



Crl.A.No. 260 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.07.2025

CORAM:

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

Crl.A.No.260 of 2011

S.Periyasamy

...Appellant

Vs.

P.Arumugam

...Respondent

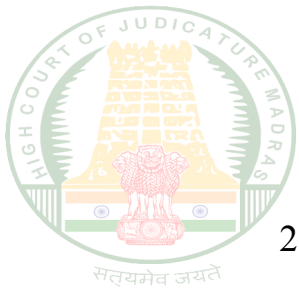
PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order passed in C.C.No. 301/2005 dated 23.04.2010 on the file of Judicial Magistrate No. II, Udumalpet, Tirupur District.

For Appellant : Mr.M.N.Balakrishnan

For Respondent : Mr.P.S.Kothandaraman

ORDER

This appeal is directed against the judgment of the Judicial Magistrate No. II, Udumalpet, Tirupur District in C.C. No. 301 of 2005 dated 23.04.2010. By the said judgment, the respondent/accused was acquitted by the trial Court of an offence under Section 138 of the Negotiable Instruments Act.



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2. The case of the complainant is that he knew the accused, and on 27.04.2005, the accused requested a hand loan of Rs.25,000/- to meet his family expenses. In discharge of the said amount, the accused issued a post-dated cheque dated 01.07.2005. Upon the cheque being presented, as per the instructions of the accused, the same was returned dishonoured on 05.07.2005 with the endorsement "insufficient funds." Thereafter, the complainant issued a demand notice dated 21.07.2005, which was received on 23.07.2005. However, no payment was made, and hence the complaint was filed. Upon issuance of summons, the respondent/accused appeared before the trial Court and denied the charge. In order to prove the allegations, the complainant examined himself as PW1, and Ex.P1 to P4 were marked.

3. Upon being questioned about the evidence let in on behalf of the prosecution under Section 313 of the Code of Criminal Procedure, the respondent/accused denied the same as false. Thereafter, one *Ravichandran* was examined as D.W.1, and the accused examined himself as D.W.2 on behalf of the defence. The trial Court heard the learned counsel on both sides and, after considering various discrepancies in the deposition of PW1/complainant, held that the answers elicited by the defense were sufficient to rebut the presumption under the Negotiable Instruments Act. Since there

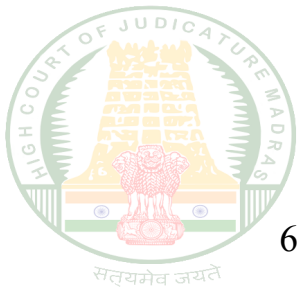


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was no further evidence to prove the advancement of the loan, the Court held that the complainant had not proved his case beyond reasonable doubt and acquitted the accused.

4. Heard the learned counsel appearing for the appellant.

5. The learned counsel appearing for the appellant submitted that the discrepancies noted by the trial Court, found in paragraphs 8 to 12 of the judgment, were minor. Since the signature on the cheque was admitted and no reply was given to the demand notice, the trial Court ought to have held that the presumption operates in favour of the complainant. The accused had not sufficiently rebutted the presumption. The case of the defence is that the accused, was an auto driver who used to transport the children to school and in that relationship, he had borrowed only Rs.5,000/- and issued these cheques. However, there was no demand by the accused to retrieve the cheque until it was deposited. The complainant had withstood cross-examination and maintained that he had advanced the loan. Therefore, the trial Court erred in acquitting the accused.



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6. Per contra, the learned counsel appearing for the respondent would submit that after due appreciation of the evidence, the trial Court has acquitted the accused and there is nothing for this Court to interfere in the matter.

7. I have considered the rival submissions and perused the material records.

8. There can be no doubt that once the signature on the cheque is admitted, the presumption under the Negotiable Instruments Act arises in favour of the complainant that the cheque was issued for valid consideration and in discharge of a legally enforceable liability. It is also well settled that the accused can rebut the presumption through cross-examination of the complainant. In this case, the trial Court took into account that the original version of the complainant is that the accused demanded and the loan was granted on the same day whereas in the cross- examination, a new fact was claimed by the complainant that demand was made 10 days prior to the date of advancement of loan.

9. Secondly, in both the complaint and his chief examination, the complainant suppressed the fact that the accused was an auto driver who used



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to take his children to school. Thirdly, the trial Court took into consideration that the cheque was filled using two different pens. The difference between the pen used for the signature and for other entries was visible to the naked eye. However, in cross-examination, the complainant specifically deposed that he saw the accused filling in the cheque using a single pen. The said discrepancy was also considered. The trial Court after examination of the cheque came to the conclusion that the manner in which the cheque was filled cannot be said that it is by one of the same person.

10. By considering all the above discrepancies and the other answers that are given by the complainant in the cross examination coupled with the defence witness, the trial Court, after due appreciation of the evidence concluded that the accused had rebutted the presumption to the level of the preponderance of probabilities. Therefore, giving the benefit of doubt, the Court acquitted the respondent/accused. I do not find the said findings to be perverse or legally unsustainable so as to upturn him in an appeal against acquittal. Accordingly, finding no merits, the appeal stands dismissed.

02.07.2025

Neutral Citation: Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

nsi

To

The Judicial Magistrate No. II,
Udumalpet,
Tirupur District.

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