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

**DATED: 26.04.2023**

**CORAM**

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

**CRL.A.(MD).No.223 of 2013**

1.Subbiah

2.Dhanalakshmi

... Appellants/Complainants

Vs.

Balamurugan

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the entire records and set aside the judgment passed by the learned Judicial Magistrate (Fast Track Court), Kovilpatti, Thootukudi District in C.C.No.203 of 2012 vide his judgment dated 04.10.2012 and consequently convict the accused by imposing maximum punishment provided under the law.

For Appellants

: Mr.R.Anand

For Respondent

: Mr.B.Rajesh Saravanan



## **JUDGMENT**

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This appeal has been filed as against the order of acquittal passed in CC.No.203 of 2012 on the file of the learned Judicial Magistrate (Fast Track Court), Kovilpatti, Thoothukudi District, dated 04.10.2012.

2. The appellants are the complainants and the respondent is the accused.

3. The appellants lodged a complaint alleging that on 09.08.2009, the respondent borrowed a sum of Rs.1,75,000/- on issuance of cheque dated 11.11.2009. The respondent also agreed to pay interest at the rate of 12% per annum. The said cheque was presented for collection and the same was returned as dishonored for the reason 'Insufficient Funds'. After causing statutory notice, they lodged complaint.

4. On the side of the appellants, they themselves were examined P.W.1 and P.W.2, had also examined P.W.3 and P.W.4 and



marked Ex.P.1 to Ex.P.6. On the side of the respondent, no one was examined and no document was marked.

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

6. The learned counsel for the appellants submitted that the respondent categorically admitted his signature and also issuance of cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. In order to rebut the presumption, the respondent did not examine anybody and no evidence was produced before the trial Court. Even then, the trial Court, without any reasons, mechanically acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. Even the alleged cheque was issued for security purpose, when the cheque was presented for collection, there was due from the respondent and as such, it has to be considered that the cheque was issued for legally enforceable debt.



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7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. According to the appellants, after issuance of cheque, which was marked as Ex.P.1, the respondent availed loan of Rs.1,75,000/-. Further, the respondent also agreed to pay interest at the rate of 12% per annum. However, the respondent failed to pay any interest and as such, the said cheque was presented for collection. Therefore, the cheque was issued for security purpose, even before availing the loan. According to the respondent, it is not issued for any legally enforceable debt. Since the cheque was issued for security, after returning the entire cheque amount, the cheque was misused by the appellants. The respondent entered into the chit transaction with one Veeralakshmi @ Veera and it was given as security. The said cheque was misused by the appellants. Therefore, the criminal action was taken as against the said Veeralakshmi @ Veera and it was also categorically admitted by P.W.1/appellant. Infact, after receipt of the statutory notice, the respondent also issued reply notice, which was marked as Ex.B.6, in which, he categorically denied the borrowal



and also issuance of cheque. Therefore, the respondent reasonably rebutted the presumption arising out of Sections 118 of 139 of Negotiable Instruments Act. That apart, the appellants also failed to prove their case in the manner known to law. Therefore, the trial Court rightly dismissed the complaint lodged by the appellants and this Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, this Criminal Appeal is dismissed.

**26.04.2023**

NCC : Yes/No  
Index : Yes/No  
rmk

To

1.The Judicial Magistrate (Fast Track Court),  
Kovilpatti, Thootukudi District.

2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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

rmk

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