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Crl.A.No.617 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

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

Crl.A.No.617 of 2012

K.Rajendran

... Appellant / Complainant

Vs.

S.Poongodi

... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders dated 05.06.2012 passed in C.C.No.169/2010 by the Judicial Magistrate No.II, Sankari.

For Appellant : Mr.R.Marudhachalamurthy  
For Respondent : Mr.N.Umapathi

### **JUDGMENT**

Challenging the order of acquittal dated 05.06.2012 passed in C.C.No.169/2010 by the learned Judicial Magistrate No.II, Sankari, the present Criminal Appeal is filed by the 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.



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

- i. The accused was working in the Complainant's company as a daily wager. She used to borrow loan from the complainant and thus there was an outstanding sum of Rs.10,00,000/- due and payable by the accused to the complainant.
- ii. After much persuasion, the accused handed over a post dated Cheque bearing number 773017 (Ex.P1) on 21.08.2010 for a sum of Rs.10,00,000/- drawn on Karnataka Bank, Fort Branch, Salem in favour of the complainant.
- iii. When the cheque was presented for collection by the complainant through his bankers viz., Alahabad Bank, Magudanchavadi branch on 07.10.2010, it was returned for the reason 'insufficient funds' as is evidenced by the cheque return memos (Ex.P3 & Ex.P4).
- iv. Thereafter, the complainant issued a statutory notice, dated 14.10.2010 (Ex.P5) to the accused calling upon her to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of receipt of the notice.



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- v. The accused though received the notice on 18.10.2010 as is evidenced by the postal acknowledgement Card (Ex.P6), did not come forward to make good the payment. However, she sent a reply on 25.10.2010, which according to the complainant contained false allegations.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.II, Sankari, under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.169/2010.
- vii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.
- viii. On the appearance of the accused, copies of records were furnished to her 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.
- ix. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P7.



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- x. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, denied of having committed any offence. No witness was examined on the side of the accused.
- xi. The learned trial court judge after analysing the oral and documentary evidence on record found the accused not guilty of the offence under Section 138 of Negotiable Instruments Act and acquitted her under Section 255(1) Cr.P.C., vide her judgment and orders dated 05.06.2012, aggrieved over which, the present appeal is filed by the complainant.

4. Heard Mr.R.Marudhachalamurthy, learned counsel for the appellant / Complainant and Mr.N.Umapathi, learned counsel for the Respondent / Accused.

5. It is seen from the records that the complainant in his complaint, has specifically stated that the accused borrowed hand loan on different dates and did not repay the said amount and that after much



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persuasion, he handed over a post dated cheque (Ex.P1) to him for a sum of Rs.10,00,000/- to the accused on 21.08.2010. However during the course of cross examination, P.W.1 had stated that he lent a sum of Rs.10,00,000/- to the accused on 18.08.2010 and thus he has contradicted his own versions in the complaint. More over the complainant did not adduce any documentary evidence to substantiate that the accused is due and liable to pay him a sum of Rs.10,00,000/-. In the circumstances, the order of acquittal passed by the trial Court, cannot be found fault with.

**6. In the result,**

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 05.06.2012 in C.C.No.169/2010 passed by the Judicial Magistrate No.II, Sankari, is confirmed.

**18.07.2024**

Index: Yes/No  
Speaking/Non-Speaking order  
Neutral Citation : Yes / No  
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**R.HEMALATHA, J.**

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To

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

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