



Crl.A.No.604 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2025

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.604 of 2014

S.Santha

...Appellant

Vs.

M.Vijaya

...Respondent

This Criminal Appeal is filed under Section 378 (4) of Criminal Procedure Code to set aside the judgment passed in S.T.C.No.293 of 2012 on the file of the Judicial Magistrate Fast Track Court No.II, (Judicial Magistrate Level) Erode, dated 28.03.2014.

For Appellant : M/s.V.S.Kesavan

For Respondent : Mr.I.C.Vasudevan

JUDGMENT

This Criminal Appeal is filed against the judgment dated 28.03.2014 made in STC.No.293 of 2012 by the learned Fast Track Court - II (Magisterial Level) Erode. By the said judgement to the respondent accused is acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881.



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2. The case of the complainant is that the accused borrowed a loan from her on 23.02.2012 and in repayment thereof issued a cheque dated 23.03.2012 which was deposited for collection on 24.04.2012 and the same returned with an endorsement “funds insufficient” on 26.04.2012. Thereafter, a notice was issued on 27.04.2012 calling upon the accused to pay the sum due under the cheque which the accused did not pay within the statutory period and hence the complaint was filed.

3. Upon filing of the complaint, a sworn statement was recorded and the accused was summoned. Upon appearance, the copies were furnished and the accused denied the charges and stood trial. In order to prove the charges, the complainant has examined herself as P.W.1 and Exhibits P.1 to P.5 were marked. Upon questioning the accused under Section 313 of Cr.P.C, the accused denied the evidence on record as false. No evidence was let in on behalf of the defence.

4. The trial Court thereafter considered the case of the parties and acquitted the accused for three reasons. Firstly, it is stated by the complainant that she is a housewife and this sum of Rs.3,50,000/- was

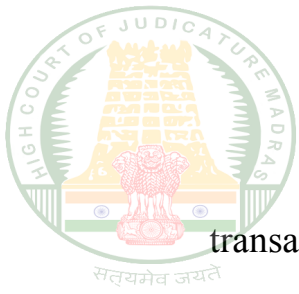


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handed over to her in cash by her son and out of the same only she has lent the money. No further evidence was given in respect thereof. The second reason that is adduced by the trial Court is that even though it is admitted by the complainant that she is an income tax assessee, she admitted that this loan was not reflected in her returns and no such returns were also produced. The third reasoning is that, during the cross examination, PW.1 has stated that she doesn't even know the avocation of the accused. Further, the trial Court considered that the cheque was signed in blue ink and the accused has signed in Tamil and the rest of the particulars in the cheque are all filled up in black ink in English with a different handwriting. For all the aforesaid reasons, the trial Court arrived at a finding that the version of the accused that it was given as a security with reference to the transactions between the husband of the accused and the husband of the complainant will also be a probable version and gave the accused the benefit of doubt.

5. Mr.V.S.Kesavan, the learned counsel appearing on behalf of the appellant would submit that none of the reasons mentioned by the trial Court can be the reason for acquittal. When the complainant is not maintaining book of accounts, the mere fact that she has admitted that the



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transaction was not shown in her assessment cannot be fatal. The trial Court ought to have seen that the complainant is armed with the presumption under the Negotiable Instruments Act, 1881.

6. The learned counsel appearing on behalf of the respondent accused would submit that it can be seen that the very cheque is being misused and the findings in that regard is made by the trial Court. Secondly, the accused can also rebut the presumption by cross examining the complainant which has been successfully done by the accused in the instant case and in the absence of any further proof, the findings of the trial Court need not be interfered by this Court.

7. I have considered the rival submissions and perused the material records of the case.

8. As rightly contended by the learned counsel for the accused, though individually all the four reasons adduced by the trial Court cannot be a ground for acquittal but on a cumulative appreciation of evidence, when the trial Court *prima facie* finds that the cheque has been filled in with a different ink and the accused signs only in Tamil while



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the other particulars are filled up in English and then some transactions between the husband of the accused and the husband of the complainant having been admitted, and the complainant does not even know the profession / avocation of the accused and the amount being Rs.3,50,000/- and the complaint admitted herself as a housewife and the same is also not being reflected in the income tax account, I am unable to hold the ultimate conclusion that is arrived by the trial Court as perverse in nature or as an impossible view. Accordingly this Criminal Appeal against acquittal is bound to fail and dismissed.

11.08.2025

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NCC : Yes / No

To

1. The Judicial Magistrate Fast Track Court No.II,
(Judicial Magistrate Level) Erode.

2. The Public Prosecutor,
High Court of Madras.

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D.BHARATHA CHAKRAVARTHY.J.,

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