IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.263 of 2016

Singai Kannan .. **Appellant/Complainant**

Vs.

Balashanmugam .. **Respondent/Accused**

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to allow the appeal by setting aside the Judgment dated 07.1.2024 and made in C.A.No.35 of 2013 on the file of the V Addl. District and Sessions Court, Coimbatore, reversing the Judgment dated 2.2.2013 made in C.C.No.426/2011 on the file Judicial Magistrate, Fast Tract Court at Magisterial Level – II, Coimbatore.

For the Appellant : Mr.M.Hemnath Kumar

For the Respondent : Mr.V.Nicholas

JUDGMENT

This Criminal Appeal is filed against the Judgment of the V Additional District and Sessions Judge, Coimbatore, dated 07.01.2024 made in C.A.No.35 of 2013. By the said Judgment, the Appellate Court upset the finding of conviction by the Trial Court and acquitted the respondent / accused. By the Judgment dated 02.02.2013 made in C.C.No.426 of 2011, the learned Judicial Magistrate, Fast Track Court at Magisterial Level – II, Coimbatore, had found the respondent / accused guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, sentenced to undergo six months simple imprisonment and to pay a fine of Rs.2,000/- and in default to undergo three months simple imprisonment.

2. The case of the complainant is that the accused – *Balashanmugham* and his mother – *Alliammal* and his sibling – *Meenakshi Sundari* have jointly borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs) on 28.07.2001 and in consideration thereof, executed a promissory note, promising to repay the said amount with further interest @ 18 % per annum. On the same day, they

deposited the title deeds in respect of a property, with an intention to create an equitable mortgage, in favour of the complainant. Thereafter, they failed and omitted to repay the principal and the interest amount. Therefore, a legal notice dated 13.08.2004 was issued to them, demanding the amount outstanding. Upon receipt of the said legal notice, in discharge of their part liability, the accused issued a Cheque dated 06.10.2004 for a sum of Rs.2,00,000/-. The Cheque was presented for collection on 08.10.2004 and on the same day, it was returned, dishonoured with an endorsement 'insufficient funds'. A demand notice was issued on 15.10.2004 and the accused received the same on 20.10.2004, but he neither repaid the amount within the statutory period nor sent any reply. Therefore, a complaint was filed and after recording sworn statement, the same was taken on file as C.C.No.85 of 2005 and summons was issued to the accused.

3. Upon appearance and furnishing the copies, the accused denied the allegations and stood trial. In order to establish the charge, the complainant examined himself as P.W.1 and marked the documents in Exs.P1 to P4. Upon being questioned under Section 313 of Cr.P.C., about the incriminating evidence

on record, the accused denied the same. Thereafter, the accused examined himself as D.W.1 and one *Radhakrishnan* was examined as D.W.2. No documents were marked on behalf of the defence. The Trial Court considered the case of the parties and in view of the admission made by the accused in his cross examination that they had even executed a promissory note in favour of the complainant and the signature on the Cheque also belongs to the accused and even after receiving the demand notice, no reply was issued, held that the complainant proved the offence beyond reasonable doubt and convicted the accused and sentenced him as aforesaid.

4. Aggrieved by the same, when the respondent / accused preferred an appeal, the Appellate Court found that though the accused has admitted his signature in the Cheque, he has pleaded that the Cheque was issued as a collateral security. The Appellate Court considered the fact that even as per the complainant, the loan was borrowed on 28.07.2001 and the Cheque was issued on 06.10.2004 and on which date, the debt became time barred and there is no legally enforceable debt and on that ground acquitted the accused.

5. The learned counsel appearing on behalf of the appellant / Complainant would submit that when it is the case of the complainant that an equitable mortgage has been created, the finding of the Appellate Court as if the debt was time barred on expiry of three years is erroneous in law. Therefore, this Court should interfere and convict the respondent / accused. The complainant has duly produced the Cheque and the presumption under the Negotiable Instruments Act, 1881 would operate in his favour.

6. *Per contra,* the learned counsel appearing on behalf of the respondent / accused would submit that admittedly, even as per the complainant, the three years period have expired and unless the complainant proves that there was any mortgage, the limitation period stood expired. Apart from this, the accused has also raised a defence that the Cheque in question was issued only as collateral security in connection with a transaction involving one *Krishnan*. It is further contended that the Cheque was handed over solely to *Krishnan*, and that both the promissory note and the alleged mortgage documents are in the name of

Krishnan alone. This, according to the accused, is the reason why the complainant has not produced those documents before the Court.

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

8. It is the specific case of the complainant that the promissory note has been executed on the date of borrowal and the equitable mortgage has been created and the accused also issued a demand notice on 13.08.2004, prior to the issuance of Cheque. However, the complainant did not choose to mark the copies of the same. It is in this context when the accused has taken a defence by way of cross examination that the promissory note and the mortgage are all in the name of a third party, the least that could have been done by the complainant is to produce the original or even the copies of the document. Therefore, by cross examination, the accused has rebutted the presumption that it would be probable that the transaction with another person was involved and the liability has been pleaded to be uncertain, the ultimate finding of the Appellate Court that

even as per the complainant the debt is time barred, especially in the absence of proof of execution of the equitable mortgage, cannot be said to be a perverse view or an impossible view and accordingly, finding no merits, this Criminal Appeal stands dismissed.

12.08.2025

Neutral Citation : Yes/No

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To
1.The V Addl. District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate, Fast Tract Court at Magisterial Level – II, Coimbatore.
3.The Section Officer
Criminal Section
High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

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