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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 29.04.2024

CORAM

**THE HONOURABLE Mr. JUSTICE M.DHANDAPANI**

Crl.A.No.433 of 2024

Neelamegam

... appellant

Vs

1. M/s.Xedan Media Private Ltd.,  
Rep. By its Director,  
Mr.J.Ravi  
S/o.Nr.Janarthanan  
Door No.1/56A, Rengamma Pettai Street,  
Papireddypatti,  
Dharmapuri-636 905.

2. J.Ravi

3. P.Savitha

... Respondents

Criminal Appeal Case filed under Section 378(4) of Cr.P.C, to call for the records and the impugned judgment dated 30.01.2024 acquitting the respondent/accused passed in STC. No.3421/2017 by the learned V Judicial Magistrate, Salem and to aside the same.

For appellant : Mr.S.Kalyanaraman  
For M/s.R.S.Mangala Kumar

**JUDGMENT**

The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in STC. No.3421/2017 on the file of the

Judicial Magistrate No.V, Salem, dated 30.01.2024, in and by which the



respondent herein was acquitted in the case u/s 138 of the Negotiable Instruments Act (for short 'the Act'), has filed the present appeal.

2. It is the case of the appellant that the appellant and second respondent, who is the Director of the first respondent, are close friends and the third respondent is also a Director of the first respondent company. It is further averred by the appellant that the second respondent used to borrow some amount at times from the appellant and he used to return the borrowed amount without making any default. In the year September-2017, the appellant borrowed a sum of Rs.15 Lakhs from the appellant and issued a cheque for a sum of Rs.15 Lakhs dated 20.10.2017 in favour of the appellant for security purpose.

3. It is the further case of the appellant that inspite of repeated reminders the second respondent failed to pay the amount due to the appellant. Accordingly, acceding to the request of the appellant, the appellant presented the cheque on 20.10.2017, but the same was returned by his banker with the endorsement 'exceeds arranged' on 25.10.2017. Since the respondents deliberately failed to pay the amount, the appellant caused a legal notice dated 10.11.2017 and the same was returned with an endorsement "unclaimed" Therefore, left with no other alternative, the



complaint was filed by the appellant for an offence u/s 138 of the Act.

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4. Upon examination of the complainant on oath u/s 200 Cr.P.C. and perusing the records, the court below, finding a prima facie case being made out, issued summons to the respondent and upon appearance, was provided with a copy of the complaint and the respondent pleaded not guilty.

5. On the side of the appellant, the appellant examined himself as P.W.1 and examined P.W.s 2 and marked Exs.P-1 to P-7. On the side of the respondents, no one was examined and Exs.D-1 to D-5 were marked. Court exhibits, Ex.C-1 to 3 were also marked. The trial court, appreciating the materials available on record, held that the appellant has not established that there was a legally enforceable debt for which the cheque was issued, which was dishonoured and also failed to prove that the cheque was issued by the second respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondents, aggrieved by which the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that the cheque was issued by the second respondent, which stood dishonoured



and the second respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the second respondent. It is the further submission of the learned counsel that the court below had clearly held that the cheque, which was alleged to have been given to the appellant by the second respondent has not been established by the respondents and had clearly held that it had not been misused by the appellant and that being the case, a duty is cast on the respondents to rebut the presumption u/s 139 of the Act and failure by the respondents would clearly lead to the presumption that the cheque was issued for discharging the legally enforceable debt.

7. It is the further submission of the learned counsel that it is incumbent on the part of the respondents to show how the cheque fell into the hands of the appellant and there being no claim that the cheque was lost as no police complaint was given, the only presumption that could be drawn is that the cheque was given by the respondents to the appellant and, therefore, the dishonour would entail action u/s 138 of the Act.

8. It is the further submission of the learned senior counsel that P.W.s 1 and 2 had clearly spoken about the appellant being a Director of the first respondent and 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 respondents and, therefore, interference is warranted with the findings recorded by the court below.

9. Heard the learned counsel for the appellant. In view of the fact that the appeal is against the acquittal of the respondents and there is double presumption with regard to the innocence of the accused/respondents, this Court, on the basis of materials available on record, is inclined to dispose of the appeal at the admission stage itself at the instance of the appellant.

10. 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 Sahebagouda 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 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 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:*

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*“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 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;*



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

11. 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.

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12. Ex.P-1 is the cheque, 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 respondents that the cheque, in blank, was given to the appellant by the second respondent for the purpose of official necessity and it has been misused by the appellant.

13. 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/respondents with regard to the cheque being issued for discharging a legally enforceable debt, which ought to be rebutted through materials to absolve the respondents, 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*



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*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 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.**

<https://www.mhc.tn.gov.in/judis> *It shall be presumed, unless the contrary is proved, that the holder*





examined as PW2, who has spoken about the cheque, which was dishonoured. PW1 in his deposition stated that the second respondent has issued a blank cheque and for filing the complaint, the appellant has filled up the cheque in front of the second respondent.

17. 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 of P.W.1 has established that the date of issuance of the cheque had not mentioned in the complaint and also the complainant has admitted that the second respondent has issued a blank cheque and for filing the case, the complainant himself filled up the cheque in front of the second respondent. Though a finding has been rendered by the court below that the complainant has not established that the cheque was issued for legally enforceable debt and hence, the complaint was dismissed.

18. When the appellant has not established that there exists a legally enforceable debt, which has to be paid by the respondents 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 respondents that the cheque, which was not given for the present transaction and it has been misused by the complainant.

19. 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.

20. Under these circumstances, this Court finds that the respondents have 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 respondents have not committed the offence under Section 138 of NI Act and rightly dismissed the case.



21. 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.3421 of 2017 dated 30.01.2024 and there is no compelled circumstances to interfere with the judgment.

22. Accordingly, this Criminal Appeal is dismissed.

29.04.2024

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Index : Yes/no

Speaking Order: Yes/no

To

1. The V Judicial Magistrate, Salem



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**M.DHANDAPANI,J.**

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