



Crl.A.No.403 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2025

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.403 of 2022

R.Srinivasan

...Appellant

Vs.

U.Dhanraj

...Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, pleaded to set aside the judgment dated 29.11.2021 passed by the learned Judicial Magistrate I, Kanchipuram District at Kanchipuram in S.T.C.No,12 of 2019 and consequently order in convicting the respondent in accordance to law and thus render justice.

For Appellant

: Mr.R.Jaganathan

For Respondent

: M/s.V.Alamelu

Legal Aid counsel

JUDGMENT

This appeal is filed against the judgment of the learned Judicial Magistrate No.1, Kancheepuram, dated 29.11.2021 made in S.T.C.No.12 of 2019.

2.By the said judgment the trial Court had acquitted the respondent of an



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offence under Section 138 of Negotiable Instruments Act, 1881. This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure.

3.The case of the complainant is that the complainant was doing contract works and the accused was a friend of him having upon introduced through his relative E.Ponmozhi. Taking advantage of the said friendship the accused had approached the complainant many times seeking a loan of Rs.5,60,000/- to meet his urgent family needs. As the accused pestered the complainant repeatedly by taking a sympathetic view, the complainant lent a sum of Rs.5,60,000/- on 10.11.2017 as cash. On the same day, the accused in discharge of his liability issued two post dated cheques that is, cheque bearing No.000014 dated 07.11.2018 drawn for a sum of Rs.2,50,000/- and another cheque bearing No.000013 dated 16.11.2018 drawn for Rs.3,10,000/-. This apart in consideration thereof, the accused also executed a promissory note on the same day. When the cheques were presented for collection by the complainant the same returned dishonoured with the endorsement “insufficient funds”. Accordingly, the statutory



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notice was issued to the accused. The accused neither paid the amount nor issued any reply. Thereafter, the complaint was filed. The complaint was taken on file upon recording of sworn statement. Upon issue of summons, copies and questioning, the accused denied the imputations and stood trial.

4.In order to bring home the charge, the complainant examined himself as P.W.1 and Ex.P1 to Ex.P10 were marked. During the course of cross-examination Ex.D1 was marked on behalf of accused. When the accused was questioned about the incriminating materials and circumstances on record, the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence. The trial Court considered the case of the parties. The trial Court considered the answers of the P.W.1 in the cross-examination wherein, he admitted that in the year 2010, a sum of Rs.2,10,000/- was advanced as loan and thereafter execution of yet another promissory note in Ex.D1 in the year 2016 and held that the version of the accused seems to be probable and gave the benefit of doubt to the accused and acquitted him.

5.The learned counsel appearing on behalf of the appellant would submit



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that firstly the complainant has duly discharged his owners by presenting the cheque and by marking the cheque, dishonoured memo, issuing of the statutory notice and the acknowledge card to buttress the advancement of loan, the promissory note was also marked. Therefore, for the promissory note as well as for the cheques in question, the presumption under Section 118 and 113 of the Negotiable Instruments Act, 1881, come into play. The accused had not let in any evidence except to cross examine the complainant. In the cross examination the complainant has admitted that there was an earlier borrowal for a sum of Rs.2,10,000/- when that is a different transaction that has got no bearing whatsoever on the present complaint. Similarly, even the promissory note dated 19.12.2016 is produced by the accused himself. Therefore, that has got no meaning at all for the trial Court to consider the same. Therefore, the accused has not done anything to rebut the presumption much less to the level of preponderance of probability. In view thereof, the learned counsel would submit that this is a fit case for this Court to interfere and overturn the finding into one of guilt and punish the accused. The learned counsel would also pointed out two subject matter cheques and submit that the accused himself by his own handwriting had written the amount both in letters and numbers by himself which



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would further buttress the case of the complainant.

6.Per contra, the learned counsel appearing on behalf of the respondent/accused would submit that the case of the complainant in the complaint is as if on 10.11.2017, the accused has borrowed the sum of Rs.5,60,000/- as cash, whereas the perusal of the cross-examination it would be clear that the complainant has admitted that there was a borrowal of Rs.2,10,000/- in the year 2010. It is when further the accused has cross-examined about the payment of sum of Rs.72,000/-, the complainant had denied the same. In any event, it is the case of the accused that only at the time of the said borrowal, the unfilled forms of pronote as well as the cheques were issued. Further it can be seen that promissory note was also executed further for exactly the same amount of Rs.5,60,000/- in the year 2016 and the same is also admitted by the complainant. The complainant did not make any further explanation with reference to the earlier transaction and repayment etc., of the same. In view thereof, the entire case as projected by the complainant is false and therefore the trial Court has rightly given the benefit of doubt.

7.I have considered the rival submissions made on either side and perused



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the material records of the case.

8. In this case, the complainant has marked the cheque and promissory note corroborating the borrowal and the statutory notice also issued and as such discharged his initial onus and therefore there is a presumption that the cheque is issued in discharge of a legally enforceable debt. It has to be seen whether the accused has rebutted the presumption to the extent of preponderance of probability and has raised any doubt in the case of the complainant as the further documents of promissory note is also marked in the instant case. The original case of the complainant in the complaint is that he advanced the sum of Rs.5,60,000/- on 10.11.2017 as cash. The said stand is taken in the statutory notice. However, in the chief-examination, eventhough it is stated that the amount is borrowed on 10.11.2017, it is also mentioned as the borrowal was in installments (gy jtizfshf). Therefore, a different stand is being taken in the proof affidavit. In the cross-examination the complainant P.W.1 admits that there was a borrowal of Rs.2,10,000/- in the year 2010. Similarly he also admits that a promissory note was executed by the accused in his favour on 19.12.2016 for the very sum of Rs.5,60,000/-. In this context there was no explanation either in the



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chief-examination or in the complaint or by way of re-examination whether all the three transactions were different transactions or one and the same. When the transactions of borrowing a sum of Rs.2,10,000/- is admitted and thereafter in the year 2016, a promissory note was executed for Rs.5,60,000/-. It appears as if the amount was advanced in the year 2010 and the balance outstanding including the interest and principal was taken into account totally and was capitalised as Rs.5,60,000/- and a promissory note was executed in the year 2016. It seems that since the years were passing by one more promissory note was executed in the year 2017. The Court can see that there is some balance outstanding by the accused to the complainant. However, the complainant's case that the amount itself was advanced as a loan as cash on 10.11.2017 is doubtful and accused has not only rebutted the presumption and has created a doubt in the very case of the complainant to the level of preponderance of probability and accordingly the finding of the trial Court in holding that the presumption is rebutted and granting benefit of doubt to the accused cannot be said to be a perverse or ann implausible view so as to upturn in an appeal against acquittal.

D.BHARATHA CHAKRAVARTHY, J.,



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WEB COPY 9. Accordingly, finding no merits, the appeal stands dismissed.

19.11.2025

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Neutral citation : Yes/No

Note:- Fees of the legal aid counsel shall be disbursed as per the norms.

To

The Judicial Magistrate I, Kanchipuram District.

Kanchipuram.

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