



CrI.A.No. 287 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**

CrI.A.No. 287 of 2011

M.Karunanidhi

...Appellant

Vs.

G.Vasanthamani

...Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order passed in C.C.No.100/2007 dated 09.01.2009 on the file of the Judicial Magistrate No. I, Udumalpet.

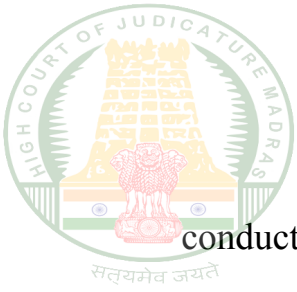
For Appellant : Mr.M.N.Balakrishnan

For Respondent : Mr.Parthasarathy

ORDER

This appeal is directed against the judgment of the learned Judicial Magistrate No. 1, Udumalpet dated 09.01.2009 in C.C. No. 100 of 2007. By the said judgment, the respondent/accused was acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant is that the respondent/accused was



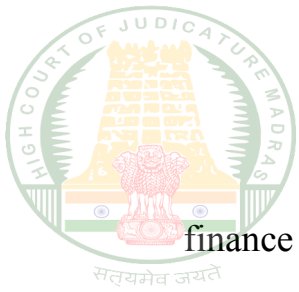
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conducting business under the name and style of 'Anandha Traders'. For business purposes, the accused obtained a loan of Rs. 2,00,000/- on 11.12.2005, promising to repay the same with interest at the rate of 12% per annum. In repayment, he executed a promissory note and issued a cheque dated 20.12.2006. Upon being presented for collection, the cheque was dishonoured. Thereafter, the complainant issued a demand notice. As no payment was made, the complaint was filed.

3. Upon the issuance of summons, the accused appeared and denied the charges. To prove his case, the complainant examined himself as P.W.1 and marked Ex.P1 to P4. Upon being questioned under Section 313 of the Code of Criminal Procedure, the accused denied the prosecution evidence as false. Thereafter, one Seshastri was examined as D.W.1, and Gopalakrishnan, the husband of the accused, was examined as D.W.2. Ex.D1 to D4 were also marked.

4. On behalf of the defence, the trial Court proceeded to hear the learned counsel on either side and found that the complainant in the witness box had totally denied being involved in any finance business. The accused, by way of cross-examination and by producing the document, proved that there was a



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finance business being run by virtue of Ex.D4, which is the information obtained through the Right to Information Act. The accused also specifically cross-examined the complainant with reference to a series of transactions on earlier occasions where loans were advanced to the accused and the same were being repaid. The complainant denied everything in toto. In light of the same, the trial Court found that the evidence of PW1 was false and believed the version of the defence. Accordingly, it acquitted the accused by giving the benefit of doubt, holding that the prosecution had failed to prove the advancement of the loan by adducing other evidence. The Court also considered that communications were sent to a erstwhile address, as per the deposition of DW2.

5. Heard the learned counsel appearing for the appellant.

6. The learned counsel appearing for the appellant would submit that once the signature on the cheque is admitted and merely because it is pleaded by the accused that it could have been given as security in respect of a finance transaction does not, in any manner, dislodge the presumption to the level of a preponderance of probability. The presumption under the Negotiable Instruments Act would operate in favour of the complainant. It can be seen



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that no reply was given to the notice issued under Section 138 of the Negotiable Instruments Act. The complainant has proved all the ingredients of the offence, and therefore the trial Court ought to have convicted the respondent/accused.

7. I have considered the said submissions and perused the material records of the case.

8. When it is the case of the accused that a finance/chit company was also being run at the same address mentioned by the complainant and the complainant has totally denied the same, then the existence of Ex.D4, being the information obtained under the Right to Information Act, marked through the defence witness, becomes relevant. Especially in light of the specific cross-examination of the complainant that at the said address a finance business was being run and the detailed cross-examination as to the various dates on which amounts were borrowed and repaid, all of which were put to the complainant and when the complainant denied the same, after due appreciation of the entire evidence as a whole, the trial Court has come to the conclusion that the deposition of PW1/complainant was false. No exception whatsoever can be taken to the said findings. In an appeal against acquittal, unless and until the



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findings are perverse, the same cannot be upturned.

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9. Further, it is the specific case of the complainant that after the loan was borrowed, the complainant also executed a promissory note promising to repay the amount with 12% interest. However, the said promissory note was never produced before the trial Court. Therefore, in light of all these factors, I am unable to upturn the findings and conclusions of the trial Court.

10. Accordingly, finding no merits, the appeal stands dismissed.

02.07.2025

Neutral Citation: Yes/No
nsl

To

The Judicial Magistrate No. I,
Udumalpet.

D.BHARATHA CHAKRAVARTHY, J.



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