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Criminal Appeal No.240 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.06.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No.240 of 2011

M.Vijayan

.. **Appellant**

Vs.

K.Vijayarathi

.. **Respondent**

Prayer: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to set aside the order of acquittal imposed in the Judgment dated 22.04.2010 made in C.C.No.186 of 2005 on the file of the Judicial Magistrate Court, Tambaram, by allowing this Criminal Appeal.

For the Appellant : Mr.D.Muthukumar
for M/s Paul and Paul

For the Respondent : Mr.T.Easwaradhas



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J U D G M E N T

This Criminal Appeal is directed against the Judgment dated 22.04.2010 in CC No.186 of 2005. By the said Judgment, the Trial Court had acquitted the respondent accused, of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard, *Mr.D.Muthukumar*, the learned counsel appearing on behalf of the appellant, and *Mr.T.Easwaradhas*, the learned counsel appearing on behalf of the respondent.

3. *Mr.Muthukumar*, the learned counsel appearing on behalf of the appellant/complainant submitted that this is a case where the Trial Court grievously erred in insisting on proof of the complainant's financial capacity and further proof of the loan, despite the fact that the complainant's case ought to be considered based on the presumption under the Negotiable Instruments Act, 1881. When the signature in the cheque was not denied by the accused and when the complainant had duly proved the ingredients and also issued a demand



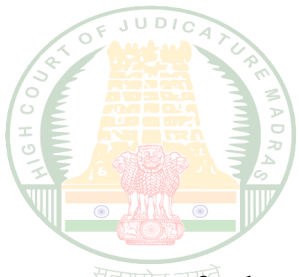
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notice, there is a presumption that arises that the cheque was issued only with reference to an existing legally enforceable debt. In that regard, the Trial Court, without even considering the fact that the accused has not in any manner rebutted the presumption, had acquitted the accused only on the ground that the complainant neither proved his ability nor there is any other proof and that the date of advancement of the complaint was also not specifically mentioned. The approach of the Trial Court is directly contrary to the Judgment of the Hon'ble Supreme Court of India in ***Kalamani Tex and Another Vs. P.Balasubramanian***¹. The learned counsel would specifically rely upon paragraphs 13 to 15 of the said Judgment.

4. The learned counsel further would submit that the respondent/accused also filed a Civil Suit in O.S. No.63 of 2005 for the very same contention which is raised as the defence, and the said suit came to be dismissed. Further, the respondent also lodged yet another complaint, which was investigated and final report was filed. After trial, a Judgment was rendered in C.C. No.2137 of 2005 on 01.09.2018 by the learned Judicial Magistrate, Alandur, holding that the case

¹ (2021) 5 SCC 283



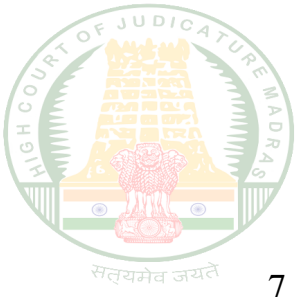
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of the complainant as if the 3rd Respondent therein and the present complainant/appellant herein had stolen the cheque was false. Therefore, these additional facts were also to be considered by this Court. Thus, the finding of the Trial Court is perverse and when the signature in the cheque is not denied by the accused, and when the complainant has proved that it was issued for a legal liability, the Trial Court ought to have convicted the respondent/accused.

5. *Per contra*, Mr.T.Easwaradhas, the learned counsel for the respondent/accused, would submit that the Trial Court had acquitted the accused after due appraisal of the evidence. If all the records in respect of the entire transaction, including the written statement and the findings of the Court in the connected matter are taken into account, this is not a case for interference by this Court in an appeal against acquittal.

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



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7. In this case, the basis on which the Trial Court acquitted the accused is that the complainant neither adduced any evidence regarding his financial capacity nor specifically pleaded the date of advancement of the loan in the complaint, nor did he furnish any evidence in support thereof. It can be seen that in paragraph No.3 of the present complaint, the complainant stated as follows:

“The Complainant submits that the Respondent had availed a sum of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) from the Complainant for the purpose of discharging her personal loan transaction.”

When the accused had lodged a complaint with reference to the very same cheque being stolen by the complainant herein in collusion with the accused Nos.1 & 2 in the said case namely C.C. No. 2137 of 2005, the following was the stand taken by the accused No.3, which has been believed by the Trial Court in that case:

“13.Further, on perusal of evidence of PW1, who stated as follows:- “எனது கணவர் 3ம் எதிரியிடம் 6 லட்சம் ரூபாய் கடன் வாங்கிக் கொண்டு அதற்காக எழுதிக் கொடுத்தார் என்றால் அது பற்றி எனக்கு தெரியாது. அதற்கான உறுதி மொழிப் பத்திரத்தில் 3 ½ லட்சம் பணத்திற்கு என்னுடைய காசோலைகளை எனது கணவர் எழுதிக் கொடுத்ததாக குறிப்பிடப்பட்டுள்ளது என்றால் அது பற்றி எனக்குத் தெரியாது. அந்த காசோலைகளில் ஒன்றுதான் தாம்பரம் நீதிமன்றத்தில் வழக்கு போட்டார் என்றால் சரிதான்.” On perusal of aforesaid evidence, PW1 neither denied nor admitted loan transaction between the 3rd accused and the PW2 but she



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stated that she does not know such fact. But she stated that the cheque which is subject matter in case in Tambaram court is one of the cheque in such undertaking.”

8. Thus it can be seen that the case of the defence in the connected case is that the cheque was issued by the husband of the accused towards partial discharge of the loan amount of Rs.6 Lakhs that was obtained by him. As a matter of fact, the Trial Court has also recorded that P.W.1 neither denied nor admitted the said loan transaction between the parties, whereas in the present complaint, it is made as if the respondent/accused herein had obtained loan personally for a sum of Rs.3,50,000/-. While the Trial Court in the said case rightly found that the case of the accused herein was false. Similarly, as far as the present complaint is concerned, it is the duty of the complainant to prove his case. Of course, the complainant is armed with a presumption. When the accused has cross-examined the complainant and proved to the level of preponderance of probability that the complainant's case is doubtful, the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 stands rebutted. Thereafter, when no further evidence was adduced by the complainant to establish the advancement of the loan, particularly in light of the fact that the parties had taken inconsistent stands before different Courts with



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respect to the same transaction, the Trial Court, upon proper appreciation of the evidence and having extended the benefit of doubt to the accused, acquitted the accused. Such a finding of the Trial Court cannot be said to be perverse or legally unsustainable.

9. Finally, the learned counsel for the appellant contended that even if the cheque was issued in discharge of the liability of the accused's husband, the Trial Court ought to have convicted the accused nonetheless. That may be so, but the case of the complainant in the instant case is that the accused had borrowed the loan amount of Rs. 3,50,000/- and once the complainant had come up with a false version, obviously the complainant's case will also fall flat. Only after the complainant discharges the initial burden, the accused is expected to defend.

10. In any event in an appeal against acquittal unless and otherwise this Court finds that the entire findings are perverse or wholly unsustainable the said finding cannot be upturned merely because another view can be taken. Only



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after the complainant discharges the initial burden, the presumption will arise. In this case, when the different stands have been taken before different fora in respect of the loan that is said to have been advanced, this is not a case for interference of a finding of an acquittal by the Trial Court.

11. Accordingly, finding no merits, this Criminal Appeal stands dismissed. The Judgment dated 22.04.2010 made in C.C.No.186 of 2005 on the file of the Judicial Magistrate Court, Tambaram, stands confirmed.

18.06.2025

Neutral Citation : Yes/No
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To

1.The Judicial Magistrate
Tambaram.

2.The Section Officer
VR Section, High Court of Madras.

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