



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED:01.03.2024**

**CORAM:**

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**CRL.A(MD) No.415 of 2010**

N.Marimuthu

... Appellant

-VS-

J.Jayaraj

... Respondent

**PRAYER** : Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure praying this Court to set aside the order of the learned Judicial Magistrate No.I, Tiruchirappalli, in C.C.No.49 of 2006 dated 16.09.2010 and allow the C.C.No.49 of 20016.

For Appellant : No appearance

**JUDGMENT**

Though the matter was listed in advance on 19.02.2024, no representation for the appellant when the case taken up for hearing today.



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2. The appeal is preferred against the acquittal in C.C.No.49 of 2006 on the file of the learned Judicial Magistrate No.I, Trichy.

3. The sum and substance of the private complaint is that to discharge the liability, the accused gave four cheques dated 16.09.2005 each for Rs.50,000/-. After issuance of cheques, the accused requested the complainant not to present the cheques till 15.11.2005. When the cheques were presented on 21.11.2005 as requested by the accused, the same were returned with an intimation memo stating 'insufficient fund'. After exchange of notices, the present complaint was filed and the same was taken on file by the trial Court.

4. To prove the complaint, the complainant was examined as P.W.1 and four cheques each for Rs.50,000/- were marked as Ex.P1 to Ex.P4. The statutory notice, reply and other documents were marked as Ex.P5 and Ex.P8 respectively. To rebut the burden, the accused examined as D.W.1 and his statement of accounts was marked as Ex.D1 and D2 and the passbook was marked as Ex.D3 and Ex.D4.



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5. The trial Court after considering the evidence held that the complainant has not proved the fact that the cheques were issued to discharge the liability. It was given only as a security for the loan availed and the loan itself being cleared which has been proved through the statement of accounts, marked as defence documents. Therefore, the complaint is liable to be dismissed.

6. The present appeal is filed on the ground that the Court below failed to take note of the fact that the accused issued the cheques towards discharge of liability. The production of bank account statement is not sufficient to rebut the statutory presumption. Accepting the solitary evidence of the accused and the statement of the account produced by him, the trial Court erred in concluding that the presumption has been rebutted. It is also contented that while appreciating the evidence, the trial Court has ignored the spirit of Section 23 of the Indian Contract Act and Section 106 of the Indian Evidence Act.

7. This Court after giving anxious consideration to the submission



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found in the grounds of appeal holds that the accused to probablise his defence has come to the witness box and has explained how the transaction has taken place and substantiate his claim that the cheques were not issued to discharge any liability legally enforceable. He has also produced the statement of accounts. Thus, by preponderance of probabilities, he has discharged the reverse burden of proof. While so, it is the duty of the complainant to prove positively the factum of debt and he cannot thereafter rely upon Section 139 of NI Act to draw the presumption.

8. Once the presumption is rebutted by preponderance of probability, it is the duty of the complainant to prove the guilt beyond doubt by advancing evidence. In this case, conspicuously such evidence is absent. Therefore, the findings of the trial Court has to be upheld. Accordingly, the same is upheld and this Criminal Appeal is dismissed.

**01.03.2024**

NCS : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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To:

- 1.The Judicial Magistrate No.I,  
Tiruchirappalli.
- 2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**DR.G.JAYACHANDRAN,J.**

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**JUDGMENT MADE IN**

**CRL.A(MD) No.415 of 2010**

**01.03.2024**