



CrI.A.No.84 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No. 84 of 2022

P. Rajasekar

.. Appellant

Versus

P. Karthikeyan

.. Respondent

Criminal Appeal filed under Section 378 of Cr.P.C to set aside the judgment dated 24.11.2021 passed in S.T.C.No.49 of 2016 by the learned Judicial Magistrate, Fast Track Court (Magisterial level), Tiruvannamalai.

For Appellant : Mr. G. Karthikeyan

For Respondent : Mr. K. Balu

JUDGMENT

This appeal is filed against the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruvannamalai, dated 24.11.2021 in STC No.49 of 2016.

2. By the said judgement, the trial Court has acquitted the accused for an offence under Section 138 of the Negotiable Instruments Act.



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3. This is a private complaint filed by the appellant complaining an offence under Section 138 of the Negotiable Instrument Act.

4. The case of the complainant is that the accused had prayed for a loan and on 02.01.2014 the complainant advanced the hand loan and in repayment thereof, the accused issued a post-dated cheque on the same day by dating the cheque as 12.02.2014 for the said sum of Rs.5,00,000/-. Upon the same being presented for collection, the same return dishonoured with the endorsement “referred to drawer”. Thereafter, statutory notice was issued and since no reply was issued and no payment was also made, the complaint was filed. Subsequently, upon recording of sworn statement, the complaint was taken on file and summons was issued to the accused and copies were furnished. Upon questioning, the accused denied the allegation and stood trial. In order to bring home the allegations, the complainant examined himself as P.W-1 and Exs.P-1 to P-5 were marked on behalf of the complainant. Upon being questioned about the material evidence and incriminating circumstances on record under Section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence.



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5. The trial court thereafter considered the case of the parties and considering the fact that the complainant took prevaricating stands in the original complaint as well as in the chief examination and in the cross examination, disbelieved the case of the complainant with reference to the liability and held that the case of the accused be probable and acquitted the accused as against which, the appeal is filed.

6. Heard Mr.G.Karthikeyan, learned counsel appearing on behalf the appellant.

7. The learned counsel would submit that in this case even though the complainant had changed the version, it is not material in the sense that the fact remains that the complaint has advanced a sum of Rs.5,00,000/-. While drafting the notice as well as the complaint, for the mistake of the counsel in not properly understanding the case of the complainant, the complainant cannot be put to grave prejudice. Whether the sum of Rs.5,00,000/- was advanced in one single day or sporadically on several installments, does not make any difference. At the same time, it is the case of the accused that he only borrowed a sum of Rs.50,000/- and that he repaid the same and the



cheque was issued only as a security in respect of the same. To prove the same, the accused has not let in any evidence. The suggestions that were made by the accused in the cross examination of the complainant are denied by the complainant. Therefore, once the cheque is presented and the accused also admits his signature in the cheque, the presumption operates in favour of the complainant and the trial court ought to have convicted the complainant. The trial court also omitted to consider that the accused did not even issue any reply notice to the statutory notice which also adds weightage to the claim of the complainant. Merely on a hyper technical ground, the complainant is non-suited and therefore, this court should interfere in the case.

8. *Per contra*, the learned counsel appearing on behalf of the respondent would submit that in this case, the very advancement of loan is in question. The specific case of the accused is that he only borrowed sum of Rs.50,000/- and while repaying, there was a scuffle and egoistically taking into account the altercation, the cheque instead of being returned, is filled up for higher amount and presented. The complainant has not proved the transaction and also his capability and on all grounds, the trial court has acquitted the accused.



9. I have considered the rival submissions made on either side and perused the judgment of the trial Court and other material records of the case.

10. Mere non-issuance of reply notice by itself will not prove the case of the complainant. The non-issuing of reply notice has to be considered along with the other evidence on record and in the context of the case. In this case, it is the specific case of the complainant in the complaint as well as the statutory notice that he lent a sum of Rs.5,00,000/- only on 02.01.2014 and in repayment thereof the post-dated cheque dated 12.02.2014 was issued. When specifically the same was pleaded, now, it is stated that the counsel did not understand the case of the complainant. The complainant himself has gone back from the said version in the proof affidavit and in the cross, he specifically admits that such a statement is false and erroneous and with such admission, it can at least be held that the accused has rebutted the presumption. Even thereafter, the complainant did not choose to let in any further evidence to prove that he sporadically lent the amount on various dates. No other evidence with reference to sporadic advancement of the loan, in all, amounting to Rs.5,00,000/- was let in. Under the said circumstances, the findings of the trial court that the complainant has taken prevaricating stands and that the accused's case seem to be probable and giving the benefit of doubt



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cannot be said to be a perverse finding or an impossible view. In an appeal against acquittal, the same cannot be upturned and the arguments of the learned counsel for the appellant cannot be accepted. In view thereof, finding no merits, this Criminal Appeal stands dismissed.

29.10.2025

srm

Neutral citation : Yes/No



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To

1. The Judicial Magistrate,
Fast Track Court (Magisterial level),
Tiruvannamalai
2. The Section Officer,
Criminal Section,
High Court of Madras – 600 104.



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D.BHARATHA CHAKRAVARTHY, J.,

srm

Judgment in
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