



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-11-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No. 185 of 2014

1. M/s.Sree Gokulam Chits and
Finance Co., (P) Limited
Rep. by Power Agent
Mr.V.Karnan S/o.K.Villiya Singam
Assistant Manager – Legal,
No.66, Arcot Road, Chennai – 600 024.

...Appellant

Vs

1. S.Feroz Khan
S/o.Sheikh Dawood,
M/s.Syed Dresses, 96, M.T.H.Road,
Padi, Chennai – 50.

...Respondent

PRAYER

The Criminal Appeal has been filed under Section 378 of Criminal Procedure Code against the judgment in C.C.No.6125 of 2006 dated 24.02.2014 passed by the Metropolitan Magistrate, Fast Track Court – I, Egmore, Chennai.

For Appellant : Mr. P. Rakesh Kumar

For Respondent : Mr. E. Narayanan



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CRLA No. 185 of 2014



JUDGMENT

This appeal is filed against the judgement of the learned Metropolitan Magistrate - Fast Track Court-I, Egmore, Chennai, dated 24.02.2014 in C.C.No.6125 of 2006. By the said judgment, the respondent accused was acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure alleging an offence under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the complainant is a Company running chit transactions. The accused participated in one such transaction and in respect of the balance due payable by him issued a cheque for a sum of Rs.2,24,261/- dated 18.08.2005. Upon the cheque being presented, the same returned dishonoured with an endorsement “funds insufficient”. Thereafter, a Statutory Notice was issued on 09.09.2005, which also returned with an endorsement “not present”. The accused knowingly evaded the notice and didn't pay the amount within the statutory period. Thereafter the complaint was filed.



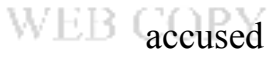
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3. Upon recording the sworn statement, the complaint was taken on file as C.C.No.6125 of 2006. Upon issue of summons and appearance of the accused and questioning, the accused denied the allegations stood trial. One A.Andro, the employee of the complainant company, was examined as P.W.1 and Ex.P1 to Ex.P7 were marked on behalf of the complainant. During the course of the cross examination, a photocopy of the passbook issued to the accused was marked as Ex.D1. Upon being questioned about the material evidence 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. The trial Court considered the fact that both parties admitted the relationship and the accused participated in a particular chit, which is evidenced by Ex.D1. The trial Court considered the fact that in the passbook, there is an entry that as on 09.07.2003, the balance amount was Rs.88,650/- and therefore, within a short period of two years that is on 18.08.2005, it could not have been Rs.2,24,261/- and therefore, it held that the defence of the accused that even before the liability had arisen, a blank cheque was left with the appellant company and that it could have been filled up and presented could not be ruled out and given the benefit of doubt to the accused and acquitted him as against which the present appeal is filed.



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4. Mr. P. Rakesh Kumar, learned counsel appearing on behalf of the appellant firstly would submit that the finding of the trial Court that only a sum of Rs.88,650/- is found to be due in the passbook is *per se* erroneous, because, in the passbook, the amount due to the accused periodically will be entered into. If the accused defaults, thereafter, as per the agreement between the complainant company and the accused, the balance outstanding will be collected along with the interest including default interest and penal interest. The calculation will not be contained in the passbook, which is retained by the accused. Therefore, the trial Court erred in holding that there is no proof for legally enforceable debt. The very fact that the amount has been correctly calculated as Rs.2,24,261/- by itself would adumbrate that the complainant company had undertaken the exercise of calculating the principal amount and the interest amount due and only for the total amount due in discharge of the liability, the accused had issued the cheque. It is not the case of the accused that he has discharged the entire amount and no such receipt for discharge is also produced. In the absence of the same, when the cheque has been duly signed by the accused and when the complainant has produced the cheque, the presumption arises in favour of the complainant company and the trial Court ought not to have acquitted the accused.



7. As a matter of fact, the learned counsel for the complainant company argued that beyond the page to which, the trial Court has looked into, there may be other entries also. On a perusal of the Ex.D1, passbook, even from the last page, it is clear that a sum of Rs.1,31,280/- is paid, out of the total amount of Rs.2,25,000/- and it is mentioned that the balance is Rs.93,720/-. The same is written only by the officials of the appellant company. In that view of the statement, when the same is said to have been due as on October, 2003,



suddenly, in the year 2005, when the cheque was issued in August, 2005, within 22 months, the same cannot become Rs.2,24,261/- by any calculation. As rightly contended by the learned counsel on behalf of the accused, not even the statement of accounts is produced. Therefore, the accused has rebutted the presumption and once the accused has rebutted the presumption by way of cross examination, it is for the complainant to have produced such statement of accounts in support of their claim to prove the liability. In the absence thereof, no exception whatsoever can be taken to the findings of the trial Court and it cannot be said that the findings are perverse or an impossible view and in an appeal against acquittal, the same cannot be upturned, unless, it is perverse or an impossible view.

8. Accordingly, this Court finds no merit in this appeal and the appeal is dismissed.

06-11-2025

ASI

Speaking order

Internet :Yes



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To
1. The Metropolitan Magistrate,
Fast Track Court – I, Egmore,
Chennai.

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D. BHARATHA CHAKRAVARTHY, J.

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