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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2025

CORAM

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

Crl.A.No.570 of 2025

Rajesh	.....	Appellant
	Vs	
Krishna Devarajan	.....	Respondent

Prayer: Criminal Appeal filed under Section 419 BNSS to call for records in C.C.No.272 of 2018 on the file of Hon'ble Judicial Magistrate No.I, Coimbatore and to set aside the judgment dated 16.12.2024 acquitting the respondent herein of the offence under Section 138 of the Negotiable Instrument Act.

For Appellant : Mr.A.Visagan

JUDGMENT

This appeal has been preferred as against the judgment dated 16.12.2024 made in C.C.No.272 of 2018 on the file of the learned Judicial Magistrate No.I, Coimbatore, thereby acquitting the respondent for the offences punishable under Section 138 of the NI Act.

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2. The petitioner is the complainant and the respondent is an accused on the complaint lodged by the petitioner for the offence under Section 138 of NI Act, alleging that the respondent borrowed a sum of Rs.25,00,000/- on 23.10.2017 and he promised to return the same within two months with interest @ 2% per month. Towards repayment of the said loan amount, the respondent issued two cheques (i) drawn on State Bank of India bearing Cheque No.776891 dated 30.01.2018 for a sum of Rs.10,00,000/- and (ii) bearing Cheque No.000070 dated 30.01.2018 drawn in State Bank of India for a sum of Rs.15,00,000/-. Both the cheques were presented for collection and the same were returned for the reasons "funds insufficient". After causing statutory notice, the appellant filed a complaint.

3. On the side of the appellant, he had examined P.W.1 and marked Exs.P1 to P9. On the side of the respondent no was examined and Exs.D1 and D2 were marked. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and acquitted him. Aggrieved by the same, the present appeal is preferred.

4. The learned counsel for the appellant submitted that the trial Court has

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wrongly construed that the appellant had produced other cheques which were not mentioned in the complaint and in the deposition. Further, the respondent never denied the signature and issuance of cheque. Both the cheques were duly issued for legally enforceable debts and as such the appellant had discharged his initial burden as contemplated under Section 138 of NI Act. But the respondent failed to rebut the presumption. Even then the trial Court acquitted the respondent.

5. On perusal of the records revealed that in order to repay the amount allegedly borrowed by the respondent, he issued a cheque bearing No.776891 dated 30.01.2018 drawn on State Bank of India for a sum of Rs.10,00,000/- and another cheque bearing No.000070 dated 30.01.2018 drawn on State Bank of India for a sum of Rs.15,00,000/-. After returning both the cheques, the appellant caused legal notice which was marked as Ex.P5. On perusal of Ex.P5 revealed that the cheque which was presented for collection bears No.719335 dated 30.01.2018 and the second cheque was marked as Ex.P2 which was drawn from the Bank of Baroda and not from the State Bank of India. Therefore, there was no cause of action to file a complaint without causing legal notice as contemplated under Section 138(b) of NI Act.

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6. The respondent marked Exs.D2 – the declaration deed dated 05.09.2017. It was executed by the appellant and stated that one Bhuvaneswari had borrowed money from the appellant for which both the cheques were received from the respondents. After repayment of the entire loan, the appellant had executed the declaration deed dated 05.09.2017 by admitting that both the cheques were issued for security purpose. Therefore, no amount was borrowed by the respondent. Both the cheques were issued for security purpose for the loan borrowed by one Bhuvaneswari.

7. Even assuming that the appellant had wrongly typed the cheque number and wrongly typed the bank name, from Ex.D2, it is clear that both the cheques were issued for security purpose and that too for the loan borrowed by one Bhuvaneshwari. The appellant failed to prove that both the cheques were issued for legally enforceable debts and also failed to prove the borrowal of 25 lakhs by the respondent. Hence, the respondent had clearly rebutted the presumption and the appellant failed to discharge the initial burden casted upon him to attract the offence under Section 138 of NI Act. Hence, the trial Court has rightly acquitted the respondent and this Court finds no infirmity or illegality in the order passed by the trial Court.

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9. Accordingly, this Criminal Appeal is dismissed.

10.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To
Judicial Magistrate No.I, Coimbatore

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G.K.ILANTHIRAIYAN, J.

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Crl.A.No.570 of 2025

10.06.2025

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