



CrI.A.No.257 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 10.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

CrI.A.No.257 of 2011

D.Moorthy

...Appellant

Vs.

Shanmugam

...Respondent

PRAYER: Criminal Appeal filed under Section 378(4) of Cr.P.C, to call for the records in C.C.No.158 of 2008 dated 03.09.2010 on the file of the Judicial Magistrate Court IV, Tirupatur, Vellore District and set aside the same as arbitrary, erroneous and unjustifiable, thereby allow the Criminal Appeal.

For Appellant : Dr.A.Thiyagarajan, Senior Counsel
assisted by Mr.S.Ramesh Kumar

For Respondent : Mr.M.Jagan
Legal Aid Counsel

ORDER

This appeal is filed against the judgment of the Judicial Magistrate Court IV, Tirupattur, Vellore District dated 03.09.2010, made in C.C. No. 158



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of 2008. By the said judgment, the trial Court acquitted the respondent of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant is that on 01.03.2008, the accused had borrowed a sum of Rs.50,000/- as a hand loan and in discharge of said liability, issued the subject matter cheque. When the cheque was presented, it was returned dishonoured with the endorsement that the account was closed. Thereafter, when the complainant issued a demand notice, the accused issued a reply with false particulars, to which a suitable rejoinder was also issued. Subsequently, the complaint was filed and after recording the sworn statement of the complainant, the accused was summoned. Upon appearance, copies were furnished and upon questioning, the accused denied the allegations and stood trial.

3. In order to bring home the charge, the complainant examined himself as P.W.1 and Exs.P1 to P8 were marked on behalf of the complainant. Upon questioning about the incriminating evidence on record, the accused denied the same as false. Thereafter, on behalf of the defence, the accused examined one Murali, the bank manager, as D.W.1, and the wife of the complainant was summoned and examined as D.W.2. Exs.D1 and D2 were also marked.



WEB COPY4. The trial Court thereafter considered the case of the parties. It considered the fact that there were other transactions between the parties. It is the defence of the accused that, prior to the instant transaction, there was another borrowing from the wife of the complainant, namely D.W.2 and an equitable mortgage was also created. The said loan has since been discharged and it is the case of the accused that the present cheque, which was issued at that point in time, is now being misused. To further buttress this point, the accused examined the branch manager, who deposed that as early as 2004, the account was blocked since there were no transactions. The trial Court believed the version of the accused and disbelieved the version of the complainant, entering a finding of not guilty. Aggrieved by which, the present appeal is filed.

5. Heard *Dr.A.Thiyagarajan*, the learned Senior Counsel appearing on behalf of the appellant. The learned Senior Counsel submitted that the entire cross examination was with reference to a totally unconnected transaction with the wife of the complainant. While the said transactions were admitted, there is nothing on record to relate the present cheque to the erstwhile transaction. Merely because the accused clandestinely issued a cheque from a

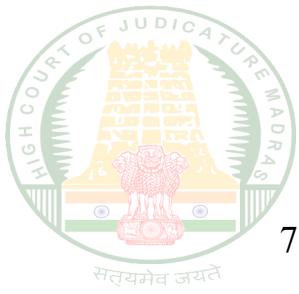


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closed account, it does not, in any manner, give any doubt on the case of the complainant. Once the signature on the cheque is admitted, even if the cheque is issued from a closed account, it will attract an offence under Section 138 of the Negotiable Instruments Act, 1881. The presumption under the Negotiable Instruments Act will operate in favour of the complainant when the accused has not rebutted it by clearly pointing out any discharge of liability. The trial Court erred in acquitting the accused. The earlier transaction, as well as the evidence of D.W.2, the wife of the complainant, would categorically prove that the said transaction was different and the instant loan and its repayment were totally different.

6. Per contra, *Mr.M.Jagan*, the learned legal aid counsel appearing on behalf of the respondent/accused pointed to the various answers given by the complainant in the cross examination, as well as the answers given by the complainant's wife during her examination and would submit that, to the level of the preponderance of probabilities, through cross-examination and surrounding circumstances, the accused has established his defence. A due reply was also given when the demand notice was issued.

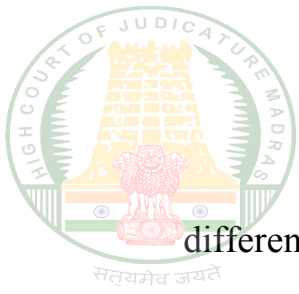


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7. In view thereof, when the trial Court has believed the respondent/accused's case that the cheque was issued only at the time of an earlier transaction, the finding need not be upturned by this Court in an appeal against acquittal.

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

9. I have gone through the answers given by the complainant in the cross-examination. The first circumstance I take into account is that the complainant is a professional money lender. As a matter of fact, the money lending licence is also marked as Ex.P6, and the fact is also admitted by the complainant. Therefore, the first concern is not getting any promissory note or not obtaining any documentary proof in respect of the loan, which is to be taken into account. The complainant states that he took only the cheque when the accused approached for the present loan. Even assuming that the complainant made a decision to take only the cheque for the loan that was advanced, it can be seen that the case of the complainant is that the accused issued the cheque on the same day of borrowal. Even on a plain perusal of the cheque, it can be seen that the contents of the cheque have been filled in with



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different ink and the signature is in a different ink. A normal person who is advancing a loan and taking only a cheque would question the said conduct, or there should be an appropriate explanation about the same. The complainant has been duly cross-examined with reference to the said aspect also. The further aspect is that when the complainant was cross-examined regarding another transaction with his wife and the loan was given in the presence of the wife, the complainant states that he does not know about the other transaction with his wife, whether it is outstanding or not and the particulars are not known to him. That answer is also very artificial considering the background in which the case arises.

10. For all the above reasons, I am of the view that no exception whatsoever can be taken to the ultimate finding of the trial Court in accepting the defence version that there is a probability of the cheque being issued in respect of the other transaction with the wife of the complainant. When there is probable difference established, the presumption under the Negotiable Instruments Act, 1881 stands rebutted and in the absence of any further proof for advancement of money, the ultimate finding of the trial Court in acquitting the accused as not guilty cannot be said to be an impossible view or perverse or absolutely untenable.



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WEB COPY11. In the absence of such circumstances, in an appeal against acquittal, even if two views are possible, this Court will not upturn the finding of the trial Court and accordingly, finding no merit, this appeal stands *dismissed*.

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Neutral Citation: Yes/No
nsl

To

The Judicial Magistrate Court IV,
Tirupatur,
Vellore District.



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D.BHARATHA CHAKRAVARTHY, J.

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