



Crl.A.No.246 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

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Mrs.Pinky Chordia
Proprietrix of M/s.Pinky & Co.,
Represented by her Manager and Power Agent,
Mr.M.Saravanan
S/o.P.Murugan,
Prakash Presidium, 'B' Wing, 5th Floor,
No.110, M.G.Road,
Nungambakkam, Chennai - 34. ... Appellant

Vs.

Mr.N.Srinivasan ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 22.07.2016 passed in C.C.No.3176/2012 by the Metropolitan Magistrate, Fast Track Court - II, Egmore at Allikulam, Chennai.



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For Appellant : Mr.K.Mahalingam
For Respondent : Mr.C.Arunkumar
for Mr.A.K.Raghavulu

JUDGMENT

Challenging the order of acquittal dated 22.07.2016 passed in C.C.No.3176/2012 by the Metropolitan Magistrate, Fast Track Court - II, Egmore at Allikulam, Chennai, the present appeal is filed by the appellant / complainant.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The case of the appellant / complainant in a nutshell is as follows :

3.1. The complainant Thiru.M.Saravanan is the Power of Attorney of Tmt.Pinky Chordia. Tmt.Pinky Chordia, is doing money lending business and on 22.10.2009, the accused Thiru.M.Srinivasan,



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borrowed a sum of Rs.25,00,000/- from her by way of account payee cheque bearing number 041168 dated 22.10.2009 drawn on ICICI Bank, Nungambakkam Branch, Chennai and executed a promissory note promising to repay the principal together with interest @ 24% per annum. He also agreed to pay the interest at the end of every month. However, the accused did not keep up his promise and after much persuasion, he issued the following cheques :

<i>S.No.</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>	<i>Exhibits</i>
1.	136894	29.02.2012	Rs.5,00,000/-	Ex.P2
2.	136895	29.02.2012	Rs.5,00,000/-	Ex.P3
3.	136896	29.02.2012	Rs.5,00,000/-	Ex.P4
4.	136897	29.02.2012	Rs.25,00,000/-	Ex.P5

All the cheques were drawn on State Bank of Travancore, T.Nagar Branch, Chennai.

3.2. When the complainant presented the cheques (Ex.P2 to Ex.P5) for collection on 01.03.2012 through his bankers, viz., ICICI Bank, Nungambakkam Branch, Chennai, the cheques were returned for the reason “Exceeds Arrangements”, as is seen from the debit advice



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3.3. Thereafter, the complainant issued a statutory notice dated 16.03.2012 (Ex.P10) to the accused calling upon him to pay the amount due under the cheques within fifteen days from the date of receipt of the notice.

3.4. The accused received the statutory notice on 16.03.2012, as is evidenced by the postal acknowledgement card (Ex.P11) but did not come forward to make good the payment. He did not also send any reply notice.

3.5. Therefore, the complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court - II, Egmore at Allikulam, Chennai, under Section 200 Cr.P.C. against the respondent / accused for an offence punishable under Section 138 of the Negotiable Instruments Act (in short N.I. Act) in C.C.No.3176/2012.

3.6. The learned Judicial Magistrate took cognizance of the



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offence under Section 138 of N.I. Act and issued summons to the accused under Section 204 Cr.P.C.

3.7. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.

3.8. The complainant Thiru.M.Saravanan, Power of Attorney holder of Tmt.Pinky Chordia examined himself and marked Ex.P1 to Ex.P11.

3.9. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

3.10. The learned trial court judge after analysing the oral and



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documentary evidence on record found the accused not guilty of the offence under Section 138 of N.I. Act and acquitted him under Section 255(1) Cr.P.C., vide his judgment and orders dated 22.07.2016, aggrieved over which, the present appeal is filed by the complainant.

4. Heard Mr.K.Mahalingam, learned counsel for the appellant and Mr.C.Arunkumar, learned counsel for the respondent.

5. Mr.K.Mahalingam, learned counsel for the appellant contended that

- i. the accused had not denied his signature on the cheques (Ex.P2 to Ex.P5) and did not also choose to send any reply to the statutory notice issued by the complainant ;
- ii. the initial presumption under Sections 118 and 139 of N.I. Act is in favour of the complainant ;
- iii. the accused did not deny the execution of the promissory note dated 22.10.2009 for a sum of Rs.25,00,000/- ;
- iv. the accused in fact received the amount of Rs.25,00,000/- through



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a cheque bearing number 041168 dated 22.10.2009 drawn on ICICI Bank, Nungambakkam Branch, Chennai.

- v. the bank statement of the complainant for the period from 01.01.2009 to 31.10.2009 would clearly show that a sum of Rs.25,00,000/- was transferred to the account of the accused.
- vi. the complainant had also filed a suit in C.S.No.725/2012 based on the promissory note dated 22.10.2009 before this Court and a decree was also passed by this Court on 21.02.2013 in favour of the complainant.

Therefore, the trial court's conclusion that the complainant has not proved the legally enforceable debt is erroneous, is his contention.

6. Per contra Mr.C.Arunkumar, learned counsel for the respondent drew the attention of this Court to the Power of Attorney dated 31.10.2011 (Ex.P1) executed by Pinky Chordia in favour of M.Saravanan on 31.10.2011. According to him, Tmt.Pinky Chordia had given Power of Attorney (Ex.P1) in favour of Thiru.M.Saravanan to conduct the complaint / case to be filed on her behalf and more



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particularly with regard to the subject cheques (Ex.P2 to Ex.P5). The said Power of Attorney (Ex.P1) was also notarized by an Advocate and Notary Public on 31.10.2011 and therefore, the complainant had not proved that there was a legally enforceable debt on the date of presentation of the complaint. It is his further submission that the complainant could not have mentioned the cheques (Ex.P2 to Ex.P5) issued on 29.02.2012 in the Power of Attorney (Ex.P1) dated 31.10.2011 and therefore, the trial court's observation that the complainant has not come to court with clean hands is perfectly in order. He therefore, prayed for dismissal of the present appeal.

7. A petition in Crl.M.P.No.9074/2024 was filed along with the present appeal to receive the following documents :

- i. Promissory note executed in favour of the complainant Pinky Chordia by the respondent / accused on 22.10.2009.
- ii. Statement of accounts issued by ICICI Bank, Nungambakkam Branch, Chennai for the period from 01.10.2009 to 31.10.2009 showing a sum of Rs.25,00,000/- was transferred to the account of



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iii. Decree and Judgment dated 21.02.2013 passed in C.S.No.725/2012 by this Court in favour of the complainant.

The statement of accounts of the complainant's bank and promissory note were not filed before the trial court. Therefore, the accused did not have an occasion to cross examine P.W.1 on these two aspects. The suit in C.S.No.725/2012 was decreed only on 21.02.2013. The trial court based on the Power of Attorney (Ex.P1) dated 31.10.2011 had held that the accused had rebutted the presumption successfully and that the complainant had not proved that there was a legally enforceable debt on the date of issuance of the cheques (Ex.P2 to Ex.P5). Since additional documents are filed before this Court reasonable opportunity should be given to both the complainant and the accused to adduce evidence.

8. In the circumstances, the case is remitted back to the trial court to consider all the documents including the documents filed before this Court in Crl.M.P.No.9074/2024 afresh and dispose of C.C.No.3176/2012 in accordance with law. Both the complainant and



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accused shall appear before the trial court on 19.08.2024.

9. In the result,

- i. The Criminal Appeal stands disposed of.
- ii. The orders dated 22.07.2016 passed in C.C.No.3176/2012 by the Metropolitan Magistrate, Fast Track Court - II, Egmore at Allikulam, Chennai, is set aside.
- iii. The case is remitted back to the trial court to consider all the documents including the documents filed before this Court in Crl.M.P.No.9074/2024 afresh and dispose of C.C.No.3176/2012 in accordance with law.
- iv. Both the parties should appear before the trial court on 19.08.2024, without fail.

18.07.2024

Index : yes/no
Speaking /Non speaking Order
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To

- 1.The Metropolitan Magistrate, Fast Track Court - II, Egmore at Allikulam, Chennai.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.



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