



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

Crl.A.No.210 of 2021

D.Ayiram ... Appellant

Vs.

1. Maharaja Royal Garden

2. Y.Daulat Khan ... Respondents

**Prayer:** Criminal Appeal filed under Section 378 of Cr.P.C, to call for the records in connection with STC. No.49 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, (Magisterial Level) Ambattur, Chennai and set aside the judgment dated 15.03.2021.

For Appellant : Mr.E.Kannadasan  
For Respondent : No appearance

### **JUDGMENT**

The appeal has been filed seeking to quash the acquittal order in STC. No.49 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, (Magisterial Level) Ambattur, Chennai, dated 15.03.2021.



2. The facts of the case are as follows:

It is the case of the complainant that the appellant is the proprietor of M/s.Sri Vinayaga Enterprises and he is also doing real estate business. The second respondent has approached him representing as a partner of the first respondent viz., M/s.Maharaja Royal Garden and sought financial assistance by way of loan to develop business of M/s.Maharaja Royal Garden situated at Ayapakkam and Guindy and to expand and facilitate members of his company. The respondents approached the appellant and availed loan for a sum of Rs.1,30,00,000/- from the appellant. At the end of December 2012, an amount of Rs.70,00,000/- was arrived as outstanding and payable by the respondents to the appellant and executed the promissory note on 28.12.2012 for the said amount of Rs.70,00,000/-.

3. It is the further case of the appellant that during the year 2013, the second respondent borrowed a sum of Rs.60,00,000/- on various dates from the appellant, in which, the second respondent has repaid a sum of Rs.10,75,000/- to the appellant and after adjusting Rs.10,75,000/- towards principal amount and leaving a outstanding liability Rs.1,19,75,000/- . After repeated request and demand made by the appellant, the second respondent issued two cheques in



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favour of the appellant vide cheque No.570853 dated 01.10.2015 for a sum of Rs.70,00,000/- and cheque No.570854 dated 01.10.2015 for a sum of Rs.49,75,000/- towards principal loan amount. Towards the discharge of the said loan amount, it is the case of the complainant that Since the second respondent did not repay the loan amount, the complainant presented the cheque before the Bank for encashment of the amount on 16.10.2015. However, the said cheque was returned on 20.10.2015 with an endorsement "funds insufficient". Hence, the appellant gave a statutory notice to the respondents/accused on 05.11.2015 seeking for repayment of the loan amount. The respondents have received the statutory notice. Since no amount was forthcoming, the appellant has filed a complaint before the learned Judicial Magistrate, FTC, Ambattur, Chennai under Section 138 of NI Act which was taken on file in STC. No.49 of 2016.

4. In order to prove the case, before the trial Court, the appellant has examined PW1 to PW4 and marked 12 documents viz., Ex.P1 to P12. On the side of the respondents, no witness was examined and no documents were marked. After ful-fledged trial, the learned Judge dismissed the case and acquitted the respondents. Aggrieved by the said acquittal judgment, the



complainant/appellant has preferred this appeal.

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5. The learned counsel appearing for the appellant vehemently argued that admittedly, the second respondent on behalf of the first respondent had borrowed the amount for their business purpose. The trial Judge ought not to have disbelieved the case of the complainant. The complainant has produced all materials records and his oral evidence is crystal clear as to the borrowing of the loan by the respondent and non repayment of the same. The respondent has agreed that he would repay the entire loan amount within a very short period. However, the respondent did not repay either the principle amount or interest thereof. Therefore, the complainant made use of those cheque given by the respondent and presented the same for collection. However, the said cheques were dishonored. Therefore, the complainant has issued Statutory notice, even after receipt of the said notice, the respondent has failed to honour his commitment. Therefore, the complainant was forced to approach the Judicial Magistrate with the present complaint. The learned trial court, without appreciating the material facts, has dismissed the case of the complainant, which is not sustainable.



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6. The learned counsel appearing for the appellant further submitted that the trial Court erred in accepting Ex.P6, P8 and P11 notice sent by the respondent accepting his liability and sought for time to make repayments and he has not denied the issuance of cheques to discharge his liability. The appellant has clearly established that the respondent has deliberately refused to settle the amount, which is not sustainable. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.

7. Heard the learned counsel for the appellant and perused the materials available on record. Though notice has been served on the respondents, there is no appearance on their behalf. Considering the pendency of the case, this Court is inclined to dispose the case based on the available records.

8. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in Babu Sahebagoada



Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date –

19.04.2024), the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

*37. This Court in the case of Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471) encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*

*“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*

*(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

*(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach*



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*its own conclusion, both on questions of fact and of law.*

*(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”*

*38. Further, in the case of H.D. Sundara & Ors. v. State*



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*of Karnataka (2023 (9) SCC 581) this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -*

*“8.1. The acquittal of the accused further strengthens the presumption of innocence;*

*8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*

*8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*

*8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*

*8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

*39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the*



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*accused has to be exercised within the four corners of the following principles:-*

*(a) That the judgment of acquittal suffers from patent perversity;*

*(b) That the same is based on a misreading/omission to consider material evidence on record;*

*(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

*40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”*

*(Emphasis Supplied)*

*12. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper*



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*appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible. "*

9. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials available on record.

10. On perusal of the cheques Ex.P-2 and Ex.P3 are the cheques, which is alleged to have been issued by the respondents towards the discharge of the liability to the appellant. However, it is the case of the respondent that the actual liability is Rs.1,19,25,000/- by the subjects the cheques were drawn for Rs.1,19,75,000/- which is than the alleged liability. Therefore, the case of the complainant creates a strong suspicion and appellant has also not proved the said fact before the trial Court.

11. In the aforesaid factual scenario, Sections 138 and 139 of the Act, which are material to find out the legal presumption, which is casted on the accused/respondent with regard to the cheque being issued for discharging a



legally enforceable debt, which ought to be rebutted through materials to absolve the respondent, the said provisions are quoted hereunder for better appreciation:-

*“138. Dishonour of cheque for insufficiency, etc., of funds in the account. 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 provision of this Act, be punished with imprisonment for a term which may extend to one year, 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*



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*amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen 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 purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.*

### **139. Presumption in favour of holder.**

*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."*

12. The complainant is drawing inspiration from the presumption provided for u/s 139 of the Act to impress upon this Court that it is for the respondent to prove that the cheque, which is the subject matter of the present appeal was not issued towards the discharge of any debt or liability and in the absence of such proof, necessarily, the rigours of Section 138 of the Act would stand attracted.



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13. The court below had embarked upon a careful analysis of the materials placed before it and had come to the conclusion that though the cheque was claimed to have been misused by the appellant, however, there are no materials to show that such is the case. The court below has held, the appellant has not proved his case beyond reasonable doubt, and the cheques were not issued for discharging legally enforceable debt.

14. In this backdrop, it is the duty of the appellant to establish that the cheque was issued for discharging legally enforceable debt. Further, on perusal of the Ex.R7/reply notice, it is seen that the respondent has not mentioned the actual particulars of the alleged loan which was borrowed from the appellant. It is also seen from the statutory notice that the appellant has not clearly mentioned whether he has advanced the alleged amount to the accused as loan or investment in accused business. However, the complainant has not proved his case beyond the reasonable doubt.

15. First of all, the presumption available u/s 139 has to be rebutted by the accused, whereinafter, a duty is cast on the complainant to establish that



the cheque, which stood dishonoured, was issued for the purpose of discharging a legally enforceable debt. In the case on hand, during the cross examination through the evidence and materials, the appellant has not established that the respondent has borrowed money from the appellant and the respondent has established that the cheque was misused by the appellant. The said finding has been clearly found out by the trial Court and hence, the complaint was rejected.

16. When the appellant has not established that there exists a legally enforceable debt, which has to be paid by the respondent for which the cheque was issued, which has since been dishonoured, the mere dishonour of the cheque alone cannot form the basis to attract Section 138 of the Act, more so, when it is the case of the respondent that the cheque, which was not given for the present transaction and it has been misused by the appellant.

17. To take shelter under the presumption provided for u/s 139 of the Act, the appellant has to first establish that the cheque was issued for discharging a legally enforceable debt, meaning thereby, that the debt should first stand established, which alone would go to show that there is a legally enforceable debt and towards the discharge of the said debt, the cheque was



issued, which could be presumed and hence, the appellant cannot enforce Section 138 and the rigours of Section 139 of the Act would not stand attracted to the case on hand.

18. Under these circumstances, this Court finds that the respondent has rebutted the presumption by preponderance of probabilities by way of cross examination of the appellant. The trial Court rightly re-appreciated the entire evidence independently and came to the conclusion that the respondent has not committed the offence under Section 138 of NI Act and rightly dismissed the case.

19. On reading of the entire evidence, it is seen that the respondent has admitted the execution of the cheque and he has rebutted the statutory presumption in the manner known to law. This Court, does not find any perversity in the judgment passed by the learned trial Court in STC. No.49 of 2016 dated 15.03.2021 and there is no compelled circumstances to interfere with the judgment.

20. Accordingly, this Criminal Appeal is dismissed.



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18.04.2024

Index: Yes/No  
Speaking/Non speaking order  
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**M.DHANDAPANI.J.**

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To  
The Judicial Magistrate,  
Fast Track Court, (Magisterial Level)  
Ambattur, Chennai.

**CrI.A.No.210 of 2021**



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