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CrI.A.No.409 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.409 of 2022

M.S.Thanigaivel

... Appellant

Vs.

S.Kumar

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the order of acquittal dated 30.11.2020 passed by the learned Judicial Magistrate-I, Kancheepuram in STC No.766 of 2014 and allow the appeal.

For Appellant : Mr.D.Baskar

For Respondent : Mr.B.Kumarasamy

JUDGMENT



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The appellant as complainant filed a private complaint against the respondent in S.T.C.No.766 of 2014 before the learned Judicial Magistrate No.I, Kancheepuram (trial Court) and the same was dismissed *vide* judgment, dated 30.11.2020 acquitting the respondent. Challenging the same, the present Criminal Appeal is filed.

2.Brief facts of the case is that the appellant/complainant and the respondent are friends known to each other and they had money dealing as well as chit transaction. The appellant was running a chit in which the respondent was a subscriber for many chits. The respondent was prompt in paying the chit amounts even after successfully bidding. Further, the appellant and his wife are LIC Agents, through them, the respondent and his family members took policies to the tune of Rs.37 lakhs. Thus, the respondent gained confidence of the appellant. Further, the respondent was having a property and house to the value of Rs.2 Crores. For business needs, the respondent approached the appellant and borrowed Rs.5 lakhs on 15.04.2011 and Rs.8 lakhs on 16.04.2011 from the appellant and Rs.5 lakhs from the appellant's wife Indumathi for constructions of house. Due to



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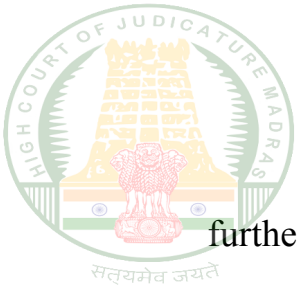
mismanagement in the business, the respondent faced financial difficulties, later, defaulted in paying the loan amount. After persisted questioning, the respondent issued two cheques one to the appellant and another cheque to the appellant's wife in the year 2013. When the cheques presented, the same got dishonoured, statutory notice issued on 30.04.2013 which was replied and the cheque amount not paid, hence, the appellant filed a private complaint under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate No.II, Kancheepuram with a delay of 44 days. To condone delay, the appellant and his wife filed petitions in Crl.M.P.Nos.2678 & 2679 of 2013 on 07.02.2014 and the delay petitions dismissed, against which, the appellant filed revisions before the learned District and Sessions Judge-II, Kancheepuram which confirmed the trial Court order. During this interregnum period, the respondent approached the appellant, arrived a compromise, issued cheque bearing No.097925 (Ex.P2) dated 10.10.2014 drawn on IDBI Bank Kancheepuram Branch for a sum of Rs.21 lakhs and executed a promissory note (Ex.P1) for the loan taken in the year 2011. When the cheque presented for encashment on 28.10.2014, the cheque returned on the same day for the reason "Funds Insufficient",



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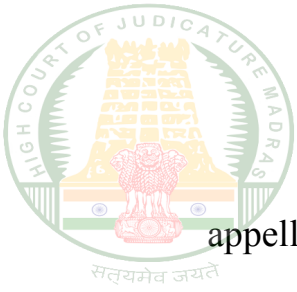
thereafter, statutory notice dated 03.11.2014 issued, the respondent received the statutory notice and sent a reply on 24.11.2014 and the above complaint filed in S.T.C.No.766 of 2014. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P6 and the respondent examined himself as DW1 and marked two documents Exs.D1 & D2 (Petition Copy with Notes Orders in CRP.Nos.3 & 4 of 2014). On conclusion of trial, the trial Court dismissed the complaint acquitting the respondent. Against which, the present Criminal Appeal is filed.

3.The learned counsel for the appellant submitted that the trial Court took an hypertechnical view and dismissed the complaint when the respondent not denied the issuance of cheque (Ex.P2) and his signature failing to consider the statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, in favour of the appellant. The defence taken by the respondent is that when the earlier complaint under Section 138 of Negotiable Instruments Act dismissed by the trial court and confirmed by the Sessions Court on the point of limitation and delay, in such circumstances issuance of the subject cheque (Ex.P2) is highly doubtful. He



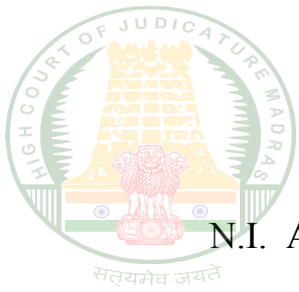
further submitted that the trial Court took a view that since the loan is of the year 2011, issuance of cheque in the year 2014 for this debt is time barred as per Section 23(3) of Indian Contract Act. Further, the trial Court failed to consider the respondent/DW1 in his evidence admits that he is the subscriber to the chit conducted by the appellant and during the chit transaction, he handed over signed blank cheques, stamp papers and other documents as security. As per Section 20 of Negotiable Instruments Act, it is to be presumed that signed blank cheques gives authority to the holder to fill up the instruments unless there is contrary evidence. In such circumstances, dismissing the complaint on technicality is not sustainable and perverse. Hence, the impugned judgment of the trial Court is liable to be set aside.

4.The learned counsel for the respondent submitted that for the statutory notice (Ex.P4) issued by the appellant on 03.11.2014, the respondent sent a detailed reply (Ex.P6) on 24.11.2014. In the reply, the respondent denied issuance of any cheque for discharge of any liability. The admitted case of the respondent is that the loan of Rs.13 lakhs from the



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appellant and Rs.5 lakhs from his wife were obtained during April 2011, but the cheque (Ex.P2) in the above case said to have issued on 10.10.2014 is time barred. Further, the respondent got into the box and probablized his defence giving details about the chit transaction and also taking LIC policies from the appellant. Since the respondent could not continue with the LIC policies, he surrendered the LIC policies which lead to loss of commission and incentive to the appellant. Annoyed over the same, using the security cheque which was given for the earlier chit transaction of the year 2009 & 2010, the respondent filled up and the above case foisted. The appellant admits that a civil suit filed by the appellant's mother. This suit also dismissed for non-prosecution. He further submitted that the appellant using the blank cheques had filled up the same and using others, has been filing several cases against the respondent. The respondent produced Exs.D1 & D2 to confirm the dismissal of earlier complaint filed by the appellant and his wife. It is highly improbable that no prudent person would issue a cheque (Ex.P2) despite coming to know about dismissal of earlier complaint of the appellant. In the reply notice (Ex.P6), the respondent referred to earlier notice dated 09.05.2013 and filing of 138 of



N.I. Act complaint with condonation delay petition. The appellant not denied, sent any rejoinder and gave any answer to it, on the other hand, using the security cheque filed the complaint which the trial Court on proper analysis of evidence and materials produced, had rightly dismissed the complaint, hence, he prayed for dismissal of the appeal.

5.This Court considered the rival submissions and perused the materials available on record.

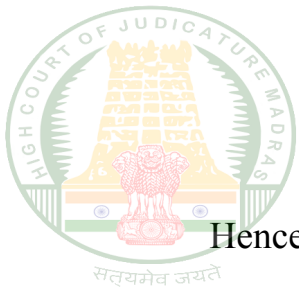
6.The appellant and the respondent are friends known to each other. The respondent was a subscriber to the indigenous chit conducted by the appellant. The appellant and his wife are LIC Agents and the respondent and his family members took LIC policies to the value of Rs.37 lakhs. Admitted position of the appellant is that an amount of Rs.13 lakhs from the appellant and Rs.5 lakhs from his wife were obtained by the respondent during April 2011 and for discharge of this liability, the cheque (Ex.P2) in the year 2014 said to have been issued which is clearly a time barred debt.

7.In this case, the respondent got into the witness box, deposed he



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was a subscriber to the chit and at the time of joining the chit, the respondent used to collect signed blank cheques and stamp papers, which is not seriously disputed. In view of the above, the respondent's explanation that the security cheque which was given for the chit transactions of the year 2009 & 2010, have been filled up by the appellant and used for a time barred debt, is probablized. The trial Court adverted to the earlier filing of complaint with a delay and the complaint dismissed, the Sessions Court confirmed the dismissal. The appellant's claim that during this period, a compromise arrived and the respondent issued the promissory note (Ex.P1) and cheque (Ex.P2) in the year 2014 is highly improbable. Once the respondent denied issuance of cheque (Ex.P2) for discharge of liability and the admission of the appellant is that he gave a loan in the year 2011, for which the dispute cheque issued in the year 2014, hence, the statutory presumption gets dislodged. Thereafter, it is for the appellant to prove the case beyond all reasonable doubt. In this case, the appellant failed to prove the fact that the cheque (Ex.P2) issued in discharge of liability. More so when the admitted position of appellant is that the cheque (Ex.P2) was issued for the loan taken in the year 2011, which is a time barred debt.



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Hence, the appellant failed to prove his case. The trial Court rightly dismissed the complaint.

8.In view of the facts and materials above, this Court finds that the appellant miserably failed to prove his case beyond all reasonable doubt and the trial Court rightly considered the same and by a well reasoned judgment dismissed the complaint. This Court is not inclined to interfere with the impugned judgment.

9.Accordingly, this Criminal Appeal stands dismissed affirming the judgment dated 30.11.2020 in S.T.C.No.766 of 2014 passed by the learned Judicial Magistrate No.I, Kancheepuram.

10.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.



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To
The Judicial Magistrate No.I
Kancheepuram.

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