IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.178 of 2014

K.A.Ebrahim … Appellant/Complainant

v.

S.M.Mehraj ... Respondent/Accused

Criminal Appeal filed under Section 378 (4) of Code of Criminal Procedure, against the aquittal made in C.C.No.1054 of 2006 on the file of the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai, on 03.01.2014 by allowing the Criminal Appeal.

For Appellant : Mr.L.Rajasekar

For Respondent : No Appearance
(Notice dispensed with)

JUDGMENT

The appeal challenges the judgment of acquittal dated 03.01.2014 passed by the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai, in

C.C.No.1054 of 2006.

2.It is the case of the appellant/complainant that the respondent is his brother-in-law; that taking advantage of the relationship, the respondent had borrowed several sums of money for his urgent needs and towards discharge of his liability, the respondent had issued a cheque bearing No.380881 dated 09.04.2005 drawn on Catholic Syrian Bank, Kollam Branch; that the appellant presented the cheque for collection; that the cheque was returned for the reason, 'account closed'; that the appellant issued a legal notice and inspite of the statutory notice, the respondent failed to make the 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.P7. On the side of defense, the respondent marked the letter given by the Catholic Syrian Bank as Ex.D1.

4. The trial Court after considering the evidence on record, found that there were several transactions between the appellant and the respondent; that there were civil disputes; that the cheque in question was not drawn from the account maintained by the respondent; and that the account from which the cheque was drawn was in the name of one Mrs.Jameela, who was the mother-in-law of the appellant and hence the complaint against the respondent was not maintainable and acquitted him.

5. Mr.L.Rajasekar, learned counsel for the appellant, submitted that the respondent had not disputed the signature in the cheque; that the appellant had established that the respondent had borrowed money; that the trial Court ought not to have acquitted the respondent merely because they were closely related and civil disputes were pending between them; that even if the respondent had misled the complainant and issued a cheque of his mother, the trial Court ought to have altered the charge to Section 420 of the IPC and convicted the respondent for the said offence; and thus, prayed for setting aside the judgment of acquittal.

6. Though notice was sent to the respondent, it has not been served. Since this Court finds that the appellant has not made out any ground for interference, notice to the respondent is dispensed with.

7. As stated earlier, it is the case of the appellant that the appellant and the respondent are closely related to each other. The respondent is the brother of the appellant's wife. It is also the admitted case of the appellant that there were civil disputes between the appellant and his wife on the one hand and the respondent and his father on the other hand. The appellant was not able to specifically state the dates on which he had lent the said sum of Rs.7,25,000/-. He was also not able to specify the exact date on which the respondent had handed over the subject cheque to the appellant. The appellant had marked Ex.D1, which is the certificate dated 06.01.2007 issued by the Senior Manager in Catholic Syrian Bank, Kollam, stating that the account from which the cheque was drawn stood in the name of one Ms.K.M.Jameela, who was the Sole Proprietor of 'Paint House'. The said Jameela is the mother of the accused, admittedly.

8. Though it is the case of the appellant that the respondent has misled him and handed over the cheque of his mother and had initially filed a petition to frame charges under Section 420 of the IPC against the respondent, for reasons best known to the appellant, he had withdrawn the said petition. Since the basic requirement to prosecute a person for an offence under Section 138 of the Negotiable Instruments Act that the cheque must be drawn from an account maintained by him has not been satisfied, the trial Court was right in acquitting the respondent. This Court finds no reason to interfere with the said judgment of acquittal.

9. Therefore, the judgment of acquittal dated 03.01.2014 passed by the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai in C.C.No.1054 of 2006, is confirmed. The Criminal Appeal stands dismissed.

18.07.2025

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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To

The Metropolitan Magistrate, FTC-II, Egmore, Chennai.

SUNDER MOHAN, J.

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