



Crl.A.No.321 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.321 of 2014

Devagi

... Appellant/Complainant

v.

A.Kannan @ Abi Kabilan

... Respondent/Accused

Criminal Appeal filed under Section 378 of Code of Criminal Procedure, against the acquittal made in C.C.No.84 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, Vaniyambadi, on 19.02.2014 by allowing the Criminal Appeal.

For Appellant : Mr.S.Gopinath
for Mr.K.Thiruvengadam

For Respondent : No Appearance

JUDGMENT

The appeal challenges the judgment of acquittal dated 19.02.2014 passed by the learned District Munsif cum Judicial Magistrate, Vaniyambadi, in C.C.No.84 of 2010.



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2. It is the case of the appellant that the respondent had borrowed a loan for his urgent needs to the tune of Rs.1,67,400/- from the appellant and her husband; that to discharge the said debt, the respondent had issued the subject cheque bearing No.462111 dated 05.02.2010 for Rs.1,67,400/-, with a request to present the same after two months; that the appellant presented the cheque on 23.04.2010, which was returned for the reason, 'insufficient funds'; that the appellant had issued a legal notice on 11.05.2010, for which the respondent had sent a reply with false averments; and thus the respondent committed the offence under Section 138 of the Negotiable Instruments Act.

3. Before the trial Court, the appellant examined herself as PW1 and one Ravichandran as PW2 and marked Ex.P1 to Ex.P6. The respondent had marked exhibits Ex.D1 to Ex.D7 on his side.

4. The trial Court after considering the evidence on record, acquitted the respondent on the ground that the respondent had rebutted the statutory presumption and the appellant had failed to discharge her burden



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to prove that the cheque was issued for a legally enforceable debt or liability.

5. Mr.S.Gopinath, the learned counsel for the appellant, strenuously contended that the trial Court erred in accepting Ex.D1 to Ex.D7 as proof of payment of the cheque amount when it is the specific case of the appellant that she and her husband had several transactions with the respondent and the receipts Ex.D1 to Ex.D7, pertain to the chit transaction between both of them and not with regard to the loan amount for which the cheque was issued and relied upon the deposition of PW1. Further, he submitted that the judgment of acquittal is perverse and sought to set aside the same.

6. It is seen that though notice has been served on the respondent, none has entered appearance.

7. As stated earlier, it is the specific case of the appellant that she, along with her husband, lent a sum of Rs.1,67,400/- and the respondent had



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issued a cheque towards the discharge of the said loan. In the complaint, there is no reference to the date on which the said amount was given as a loan to the respondent. There is no mention about any other transactions either in the statutory notice or in the complaint.

8. During the course of cross-examination of the appellant, the respondent had marked seven documents, viz., Ex.D1 to Ex.D7, which are receipts issued by the appellant evidencing receipt of a total sum of Rs.1,73,853/-. The appellant had not disputed the receipt of the said sum. However, it is the case of the appellant that the said receipts were only issued towards the liability of the respondent in a chit transaction between the appellant and the respondent. Even if that case is accepted to be true, this Court is of the view that since the respondent had rebutted the statutory presumption by producing the evidence of payment of money to the appellant, the burden had shifted to the appellant to establish that there was an independent transaction and the cheque in question was issued towards the liability in the said transaction. The appellant had not discharged the said burden.



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9. As stated earlier, there was not even an averment about any independent transactions in the complaint or in the statutory notice. Further to certain questions in the cross-examination, the appellant had stated that she was not aware of those transactions and it was only her husband who knew about those transactions. The trial Court therefore found that the appellant had not established that the cheque in question was issued for a legally enforceable debt or liability and rightly acquitted the respondent.

10. This Court finds no infirmity in the said judgment. Accordingly, the judgment of acquittal dated 19.02.2014 passed by the learned District Munsif cum Judicial Magistrate, Vaniyambadi, in C.C.No.84 of 2010, is confirmed. The Criminal Appeal stands dismissed.

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

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SUNDER MOHAN, J.

ars

To

The District Munsif cum Judicial Magistrate,
Vaniyambadi

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