex.P.1 dated 26.12.2005 for Rs.6,50,000/-, which was presented for encashment and that has been returned on 27.12.2005 as Return Memo/Ex.P.2. Statutory notice/Ex.P.3 under Section 138(b) of Negotiable Instruments Act and that has been returned as per return cover/Ex.P.4. Hence he was constrained to file a complaint. The Trial Court after following the

procedure and considering the oral evidence of P.W.1, Ex.P.1 to Ex.P.4 has convicted the respondent/accused under Section 138 of Negotiable Instruments Act and sentencing her to undergo one year rigorous imprisonment and imposing a fine of Rs.5,000/-, in default in payment, to undergo three months simple imprisonment. Against which, the respondent herein has preferred an appeal in CrI.A.No.160 of 2009 and the learned First Appellate Court has set aside the conviction on the ground that the appellant herein has not proved that Ex.P.1/cheque has been issued to him, that too, for discharging legally subsisting liability and the respondent herein has not borrowed any money and the cheque/Ex.P.1 has been issued to one Rajasekar, who is a cotton broker. The learned counsel would submit that once the signature in the cheque has been admitted, the presumption under Sections 118 and 139 of Negotiable Instruments Act is that it has been issued for discharging legally subsisting liability. So, the burden is shifted to the respondent to rebut the presumption that the cheque has been issued to Rajasekar, a cotton broker. Since there was a dispute in respect of payment of commission, the cheque has been given to the complainant and he utilized the same and that factum was not proved by D.W.1. The First Appellate Court has failed to consider the same and has held that the respondent herein has rebutted the presumption. The First Appellate Court has failed to consider the evidence of P.W.1, wherein he has stated that he does not know the said Rajasekar. Hence, he prayed for setting aside the judgment of acquittal. He also relied upon the decision reported in AIR 2001 SC 2895 (K.N.Beena vs. Muniyappan and another) and submits that the respondent has not rebutted the presumption under Section 139 of Negotiable Instruments Act.

6. Resisting the same, the learned counsel appearing for the respondent would submit that the Trial Court has not considered the fact that the respondent has rebutted the presumption under Section 139 of Negotiable Instruments Act. So, the onus is shifted to the complainant to prove that the cheque has been issued for discharging legally subsisting liability. But the complainant/appellant has not proved. The First Appellate Court has rightly rejected the same and hence, the judgment of acquittal is correct and it does not warrant any interference. He would further submit that the defence has to be proved by way of preponderance of probabilities and not by beyond reasonable doubt. He would also submit that the cheque has been issued as security to one Rajasekar but in the cheque, signature is one ink and the contents are in different ink. That factum was considered by the First Appellate Court. To substantiate his argument, he relied upon the following decisions:

1. 2010 (11) SCC 441 (Rangappa vs. Sri Mohan)
2. 2007 (1) LW(crl.) 26 (P.Eswaran vs. J.A.Abdul Hameed)
3. 2007 (1) LW(crl.) 579 (Ramakanth vs. V.A.Rahim)

7. Considered the rival submissions made on both sides and perused the typed set of papers.

8. This judgment is a reversal judgment. The Trial Court has held that the respondent/accused is guilty under Section 138 of Negotiable Instruments Act but the First Appellate Court has reversed the judgment of conviction and acquitted the respondent/accused stating that the appellant has not proved that the cheque has been issued for discharging legally subsisting liability.

9. Now, this Court has to decide whether the cheque has been issued for discharging legally subsisting liability? It is pertinent to note that the respondent herein has not disputed the signature in the cheque. But whereas her stand is that she has not issued the cheque to the appellant, she has issued the cheque in favour of Rajasekar, who is a cotton broker and there was a dispute in respect of payment of commission, so the cheque was handed over the appellant.

10. Before adverting to the facts of the case, let us now discuss about the decision relied upon by both sides.

11. In the decision reported in AIR 2001 SCC 2895, wherein it was held that the First Appellate Court erroneously proceeds on the basis that the burden of proving that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability is on the complainant. It is appropriate to incorporate the paragraph No.6, which reads as follows:

"6. In our view the impugned Judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonored cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the Negotiable Instruments Act. Under Sections 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P. Dalal vs. Bratindranath Banerjee reported in (2001) 6 S.C.C. 16 has also taken an identical view.

12. In the decision reported in 2010 (11) SCC 441, wherein it was held that once the signature in the cheque has been admitted the presumption is that the cheque has been issued for legally enforceable debt or liability, which is a rebuttable presumption. It can be proved by way of placing reliance on the prosecution materials by the accused to prove the defence or examining independent witness. The burden of the accused is to prove his defence by preponderance of probabilities and not by beyond reasonable doubt. It is appropriate to incorporate paragraph Nos. 27 and 28, which reads as follows:

"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

13. In the decision reported in 2007 (1) LW 26, wherein it was held that in the cheque signature is in one ink and the contents of the cheque is in different ink which raises doubt and also probablise the defence theory that the complainant might have

received the blank cheque and subsequently filled up the amount.

".....

(1) The signature in the cheque, Ex.P.1, is one ink and the contents of the said cheque is in a different ink which raises doubt and also probablise the defence theory that the complainant might have received the blank cheque and subsequently filled up the amount etc."

14.In the decision reported in 2009 (1) LW 579, wherein it was held that the presumption under Sections 118 and 139 of Negotiable Instruments Act as to the issuance of the said instrument for consideration and not discharge of the debt is rebuttable presumption and the initial burden of proof on accused to rebut the presumption by raising probable defence and if he discharged the said burden, the onus thereafter shift on the complainant to prove his case. It is appropriate to incorporate relevant paragraph, which reads as follows:

"8.The point:-

.....

8(b) The learned counsel appearing for the appellant relying on 2001(3) CTC 243 (Hiten P.Dalal Vs.Bratindranath Banerjee), contended that under Section 118 of NI Act when the accused admits his signature in a cheque (Negotiable Instrument) then the presumption will follow that it was made for consideration and that under Section 138 of NI Act if a cheque issued by a person in discharge of part or whole of liability is returned dishonoured for want of funds drawer of such cheque shall be deemed to have committed offence under Section 138 of NI Act and that under Section 139 of NI Act the presumption is to be drawn, unless contrary is proved that holder of cheque received cheque for discharge of in whole or in part of any debt or other liability. The exact observation in the above said dictum runs as follows:-

"The appellant's submission that the cheques were not drawn for the 'discharge in whole or in part of any debt or other liability' is answered by the third presumption available to the Bank under Section 139 of the Negotiable Instruments Act. This section provides that "it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability". The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque was not received by the Bank towards the discharge of any liability. Because both Sections 138 and

139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras Vs. A.Vaidyanathan Iyer AIR 1958 SC 61, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the Court 'may presume' a certain state of affairs, Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the letter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the nonexistence of the presumed fact."

Relying on the above dictum the learned counsel for the appellant would contend that the learned trial Judge has come to an erroneous conclusion that there was no subsisting debt and that to discharge the same Ex.A.1 was drawn by the accused. In the above dictum four cheques were issued by the accused drawn on the Andhra Bank in favour of the Standard Chartered Bank for the sums of Rs.27 crores, Rs.145 crores, Rs.17 crores and Rs.19,95,75,000/- respectively. Accordingly to the Bank the cheques were issued for payment of loss suffered by the Bank arising out of transactions kin securities entered into by the Bank through or at the instance of the appellant during the statutory period. So it is clear from the facts of the above said case the cheques were issued for payment of loss suffered by the Bank arising of the transactions kin securities entered into by the Bank. When those cheques were presented in the Bank all the four cheques were returned dishonored by the Andhra Bank with the remark "Not arranged for". Only under such circumstance, the above dictum has been laid, whereas in the case on hand even the notice sent under Ex.P.4 is silent with regard to the subsistence of the debt for which Ex.P.1-cheque was drawn by the accused in favour of the complainant. Except the word "discharge of your debt", there is absolutely no averment in Ex.P.4 giving details about the subsistence of the debt to which Ex.P.1-cheque dated 6.1.1999 for Rs.50,000/- was drawn.

8(c) Section 138 of the Negotiable instrument Act runs as follows:-

"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

PROVIDED that nothing contained in this section shall apply unless:-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation:-For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

So the explanation to Section 138 of NI Act clearly indicates that "debt or other liability" means a legally enforceable debt or other liability. The learned counsel for the appellant would advance an argument that a legally enforceable debt means that it should not be for an illegal or immoral purposes. I am afraid that a legally enforceable debt does not mean only illegal or immoral in nature but also that it must be supported by some evidence to show that the debt was in subsistence on the date of drawal of Ex.P.1- cheque. It is pertinent to

note the evidence of P.W.1 in this regard. The complainant, P.W.1, would depose that on 14.9.1998, the accused borrowed a sum of Rs.50,000/- in hundred rupees denomination in his house at Valavil, Mahe, but he would admit that he has not obtained any record for parting with the said amount and that the accused gave the cheque on 6.1.1999 for Rs.50,000/-. There is no explanation forthcoming from the complainant to the effect why he has not obtained the cheque for Rs.50,000/- on 14.9.1998 itself ie. on the date of borrowal and why the cheque-Ex.P.1 was obtained three months after the lending of money. Only in his evidence P.W.1 will depose that a sum Rs.50,000/- was borrowed by the accused on 14.9.1998. Even this date of borrowal was not mentioned in Ex.P.4-notice.

8(d) The other decision relied on by the learned counsel appearing for the appellant viz. 2002 SCC (Cri) 121 = 2002 (1) LW (Cri.) 356 (M.M.T.C.Ltd. And another Vs. Medchl Chemicals and Pharma (P Ltd., and another), also will not be applicable to the present facts of the case because only on the basis of a memorandum of understanding dated 1.6.1994 later altered as 19.9.1994 two cheques dated 31.10.1994 and 10.11.1994 respectively were drawn by the accused in favour of the complainant, which were on presentation dishonoured on the ground of payment stopped by drawer. So in the above said dictum there was a document viz. Memorandum of understanding entered into between the parties, to show the existence of debt on the date of drawal of the cheque.

8(e) In other decision reported in 2001 AI R SCW 4344 (K.N.Beena Vs. Muniyappan) relied on by the learned counsel for the appellant, the complainant therein has proved that only in respect of a subsisting debt a cheque for Rs.63,720/- was drawn by the accused in favour of the complainant, wherein it has been held that once the complainant has proved about the subsistence of a debt then the burden of proof shifts on the accused to prove by way of cogent evidence that there was no debt or liability. But in the case on hand there is absolutely no evidence on record to show that there was subsisting debt on the date of drawal of Ex.P.1-cheque by the accused. So, the above said dictum will not be applicable to the present facts of the case.

8(f) Per contra, the learned counsel appearing for the respondent/accused relying on 2006 (3) SCC (Cri) 30 = 2006-2-L.W.918 (M.S.Narayana Menon @ Mani Vs. State of

Kerala and another), and contended that the presumption under Section 118 and 139 of NI Act as to the issuance of the said instruments for consideration and in discharge of debt is rebuttable presumption and that initial burden of proof is on accused to rebut the said presumptions by raising a probable defence and if he discharges the said burden, the onus thereafter shifts on to the complainant to prove his case. In the said case a cheque was drawn by the accused in connection with share transactions. When the cheque was presented it was dishonoured. But the complainant has failed to discharge his initial burden by producing his statutory books of accounts in relation to the said transaction in question to show that there was a subsisting debt on the date of drawal of cheque. The relevant observation in the above said dictum is as follows:-

"The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another. The second respondent was a member of a stock exchange. The transactions in relation to the stock exchange are regulated by the statutes and statutory rules. If in terms of the provisions of a statute, a member of a stock exchange is required to maintain books of accounts in a particular manner, he would be required to do so, as non-compliance with the mandatory provisions of the Rules may entail punishment. It is not in dispute that transactions comprising purchases and sales of shares by investors is a matter of confidence. Both parties would have to rely upon one another. For the said purpose, the courts of law may also take judicial notice of the practice prevailing in such business. The learned appellate Judge rightly did so.

The definite case of the second respondent was that the cheque dated 17.8.1992 was issued by the appellant in discharge of his debt. The said liability by way of debt arose in terms of the transactions. For proving the said transactions, the second respondent filed books of accounts. The books of accounts maintained by the second respondent were found to be not reflecting the correct

state of affairs."

Under such circumstances, it was held by the Honourable Apex Court that the accused cannot be convicted under Section 138 of NI Act.

The same principle has been reiterated in 1996(9) SCC 225 (Ramesh Babula Doshi Vs. State of Gujarat), 2004(10) SCC 692 (Main Pal and another Vs. State of Haryana and others), 1983 (3) SCC 629 (Ramji Surjya Padvi and Another Vs. State of Maharashtra) and 2002(6) SCC 321 (Pritam Nath and others Vs. State of Punjab), even though those cases have arisen under Indian Penal Code. Under such circumstances, I find no reason to interfere with the well considered judgment of the trial Court, which does not suffer from any illegality or infirmity. Point is answered accordingly."

15. Considering the above citation and as per the provision of Sections 118 and 139 of Negotiable Instruments Act, the signature in the cheque/Ex.P.1 has been admitted. So the presumption under Sections 118 and 139 of Negotiable Instruments Act is that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability. It is the duty of the respondent/accused to prove that it was not issued to the appellant and it was issued to one Rajasekar, a cotton broker as security when she purchased raw materials for her textile mill.

16. As per the dictum of the Hon'ble Apex Court reported in 2010 (11) SCC 441, the presumption is rebuttable presumption and the presumption can be rebutted either by way of placing reliance on the evidence of complainant and materials produced by the complainant or independent evidence of the accused only preponderance of probabilities and not by beyond reasonable doubt. So, it is the duty of the respondent/accused to prove and probablise her defence by preponderance of probabilities.

17. It is also pertinent to note that on the side of the respondent/accused she examined herself as witness and not marked any documents. So, it is appropriate to consider the cross examination of the respondent. As per the decision reported in 2007 (1) LW (Cr1.) 26, wherein it was held that the difference in the ink in the signature and the contents in the cheque has probablised his defence. So, on perusal of the cheque/Ex.P.1, it was issued by the respondent for Ruby Textiles and the signature in the cheque is in black ink. But whereas the other contents are written in the Blue Ball point pen.

18. Now this Court has consider the cross examination of P.W.1, wherein he has stated that he is having transaction with the respondent but he would submit that he has not filed any documents. He would fairly conceded that he does not remember when this

respondent has requested for loan. He would also fairly conceded that he obtained Rs.3,00,000/- from his Aunt Ramathaal and also obtained Rs.50,000/- from one Rasu, who is the adjacent land owner and that amount has been paid to the respondent. He would also submit that he does not know the said Rajasekar, who is a cotton broker. He would further submit that at the time of payment of money, one Muthukrishnan and Rajkumar were there and the cheque has been issued only her at mill and she has gone to the extent of saying that he she has no witness for receipt of the cheque. He fairly conceded that signature is in black ink and the contents are in blue ink.

19.The respondent examined herself as witness and in the chief itself, she has stated that she does not know this complainant/appellant and there is no transaction between both of them. Ruby Textile has been conducted by her husband and they purchased the raw material from a cotton broker, Rajasekar, and at that time, they given a blank signed cheque and it was agreed that after payment of the amount, the cheque will be taken back. She has stated that Ex.P.1/cheque has been given to Rajasekar and since there was a dispute in respect of payment of broker commission between her husband and Rajasekar he has not furnished the raw materials. When it was demanded to return the blank cheque he said that it was misplaced and he will trace and hand over the same. In the Section 313 Cr.P.C questioning, she has not mentioned that the cheque has been given to Rajasekar because the complainant has informed that he is withdrawing the case. She has further stated that the Cotton Mill is at Jeeva Nagar, Udumalpet and in the year 2005 they shifted the same to Alampalayam and nearly 25 persons are working. Further, she denied the suggestion that she received the money from the appellant and given a false evidence. She has fairly conceded that she has not taken any action against the said Rajasekar, a cotton broker.

20.Considering the chief and cross examination of P.W.1 and D.W.1 and also the different ink used in the Cheque/Ex.P.1 and applying the decision of this Court in 2007 (1) LW (Crl.) 26, I am of the view that the defence has been probablised that the cheque has been issued while she purchased raw materials from Rajasekar and that factum was correctly considered by the First Appellate Court. Furthermore, the appellant would submit that they are known to each other and they are having so many transaction between them but he has not filed any scrap of paper before this Court to show that there was previous transaction between them. It is also well settled dictum of the Hon'ble Apex Court that once the presumption under Section 139 of Negotiable Instruments Act has been rebutted the onus has been shifted to the complainant to prove that the document has been issued for discharging legally subsisting liability. But the cross examination itself shows that he has not discharged the onus because in the cross examination, he has stated that at the time of lending

money, one Muthukrishnan and Rajkumar were there but they were not examined before this Court. It is painful to accept that without any scrap of paper the appellant has lent Rs.6,50,000/-. But admittedly after one month, he has not demanded any interest. So, the conduct of P.W.1 itself shows that the respondent has rebutted the presumption but the appellant herein has not proved that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability. It is true that in the chief examination, P.W.1 has stated that he has possessed property and the financial capacity of the appellant has not been questioned by the respondent. So, the finding that he is not having the financial capacity to lend money has been proved in the cross examination itself because he has stated that he obtained Rs.3,00,000/- from his Aunt Ramathaal and Rs.50,000/- from one Rasu, who is the adjacent land owner. In such circumstances, I am of the view that the lending of Rs.6,50,000/- on 21.11.2005 is not proved by the appellant. Hence, the First Appellate Court has considered all the aspects in proper perspective and came to the correct conclusion. Therefore, I am of the view that the judgment of acquittal passed by the First Appellate Court does not warrant any interference and it is hereby confirmed.

21. In fine,

- The Criminal Appeal is dismissed.
- The Judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore in C.A.No.160 of 2009 dated 26.02.2010, setting aside the judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Udumalpet, Coimbatore District (Presently Tirupur District) in C.C.No.91 of 2006 dated 06.11.2009, is hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

WEB COPY

To

1.The Additional District and Sessions Judge,
Fast Track Court No.I, Coimbatore.

2.The Judicial Magistrate No.I,
Udumalpet, Coimbatore District (Presently Tirupur District)

3.The Public Prosecutor
High Court, Madras.

4.The Record Keeper
Criminal Section, High Court, Madras.

1 cc to Mr.V.T.Narendiran ,Advocate, SR.No.12287

1 cc to Mr.L.Baskaran ,Advocate, SR.No.12095

Crl.A.No.416 of 2010

scd(co)
pmk.13.3.2015



WEB COPY