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Crl.A.No.337 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.337 of 2017

Raja

... Appellant/Complainant

vs.

M.Murugesan

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, against the acquittal made in S.T.C.No.38/2015 on the file of the learned Judicial Magistrate (Fast Track) Court, Attur on 20.07.2016.

For Appellant : Mr.C.Prabakaran

For Respondent : Ms.Nethra,
Legal Aid Counsel

JUDGMENT

The appellant challenges the Judgment of acquittal in S.T.C.No.38/2015, dated 20.07.2016.

2. It is the case of the appellant that the appellant and the respondent are close friends; that the respondent requested the appellant for a loan of



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Rs.6,18,000/- for his business needs; that accepting to his request, the appellant lent a sum of Rs.6,18,000/- on 07.01.2014; that the respondent promised to return the said amount within a period of six months and issued a cheque dated 08.10.2014; that when the appellant presented the cheque for collection, the same was returned for the reason funds insufficient; a statutory notice was issued by the appellant on 20.10.2014; that in spite of receipt of the statutory notice, the respondent did not make any payment; and thus the respondent committed the offence under Section 138 of the Negotiable Instruments Act.

3. Before the trial Court, the appellant examined himself as PW1 and another witness as PW2 and marked Ex.P1 to Ex.P6. The respondent examined himself as D.W.1 and marked Ex.D1 to Ex.D7.

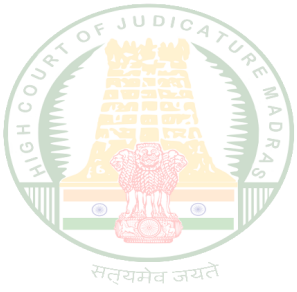
4. The trial Court, after considering the evidence on record, held that the appellant had not established that she had lent a sum of Rs.6,18,000/- to the respondent on 07.01.2014 and also had not established his financial capacity to lend such huge sum.



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5. Mr.C.Prabakaran, learned counsel for the appellant would

strenuously contend that the trial Court having disbelieved the defence of the respondent that the Cheques were stolen from his house, ought to have considered the evidence in a proper perspective. He would submit that since the respondent had failed to establish as to how the cheque came in possession of the appellant, the Court must have drawn the statutory presumption under Section 139 of the Negotiable Instruments Act. Since the respondent has not rebutted the statutory presumption ought not to have acquitted the respondent. The learned counsel further submitted that the appellant had established his source of income by stating he had earned a sum of Rs.3,00,000/- from the agricultural lands and had also received Rs.2,65,000/- from his brother and had a sum of Rs.53,000/- as savings. The learned Judicial Magistrate had erroneously disbelieved that part of evidence and wrongly acquitted the respondent. The learned counsel for the appellant further submitted that since they were close friends and also the respondent had huge debts, the appellant also offered to buy the Mill and advanced the said sum.



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6. Though notice was served on the respondent, the learned counsel had also entered appearance, there was no representation for the respondent on the earlier occasions. Hence, this Court appointed Ms.Nethra, legal aid counsel for the respondent.

7. Ms.Nethra, learned legal aid counsel contended that the view taken by the trial Court is a plausible view and this Court in an appeal against the acquittal, would not ordinarily interfere in such circumstances. The learned counsel submitted that the appellant was not sure of the exact amount of loan said to have been given to the respondent. He had initially stated that the loan amount was Rs.6,18,000/- and thereafter changed the version by stating that the loan amount was only Rs.6,00,000/- and the interest was Rs.18,000/-; that the source of income was not established by examining the brother of the appellant; that since the respondent had established that there was no document to establish the loan, the appellant belatedly produced the document (a Muchalika) which was marked as Ex.P6 at the fag end of the trial; that the said document was not referred to in the notice, in the complaint and in the proof affidavit; and that after the conclusion of the



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cross examination, the said document was filed by recalling the witness

P.W.1. The learned counsel therefore submitted that the impugned Judgment does not call for any interference by this Court.

8. As stated earlier, the appellant examined two witnesses. Initially he had marked 5 documents. However after the cross examination concluded, the appellant examined himself again and marked Muchalika as Ex.P6. Originally the case of the complainant was that he had lent a sum of Rs.6,18,000/- on 07.01.2014 and the accused promised to return the same within six months. To a specific question put by the Court as to how he had lent a huge sum of Rs.6,18,000/- without interest, the appellant stated that the loan amount was Rs.6,00,000/- and interest was Rs.18,000/-. The trial Court found that the contradiction in the amount said to have been given as loan coupled with the fact no document was produced to establish the loan are sufficient to rebut the statutory presumption. This Court finds no infirmity in the said finding.



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WEB COPY 9. That apart as stated earlier, the appellant had produced a new document (Ex.P6) to prove the loan, in the re-examination which was done after cross examination was completed. The appellant has not explained as to why he had not referred to these documents either in the notice or in complaint or in his chief examination. Hence, this Court is of the view that the said document Ex.P6 as rightly held by the trial Court, is an after thought and created subsequently. If Ex.P6 had been really executed by the respondent at the relevant point of time, there was no reason why the appellant had not mentioned about that document in any of his earlier versions.

10. Therefore the finding of the trial Court that the statutory presumption was rebutted by the respondent, cannot be faulted. The appellant therefore ought to have discharged his burden by establishing the source of income and the lending. He had not produced any evidence to prove that he had received a sum of Rs.2,65,000/- from his brother. In such view of the matter, this Court is of the view that the Judgment of acquittal



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by the trial Court is well considered and there is no reason to interfere with the same.

11. The Criminal Appeal therefore stands dismissed.

12. The High Court Legal Services Committee is directed to pay the scheduled fee to Ms.Nethra, legal aid counsel.

22.07.2025

Index : yes/no

Speaking /Non-speaking order

Neutral citation : yes/no

vum

To

1. The Judicial Magistrate (Fast Tract) Court,
Attur.

2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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Copy to

WEB COPY The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai - 104.



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SUNDER MOHAN, J.

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