



CrI.A.No.139 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 10.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

CrI.A.No.139 of 2010

James @ James Swornbas

...Appellant

Vs.

S.Krishnamoorthy

...Respondent

**PRAYER:** Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to set aside the judgement dated 15.09.2009 passed in C.C.No. 5384 of 2007 by the learned VII Metropolitan Magistrate, George Town, Chennai – 01, ordering the acquittal of the respondent accused, to convict and sentence him in accordance with law and be further pleased to direct the respondent accused to pay the appellant- complainant compensation in the manner provided in Section 357 of Cr.P.C.

For Appellant : No appearance

For Respondent : No appearance

**ORDER**

This appeal is filed challenging the judgment of the VII Metropolitan Magistrate, George Town, Chennai-01, made in C.C. No. 5384/2007, dated 15.09.2009, whereby the respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881.



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**WEB COPY**2. The case of the appellant/complainant is that he entered into a construction agreement with the respondent and in discharge of his liability, the respondent issued two cheques: cheque bearing No. 933326 dated 05.02.2007 for a sum of Rs. 25,000/-, and cheque bearing No. 933335 dated 07.02.2007 for a sum of Rs. 4,00,000/-, which were marked as Ex. P1 and P2. Upon presentation for collection, the cheques were returned dishonoured for insufficient funds. Thereafter, the complainant issued a legal notice, Ex. P5, and filed the complaint.

3. The defence contended that although a contract was entered into, the complainant left it halfway due to a dispute between the complainant and the accused. It was stated that thereafter, one *Sivalingam* was engaged as a contractor and the works were completed. The cheques, which were left with the complainant as security during the transaction, were misused by the complainant.



WEB CODE

4. In support of the case, the complainant examined himself as P.W.1, and Ex.P1 to P6 were marked. On behalf of the defence, Ex. D1 and D2 were marked. The subsequent contractor was examined as D.W.1, and the accused examined himself as D.W.2.

5. After appraising the evidence adduced by both sides, the Trial Court found that the complainant, in both the complaint and chief examination, never mentioned that he had already lodged a police complaint or that a panchayat was held. The facts that the works remained incomplete and that another contractor was later engaged to complete the work were all not mentioned.

6. While the complainant admitted these facts only during cross-examination, the Court held that the accused had rebutted the presumption and also let in contra evidence to dispute the liability. Accordingly, it concluded that the complainant had not proved beyond reasonable doubt that a liability existed. The Trial Court thus acquitted the accused. In view of said findings, which are based on the appraisal of evidence on record, this Court, in an appeal against acquittal, cannot upturn the findings unless the same is perverse in nature.



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Neutral Citation: Yes/No  
nsl



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**D.BHARATHA CHAKRAVARTHY, J.**

nsI

To  
The VII Metropolitan Magistrate,  
George Town,  
Chennai – 01.

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