



Crl.A.No.650 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.11.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.650 of 2016

P.Selvarraj

... Appellant/complainant

Versus

R.Chandrasekar

... Respondent

PRAYER : Criminal Appeal filed under Section 378 of CrI.P.C., praying to set aside the order of acquittal in S.T.C.No.259 of 2014 passed by Judicial Magistrate (Fast Track Court No.1), Erode by its order dated 16.07.2015 by allowing the appeal.

For Appellant : Mr.V.Balamurugane

For Respondent : Mr.D.Keerthi Rajan,
Legal-Aid-Counsel

J U D G M E N T

The appellant / complainant filed a private complaint under Section 138 of the Negotiable Instruments Act in S.T.C.No.259 of 2014. The trial Court, by judgment dated 16.07.2015, dismissed the complaint, against which the present appeal has been filed.



Crl.A.No.650 of 2016

2. The learned counsel for the appellant contends that on 29.02.2014, the respondent came to the house of the complainant and borrowed a sum of Rs.2,00,000/- for his urgent requirements. In discharge of the said liability, the respondent issued a cheque bearing No.458044, dated 29.03.2014, drawn on Corporation Bank, Erode Branch, for Rs.2,00,000/-. When the cheque was presented by the complainant through his bank, Karur Vysya Bank, Veerappanchatiram Branch, on 02.04.2014, it was returned unpaid on 07.04.2014 with the endorsement "Funds Insufficient". Thereafter, a statutory notice was issued on 11.04.2014. The respondent received the notice at his residential address on 15.04.2014. However, the notice sent to his other address was returned on 23.04.2014 with the endorsement "Not Claimed". Subsequently, on 26.04.2014, a reply notice was sent by the respondent. The petitioner following the statutory procedure filed a complaint.

3. During the trial, the complainant examined himself as P.W.1 and marked Exhibits P1 to P7. On the side of the defence, no witness was examined, and no documents were marked.



Crl.A.No.650 of 2016

4. Upon conclusion of the trial, the trial Court dismissed the complaint, against which the present appeal filed.

5. The learned counsel for the complainant submitted that the complainant and the respondent are friends and well acquainted with the each other. The respondent approached the complainant seeking a short-term loan for his urgent requirements, and the complainant lent him a sum of Rs.2,00,000/-. In discharge of the said loan, the respondent issued a cheque drawn on Corporation Bank. Exhibit P1 is the cheque bearing No.458044, dated 29.03.2014; Exhibit P2 is the bank memo; Exhibit P3 is the statutory notice issued on 04.04.2014; Exhibit P4 is the postal acknowledgment card dated 15.04.2014; Exhibit P5 is the returned cover from the respondent; and Exhibit P6 is the reply notice dated 26.04.2014, with false allegations questioning the financial capability of the complainant. The complainant deposed and marked all the above exhibits in support of his case.

6. The trial Court rejected the defence taken by the respondent that he had no transaction with him and that it was only the respondent's brother, one



Crl.A.No.650 of 2016

A.R.Murugesan, who had dealings and had handed over the cheque. The trial Court also referred to the income tax records and rightly found that the complainant a person having sufficient means. It was further observed that the respondent had not denied his signature on the cheque. Refusing to accept the defence taken by the respondent, the trial Court ought to have seen, statutory prosecution under Sections 138 and 139 of the Negotiable Instruments Act, is in favour of the complainant, and the respondent failed to probablize his defence either through cross-examination or by examining any witness, or by producing any documents. Hence, the finding of the trial Court is perverse and liable to be set aside.

7. The learned counsel for the respondent submitted that, in this case, the trial Court rightly dismissed the complaint. The specific case of the appellant/complainant is that the respondent approached him and borrowed a loan on 29.02.2014. In the statutory notice and in the complaint, the date of the loan specifically given as 29.02.2014. The year 2014 is not a leap year, and therefore, February month of 2014 had only 28 days.



Crl.A.No.650 of 2016

8. In such factual position, the respondent could not have borrowed the loan on that date. The foundational fact gets demolished and confirms complainant's case false.

9. It is the specific case of the respondent that the complainant had misused the cheque obtained from one A.R.Murugesan, who is the brother of the respondent. The appellant admits that he had earlier filed a case in S.T.C.No.1302 of 2013 relating to a cheque bounce against A.R.Murugesan which was dismissed by the trial Court, and no appeal preferred against the said dismissal. In view of the dismissal of S.T.C.No.1302 of 2013, hence, there is neither reason nor justification for the appellant advancing fresh loan to the respondent in the year 2014.

10. Considering all these aspects finding very foundation of the complaint false, trial Court rightly dismissed the complaint.

11. Considering the submissions made and upon perusal of the materials available on record, it is seen that the specific case of the appellant is that, on 29.02.2014, the respondent approached him and borrowed a sum of



Crl.A.No.650 of 2016

Rs.2,00,000/-. This date is consistently confirmed by the appellant in the statutory notice (Ex.P3), as well as in the complaint. The appellant oral evidence for the first time gives explanation that the date of the loan was 01.03.2014 and not 29.02.2014. Further, the admitted position is that the complainant earlier filed a case against A.R.Murugesan, brother of the respondent in the year 2013 in S.T.C.No.1302 of 2013, which got dismissed and reached finality. This being so giving loan to the respondent in the year 2014 that too on a non existing day 29.12.2014, demolish the foundation of the case, when the foundation fact demolished, the entire case necessarily to fall.

12. The trial Court, after considering all these aspects, found that the appellant had not approached the Court with clean hands and that the very foundation of the complainant case not proved, and the trial Court rightly dismissed the complaint.



Crl.A.No.650 of 2016

13. This Court finds no reason to interfere with the well-reasoned judgment of the Trial Court. Accordingly, the **Criminal Appeal stands dismissed.**

14. This Court places on record its appreciation for the valuable assistance rendered by Mr.D.Keerthi Rajan, learned Legal Aid Counsel for the respondent. The Tamil Nadu State Legal Services Authority is directed to pay the prescribed remuneration to Mr.D.Keerthi Rajan, Legal Aid Counsel.

03.11.2025

nvi

Index : Yes / No

Internet : Yes/No

Neutral citation : Yes/No

Speaking / Non-speaking order

To

1.The Judicial Magistrate (Fast Track Court No.1), Erode

2.The Public Prosecutor,
High Court, Madras.

7/8



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Crl.A.No.650 of 2016

M.NIRMAL KUMAR, J.

nvi

Crl.A.No.650 of 2016

03.11.2025