



Crl.A.No.305 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

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

Crl.A.No.305 of 2012

Arul Raj

... Appellant

Vs.

Vasudevan

... Respondent

Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code, against the Judgment and orders, dated 05.01.2012 passed in C.C.No.109/2009 by the Judicial Magistrate II at Puducherry.

For Appellant : No appearance

For Respondent : No appearance

### **JUDGMENT**

Challenging the order of acquittal, dated 05.01.2012 passed in C.C.No.109/2009 by the learned Judicial Magistrate II at Puducherry, the present Criminal Appeal is filed by the complainant.



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2. Though the present appeal is filed in the year 2012, till date notice has not been served on the respondent. The counsel for the appellant, is also not present.

3. The appellant / complainant filed a private complaint against the respondent / accused under Section 200 Cr.P.C., for an offence punishable under Section 138 of the Negotiable Instruments Act.

4. In order to substantiate his case, the appellant / complainant had mainly relied on the letter of undertaking (Ex.P6) given by the respondent/accused on 07.11.2008 on which date the Cheque (Ex.P1) bearing No.030541, dated 12.01.2009 drawn on UCO Bank, Bazaar Branch, Puducheery was allegedly issued by him. However, the accused had denied the execution of the undertaking letter (Ex.P6) to the Cheque (Ex.P1). The trial Court had analysed this aspect in Paragraph Nos.17 and 18 which are extracted hereunder:

*"17. In Ex.P6, undertaking letter, two cheque*



*numbers have been mentioned that they have been given by the accused. But, there is no particulars in Ex.P6 that to whom they were given, for what purpose and for which amount they were given. One of the said cheque number is Ex.P1/cheque Number. The complainant has never stated anywhere in his evidence that whether another cheque was also given to him. If the said letter is one given by the accused, and the Ex.P1 is issued for the purpose of repayment of of the alleged borrowal of Rs.20 lakhs, the complainant ought to have explained that as to why the another cheque was given. He has not stated anything about the said another cheque. If as stated by the PW1, in his cross examination that the accounts were taken keeping three persons namely Raji, Moorthy and Arumugam, he may have produced the said accounts regarding the alleged borrowal on several dates and if the Ex.P1/cheque was issued for the repayment of the said borrowal, the complainant ought to have explained about the another cheque mentioned in Ex.P6. But, he failed to do so. Neither produced the said account nor examined the said 3 persons. Further, during cross examination the PW1 has admitted that he knows one Moorthy, who has filed a case in CC No.108/2009, another case filed against the accused for dishonour of cheque, which is tried simultaneously with*



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*this case. The above facts itself shows that the complainant has not come to court with clean hands and the case of the complainant is suspectable one. The above facts are sufficient to rebut the presumptions raised in favour of the complainant.*

*18. Further, the Ex.D1, the of copy of the Trust deed proves the relationship between the accused and the complainant. Further, the particulars mentioned in Ex.P8/the bank account statement of the accused are sufficient to show that the accused was operating the said account for the purpose of repayment of certain loan. The above facts are sufficient to show and presume that any of the two stands taken by the accused may be true. Therefore, for the above stated reasons, this court holds that the presumptions raised above are got rebutted by the accused. The Ex.P7/bank account statement of the complainant shows that he is a pensioner and during 01.01.2009 to 31.01.2009 he was not having more than Rs.14,650/-."*

The above observations of the trial Court, cannot be found fault with and there is no reason for this Court to interfere with the same.



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**5. In the result,**

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 05.01.2012 in C.C.No.109/2009 passed by the Judicial Magistrate II at Puducherry, is confirmed.

**15.07.2024**

Index: Yes/No  
Speaking/Non-Speaking order  
Neutral Citation : Yes / No  
vum

To

1. The Judicial Magistrate II,  
Puducherry.
2. The Section Officer,  
Criminal Section,  
Madras High Court,  
Chennai.



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**R.HEMALATHA, J.**

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