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CRL A No. 944 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-11-2025

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL A No. 944 of 2022

P.Ganesan

Appellant(s)

Vs

1. Dollors Pounds Trading School of Academy,
By its Prop.J.Vijayabharath, S/o. Jayabalachandra
Mouli, No.209, 9th Street, Kothari Nagar, Ramapuram,
Chennai 600 089.

2.J.Vijayabharth

Respondent(s)

PRAYER: This Petition is filed under Section 378(4) of Cr.P.C., to set-aside the Judgement passed by the learned Judicial Magistrate No.II, Salem in STC.No. 142 of 2011 dated 19.06.2017 by allowing this Appeal.

For Appellant(s): M/s.L.Rajendran

For Respondent(s): Mr.S.Madhusudnanan



ORDER

This criminal appeal is filed against the judgement dated 19.06.2017 in
STC.No.142 of 2011 passed by the learned Judicial Magistrate No.II, Salem.

2. It is to be noted here that earlier, an appeal was filed in
Crl.A.No.110 of 2017 and by virtue of the full bench judgment, the appellate
judgement was held to be non est and once again the parties are transposed and
this criminal revision originally filed as against the appellate judgment was
again converted into one as criminal appeal. Accordingly, now Mr.P.Ganesan,
the complainant is the appellant. This is a private complaint filed by the
appellant under Section 200 of the Code of Criminal Procedure complaining an
offence under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant is that on 02.09.2010, the accused
approached the complainant and obtained a hand loan for his business and
family purposes to the tune of Rs.4,40,000/-. In discharge of the said liability,
the accused on the same day issued two cheques i.e., the first cheque dated



02.12.2010 for a sum of Rs.2,70,000/- and another cheque dated 15.12.2010 for a sum of Rs.1,70,000/-. Upon the cheques being presented, it came dishonoured with endorsement "Funds Insufficient". Thereafter, a statutory notice was issued. Thereafter, neither any payment was made nor any reply notice was issued. Accordingly, the complaint was filed. Upon recording the sworn statement, the case was taken on file. Upon issue of summons, furnishing of copies and questioning, the accused denied the imputations and stood trial. In order to bring home the charge, the complainant examined himself as P.W.1 and Ex.P1 and Ex.P9 were marked. Upon being questioned about the incriminating materials and evidence on record under Section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, the accused examined himself as D.W.1 and on behalf of the accused, Ex.D1 and Ex.D2 were marked. The trial Court considered the case of the parties and considered Ex.D1, a copy of the passport. From the said document, the trial Court concluded that the accused had left for Singapore on 27.08.2010 and returned only on 18.09.2010 and therefore, the complainant's case that the accused approached him on 02.09.2010 and got the loan could not have been possible



and therefore, in view of the evidence adduced on behalf of the accused, raises a doubt with reference to the allegation of the complainant and as such, gave the benefit of doubt to the accused and acquitted the accused.

4. *Mr.L.Rajendran*, the learned Counsel appearing on behalf of the appellant would submit that firstly, in this case, the entire passport is not marked. The accused after leaving for Singapore could have also come back and gone back to Singapore in the meanwhile. If only the entire passport is produced and marked, all the pages can be inspected and sometimes it is possible that the immigration stamp is on a different page also. Neither the Immigration Officer was examined to conclusively point out that the accused was only in Singapore on the relevant date. Therefore, the trial Court ought not to have given the benefit of doubt, only based on Ex.D1 alone. The learned Counsel would further submit that when the complainant has produced the cheque and the explanation that is given by the accused with reference to the signature in the cheque is absolutely unbelievable, the trial Court erred in acquitting the accused.



5. *Mr.S.Madhusudhanan*, the learned Counsel appearing on behalf of the respondent / accused would submit that it is a specific case of the complainant that the accused borrowed the amount on 02.09.2010. The entire passport was produced before the trial Court and only the photocopies of the relevant pages alone were marked after comparison. The relevant page clearly mentions the date of immigration into Singapore and the date of departure. Both the stamps are clearly available in the relevant pages that are marked. Therefore, the complainant was very much present and the learned Counsel also cross examined the witness in detail. Nothing has been brought out to doubt the said entries. It is only suggested that the entire passport itself is forged and fabricated. The trial Court had also verified the passport and thereafter only the finding is given.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. When the complainant has produced the cheque and proved the ingredients of Section 138 of the Negotiable Instruments Act, he discharges the



initial onus and the burden lies on the respondent / accused to rebut the presumption. In order to rebut the presumption, the accused examined himself as D.W.1 and has also cross examined the complainant and produced Ex.D1 his passport. The relevant pages are marked as exhibit. On a perusal thereof, the stamping of immigration and the stamping of departure are clearly contained in the same page and it is clear that during the relevant date, the accused was in Singapore. Even if the complainant contends that it may be possible that the stamping is on a different page, then at the time of trial, no such question was put forth and when the original passport was produced for verification, at that time of marking itself the different entry if any, should have been pointed out. With reference to the argument that the Immigration Officer should have been examined, as far as the rebutting the presumption is concerned, the standard of proof that is expected of the accused is only preponderance of probability and not proof beyond doubt. To a reasonable extent the accused has produced the document and has created an impression that he was in Singapore, the same has to be accepted. D.W.1 has admitted that there are more pages to the passport and he has not fully marked all the pages. But when the immigration seal and the



departure seal is in the same page and does not raise any serious doubt over the case of the accused. Under the said circumstances, when the evidence on record as presented by the accused, raises a reasonable doubt on the case of the complainant, the finding of the trial Court in giving the benefit of doubt to the accused cannot be said to be a perverse finding or an impossible finding.

Accordingly, finding no merits, this Criminal Appeal stands dismissed.

20-11-2025

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Neutral Citation: Yes/No

To

1. The Judicial Magistrate No.II, Salem.
2. The Section Officer,
Criminal Section, High Court of Madras.



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D.BHARATHA CHAKRAVARTHY J.
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