



Crl.A.No.136 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.136 of 2023

P.Vinos

... Appellant

Vs

P.Periyasamy

...Respondent

PRAYER : Criminal Appeal has been filed under Section 378 of Criminal Procedure Code, to set aside the order dated 24.11.2022, passed in CC.236 of 2018 on the file of the Judicial Magistrate Fast Track Court (ML) Alandur and to allow this Crl.A and convict the respondent herein.

For Appellant : Mr.N.Balaji

For Respondent : Mr.A.P.Sathya Murthy

JUDGMENT

This Criminal Appeal has been filed as against the order passed in CC.236 of 2018 dated 24.11.2022, on the file of the Judicial Magistrate Fast Track Court (ML) Alandur, thereby dismissing the complaint filed by the appellant herein for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The appellant is the complainant, in which the respondent is an

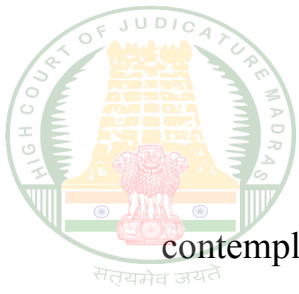


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accused, in the complaint lodged by the appellant for the offence punishable under Section 138 of Negotiable Instruments Act, in C.C.No.236 of 2018, on the file of the Judicial Magistrate Fast Track Court (ML) Alandur, alleging that the respondent is running a hardware business and in order to develop the business, he had borrowed money from the appellant on various occasions at the rate of 24% per annum. Towards the repayment of the loan amount, the respondent had issued a cheque for a sum of Rs.7.5 Lakhs and the same was presented for collection. However, it was returned dishonoured for the reason "Funds Insufficient". After causing statutory notice, lodged a complaint.

3. On the side of the appellant, he was examined as PW.1 and marked Exs.P1 to P4. On the side of the respondent, no one was examined and no document was produced. On perusal of oral and documentary evidence, the Trial Court acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the appellant would submit that the respondent did not deny either the signature on the cheque or the issuance of cheque. Therefore, the appellant had initially discharged the burden of proof as

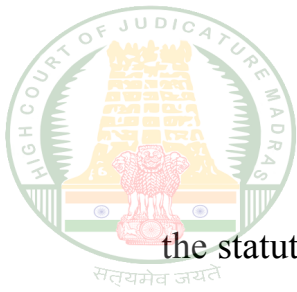


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contemplated under Section 138 of Negotiable Instruments Act. In fact, the respondent failed to rebut the statutory presumptions drawn under Section 118 and 139 of Negotiable Instruments Act. Even then, the Trial Court acquitted the respondent.

5. A perusal of records revealed that on receipt of the statutory notice as contemplated under Section 138 of Negotiable Instruments Act, the respondent issued a reply notice stating that the cheque was issued only for security purposes and that too in favour of one Roselin Fernando. It was further alleged, with the help of the appellant, the present complaint was lodged to extract money from the respondent. Though the respondent admitted his signature and issuance of cheque, the same was not issued for any legally enforceable debt or liability nor was it issued in favour of the appellant herein.

6. The appellant is working under the said Roselin Fernando and that the cheques issued by the respondent were misused with the help of the appellant herein. In fact, the reply notice was also sent to the said Roselin Fernando. Further, the appellant herein failed to disclose the specific amount allegedly borrowed by the respondent and the date of such borrowing either in



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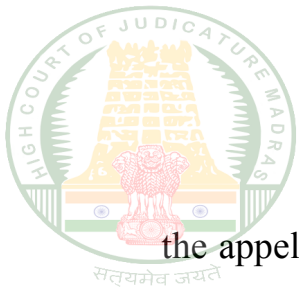
the statutory notice, the complaint or the proof affidavit. However, on receipt of

the said reply notice, the appellant did not issue any rejoinder to prove his case.

The appellant was examined as PW.1 and failed to prove his case.

7. The presumption under Section 118 of the Negotiable Instruments Act can legally be inferred that the cheque was made or drawn for consideration on the date which is mentioned in the cheque. The provision under Section 139 of the Negotiable Instruments Act enjoins to presume that the holder of the cheque received it for the discharge of any debt or liability. Therefore, the burden is on the respondent to rebut the same. Further, the standard of proof so as to prove a defence on the part of the accused is preponderance of probabilities and need not be beyond all reasonable doubts. The burden to rebut the presumption standing in favour of the complainant is upon the accused who must raise a probable defence that the cheques were not supported by existing enforceable debt or liability. The respondent had duly rebutted the presumption with probable defence. However, the appellant failed to prove that the cheque was issued for existing enforceable debt or liability.

8. A perusal of the complaint and other documents also revealed that



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the appellant failed to even whisper about the total amount allegedly borrowed by the respondent or the date on which it was borrowed by the respondent.

Further, during his course of examination, the appellant admitted that he had acquaintance with the said Roselin Fernado,. Therefore, the respondent has successfully raised a defence, on the basis of the preponderance of probability that there existed no legally enforceable debt or liability for which the cheque was issued.

9. Therefore, the Trial Court had rightly acquitted the respondent and this Court finds no infirmity or illegality in the order passed in CC.236 of 2018 dated 24.11.2022, on the file of the Judicial Magistrate Fast Track Court (ML) Alandur.

10. Accordingly, this Criminal Appeal stands dismissed.

06.06.2025

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

mn

G.K.ILANTHIRAIYAN, J.

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The Judicial Magistrate Fast Track Court (ML),
Alandur.

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