



Crl.A.No.300 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

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Velusamy

... Appellant

Vs

K.Jayaraman

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment delivered by the learned Metropolitan Magistrate (Fast Track Court) No.01, Egmore, Allikulam, Chennai-3. C.C.No.3500 of 2017 dated 03.01.2020 thereby acquitting the respondent/accused from the offence under Section 138 of the Negotiable Instruments Act,1881.

For Appellant : Mr.S.Silambu Selvan

For Respondent : Mr.P.Anbazhagan

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JUDGMENT

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This criminal appeal is filed against the judgment of the Metropolitan Magistrate (Fast Track Court) No.I, Egmore, Allikulam, Chennai -03, dated 03.01.2020 made in C.C.No.3500 of 2017.

2.By the said judgment, the trial Court acquitted the respondent for the offence under Section 138 of the Negotiable Instruments Act. This is a private complaint under Section 200 of the Code of Criminal Procedure alleging an offence under Sections 138 of the Negotiable Instruments Act.

3.The case of the complainant is that the accused had borrowed a sum of Rs.2,60,000/- during January 2016. In order to discharge the said liability, he had issued the subject matter cheque dated 12.04.2017, which upon presentation for collection, returned dishonoured with an endorsement “funds insufficient”. Thereafter, a statutory notice was issued and no payment was made within the



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statutory period. However, only a reply notice was issued on behalf of the accused.

Therefore, the private complaint was filed.

4. Upon recording the sworn statement, the complaint was taken on file as C.C.No.3500 of 2017. Summons was issued to the accused and upon appearance, copies were furnished and upon questioning, the accused denied the allegations and stood trial. In order to bring home the charge, the complainant examined himself as P.W.1 and exhibits P1 to P5 were marked. When the accused was questioned under Section 313(1)(A) of the Code of Criminal Procedure about the material evidence on record, he denied the same as false. Thereafter, the accused examined himself as D.W.1 and Exhibit D1 was marked.

5. The trial Court considered the case of the parties and considered the fact that the complainant admits in the cross-examination that he is a money lender and the accused came to him only for the purpose of borrowing money. Therefore, it



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disbelieved the version of the complainant that in that scenario, the complainant would have advanced a loan of sum of Rs.2,60,000/- without any document whatsoever, especially when he is advancing the loan by cash. Secondly, it considered the case of the accused that he had borrowed a sum of Rs.25,000/- from the complainant for the purpose of one Subramani being a tender coconut merchant and that he has repaid the entire loan and he has also subsequently died and this cheque was issued only as security at the time of borrowing the loan and the complainant is misusing the said cheque and held that the accused has rebutted the presumption to the level of preponderance of probabilities and in the absence of any further proof with reference to the advancement of loan, gave the benefit of doubt to the accused and acquitted the accused, as against which, the appeal is filed by the complainant.

6.The learned counsel appearing on behalf of the appellant would take this Court through the evidence of P.W.1 and D.W.1 and submit that firstly, it can be seen that when the accused issued Exhibit P5 - reply notice, it was his case that he



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had borrowed the loan for himself, whereas, a new plea was taken in the trial, as if, the loan was borrowed with reference to one Subramani. Therefore, *per se*, the defence of the accused is unbelievable. Secondly, by pointing out to the cross-examination of D.W.1, he would contend that the accused has also admitted that the said Subramani knew the complainant. As per the version of D.W.1, if such is the case, the accused need not have pitched in for lending the loan to the said Subramani. Therefore, except to make some false and baseless defence, the accused did not do anything to rebut the presumption to the level of preponderance of probability. When the accused has admitted the signature in the cheque and when the complainant has duly discharged his initial onus by marking the cheque and also deposing before the Court that he advanced the loan, the trial Court ought to have convicted the accused.

7.The further findings regarding the capability and also non-production of income tax details would not arise at all in this case considering the background of



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the parties that the appellant is said to be a money lender and the amount that was advance was only Rs.2,60,000/-. Even the common acquaintance of an advocate by name Vaidhegi is also admitted by the accused. Under the said circumstances, this is a fit case for interfering with the findings of the trial Court and the appeal against acquittal is liable to be allowed.

8. Per contra, Mr.P.Anbazhagan, learned counsel appearing on behalf of the respondent/ accused would submit that though it is true that Subramani's name was not made in the reply notice, it was elaborated during the course of the evidence. Even in the cross-examination D.W.1 has admitted that it is he who borrowed, but, on behalf of Subramani. When the said Subramani was alive, they had returned the amount and the complainant avoided returning of the cheque at that point of time and belatedly, misusing the cheque. The accused was working in the Secretariat and there was no necessity for him to borrow such an amount from the complainant. The trial Court has considered all the above facts and has acquitted



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the accused.

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

10.As argued by the learned counsel for the appellant, it is true that the facts relating that the accused had borrowed the loan only for Subramani was not mentioned in the reply notice Ex.P5 and it was only introduced belatedly. Further, D.W.1 has also been specifically cross-examined that it was only Subramani who had known the complainant earlier than that of the accused.

11. Be that as it may, the weakness of the defence of the accused can be considered later. But, that, by itself, would not conclusively establish the case of the complainant. It can be seen that in the statutory notice as well as in the complaint, the complainant stated that the accused is known to him and therefore,

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he had issued the hand loan. But, he has admitted in the cross-examination that he is a financier and the accused was introduced to him by an advocate *viz.*, Vaidehi and the introduction is only for the purpose of getting the loan. Therefore, at the earliest point of time, the complainant has not come up with the true facts.

12.Secondly, when the complainant admits that he is a financier and only for the purpose of getting the loan, the accused got introduced to him and he advanced the loan then, the finding of the trial Court that it is hard to believe that in such scenario, a hand loan without even any document in writing or without even any post dated cheque whatsoever the entire loan of the sum of Rs.2,60,000/- is advanced by way of cash by itself is doubtful, cannot be said to be a perverse finding or an impossible view. When the case of the complainant itself is unclear and has made different statements in the statutory notice and complaint and has come up with a different version in the cross-examination, the decision of the trial Court in granting the benefit of doubt to the accused cannot be found fault with



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much less it cannot be upturned in an appeal against acquittal.

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Accordingly, I find no merit in the appeal and therefore, this criminal appeal stands dismissed.

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Neutral Citation: Yes/No
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To

1. The Metropolitan Magistrate,
Fast Track Court No.1,
Egmore, Allikulam,
Chennai-3.
2. The Public Prosecutor, High Court, Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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