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CRL A No. 106 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL A No. 106 of 2016

V.S.Vijayakumar

Appellant

Vs

K.Mani

Respondent

PRAYER: This appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973, to admit the appeal against the judgment dated 25.09.2015 passed in C.C.No.276 of 2010 on the file of the Judicial Magistrate Court No.I, Erode and set aside the same by allowing the present appeal and convict the respondent in accordance with law.



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CRLA No. 106 of 2010

For Appellant:

Mr.M.Karthik

For Respondent:

Mr.R.Ananth

for Mr.V.V.Sathya



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ORDER

2. The said case is the private complaint filed by the appellant/complainant, alleging an offence under Section 138 of Negotiable Instruments Act.

3. The case of the complainant is that the accused has borrowed a sum of Rs.1,00,000/- (Rupees One Lakh only) for an urgent needs and in repayment thereof issued a cheque dated 01.09.2009 for the said sum of Rs.1,00,000/- (Rupee One Lakh only). Upon the cheque being presented for collection, the same was returned dishonoured with an endorsement "Accounts Blocked" and thereafter, a statutory notice was issued, for which, neither any reply nor any payment made and hence, the complaint.

4. After recording the sworn statement, the complaint was taken on file and



when summons was issued to the accused, the accused appeared and the copies were furnished, the accused denied the allegations stood trial. In order to bring home the charge, the complainant examined himself as PW1 and Exs.P1 to P5 were marked. Upon being questioned under Section 313 of the Code of Criminal Procedure, the accused denied the evidence as false and thereafter, no evidence was let in on behalf of the defense.

5. The trial Court considered the case of the parties. The trial Court took into consideration the circumstance that even though in the statutory notice the complainant has pleaded that the accused undertook to repay the sum of Rs.1,00,000/- (Rupee One Lakh Only) along with interest at 18% per annum, the said pleading was missing in the complaint and the complainant also did not furnish any details as to whether any part amount was paid by way of interest or not and considering the said contradiction, gave benefit of doubt to the accused and acquitted him. As against which, the present appeal is filed.



6. Mr.M.Karthik, learned counsel appearing on behalf of the appellant would submit that, in this case, when the cheque has been duly presented and when the statutory notice was issued, no reply whatsoever was issued on behalf of the accused, no evidence was also let in on behalf of the accused and when the amount is only Rs.1,00,000/- (Rupees One Lakh Only) and it was borrowed by the accused and cheque was issued, the trial Court ought not to have acquitted merely on the sole discrepancy of not mentioning about the interest. The complainant has duly clarified about the interest portion in the cross examination. The complainant has said that considering the overall facts and the relationship with the accused and the amount being lent towards refurbishing of the lathe, the complainant did not insist on interest. In any event, the non-mentioning of the said amount which will only work against the accused, will not in any manner amount to approaching the court with unclean hands. Therefore, he submitted that the judgment of the trial Court is liable to be interfered with.

7. Per contra, the learned counsel appearing on behalf of the respondent accused would submit that it is not only with reference to interest, but also the



accused is denying the entire transaction itself. There was no occasion for her to borrow the said sum, and there is absolutely no proof that is let in by the complainant with reference to the said transaction. In the absence of the same, the accused has rebutted the presumption and in the absence of any further proof, the trial court has granted benefit of doubt and acquitted the accused.

8. I have considered the rival submissions made on either side and perused the materials available on record.

9. The case of the complainant cannot be said to be stood proved merely on account of non-issuance of reply notice alone. The complainant has to *prima facie* discharge his onus with reference to the pleading regarding the existence of the legally enforceable liability. In the complaint, it was mentioned that the accused has borrowed the said sum for her urgent expenses. In the cross examination, a new version is pleaded by the complainant that the amount is given for renewal/refurbishing of the lathe of the husband of the accused. In that context, when the accused was specifically cross examined by the complainant that the cheque was



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clandestinely given by the husband of the accused even by forging the signature of the accused and when no steps have been taken in that regard, it cannot even be taken as a case, where the signature is admitted by the accused.

10. In that view of the matter, especially, when there is absolutely no proof with reference to the transaction and in view of the different stand being taken by the complainant in the notice and complaint and in the cross examination, the finding of the trial Court granting benefit of doubt to the accused cannot be said to be a perverse finding or an impossible view. In view thereof, the appeal stands dismissed.

28-10-2025

Jd

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1. The Learned Judicial Magistrate No.I, Erode.
2. The Public Prosecutor,
Madras High Court, Chennai.



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D.BHARATHA CHAKRAVARTHY J.

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