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CRL.A.(MD).No.51 of 2015



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 26.04.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN**

**CRL.A.(MD).No.51 of 2015**

Nikilesan

... Appellant/Complainant

Vs.

Muthumalai

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records in C.C.No.579 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court / Magisterial Level, Thoothukudi, Thoothukudi District and set aside the Judgment, dated 10.07.2014 and punish the accused in accordance with law.

For Appellant : Mr.N.Subramani

For Respondent : No appearance

**JUDGMENT**

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This appeal has been preferred as against the order of acquittal passed in C.C.No.579 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court / Magisterial Level, Thoothukudi, Thoothukudi District, dated 10.07.2014 thereby dismissing the complaint and acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The appellant is the complainant and the respondent is the accused.

3.The crux of the complaint is that the respondent borrowed a sum of Rs.31,00,000/- for his urgent and business needs on 29.05.2009. He also agreed to pay interest at the rate of 12% per annum. He failed to pay any interest and in order to repay the said amount, after waiving some interest, he issued a cheque for a sum of Rs.40,00,000/- and it was presented for collection and the same was returned dishonoured for the reason "funds insufficient". After causing statutory notice, the appellant filed the complaint for the offence under Section 138 of the Negotiable Instruments Act.



4.On the side of the appellant, he himself was examined as P.W.1 and marked Exs.P.1 to P.5 and on the side of the respondent, he had examined D.W.1 and marked Ex.D.1 to Ex.D.3.

5.On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and acquitted him for the offence punishable under Section 138 of the Negotiable Instruments Act. Aggrieved by the same, the present Appeal.

6.The appellant raised the ground that the respondent admitted his signature and issuance of cheque. Therefore, the appellant discharged his initial burden and as such, the trial Court ought not to have acquitted the respondent herein. The respondent also failed to rebut the presumption by the probable defence. Though so many contentions were raised by the respondent in order to substantiate the same, the respondent failed to produce any document.

7.On perusal of records revealed that the appellant accepted the cheque which was marked as Ex.P.1, but failed to produce any document to show that the respondent borrowed such a huge sum of Rs.31,00,000/- as a loan. It is also seen that, the



appellant simply stated that the respondent is well known to him. Even though the respondent is well known to him, no prudent man would lend such a huge money, namely Rs.31,00,000/-, without any security document. Therefore, the appellant failed to prove that the cheque was issued for any legally enforceable debt. There is absolutely no legally enforceable debt existing between the respondent and the appellant. When there is no evidence for the passing of consideration for the execution of the cheque mere admission of signature in the cheque does not prove legally enforceable debt. That apart, the debt itself is a time barred one. The respondent had executed a power of attorney on 10.12.2008 in favour of the wife of the appellant herein. On the strength of the power of attorney, the appellant had executed a mortgage deed in favour of his wife, which was converted to a sale deed in his wife's favour. Therefore, the alleged debt, dated 10.12.2008 is barred. Ex.P.1 was issued on 04.03.2012. Therefore, the cheque was not issued for any legally enforceable debt.

8.It is settled law that the complainant should prove that the dishonoured cheque was issued for discharging existing liability. When the complainant has failed to prove the due execution of cheque and the legally enforceable liability on the part of the accused, the accused is entitled for acquittal.



9. In the case on hand, the respondent categorically rebutted the evidence and as such, the burden once again shifted on the shoulder of the appellant to prove the charge beyond reasonable doubt. The appellant also failed to prove his case beyond any doubt. Therefore, the trial Court rightly dismissed the complaint and acquitted the respondent and this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Criminal Appeal is dismissed.

**26.04.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes  
ps

To

The Judicial Magistrate, Fast Track Court  
/ Magisterial Level,  
Thoothukudi,  
Thoothukudi District.



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**G.K.ILANTHIRAIYAN, J.**

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