IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.294 of 2011

G.Chandrasekaran .. Petitioner

Versus

Radhakrishnan .. Respondent

Prayer : Criminal Appeal filed under Section 378 (4) of Cr.P.C, as against the Judgment of Acquittal recorded by the Judicial Magistrate No.II, Puducherry in S.T.R.No.10547 of 2000 dated 31st January, 2011.

For Petitioner : M/s.V.Vijayakumar

For Respondent : B.Balavijayan

JUDGMENT

This appeal is directed against the Judgment of the learned Judicial Magistrate No.2, Puducherry, made in S.T.R.No.10547 of 2000 dated 31st January, 2011. By the said Judgment, the respondent / accused acquitted of offence under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that the accused had borrowed a hand loan of Rs.50,000/- and in discharge thereof, issued the subject matter cheque on the same day i.e., on 15.09.1999 and upon the cheque being presented for collection, as per the request of the accused on 12.10.1999, the same returned dishonored. Thereafter, the complainant issued demand notice within time and since there was neither any reply nor repayment, the complaint is filed. When the summons was issued to the respondent / accused upon appearance denied the charge and stood trial. In order to prove the case of the complainant, the complainant examined himself as P.W.1 and Ex.P1 to P6 were marked. Upon being questioned under Section 313 of the Code of Criminal Procedure, the accused denied the evidence as false. Thereafter examined the Assistant Manager

of the South Indian Bank, Puducherry as D.W.1 and Ex.D1 to D3 were marked. The trial Court after hearing the learned Counsel on either side, came to the conclusion that the accused has rebutted the presumption and the borrowal of a sum of Rs.50,000/- is not proved beyond doubt and acquitted the accused. Against which, the present appeal is filed.

3. Heard Mr.V.Vijayakumar, the learned Counsel for the appellant.

4. The learned Counsel for the appellant would submit that once the signature in the cheque is admitted and the trial Court has even adverted to the relevant provisions of law, under which the presumption operates in favour of the complainant, unless there is evidence on record to the level of preponderance of probabilities, so as to rebut the presumption, the cheque was issued for a valid consideration has to be presumed by the court and accordingly, the trial Court erred in returning a finding of acquittal. He would submit that when the complainant has withstood cross examination and as categorically deposed that the sum of Rs.50,000/- being advanced as hand loan and the capability of the

complainant has also since been accepted by the trial Court, merely on the ipse dixit of the defence version in the cross examination, as if the cheque was issued in the year 1997 to one Kandasamy is believed without any justification whatsoever and therefore, the said findings are perverse for this Court to interfere in the appeal against acquittal. The finding of acquittal has to be turned one into conviction and the cheque amount should be ordered to be paid by the respondent / accused.

5. Per contra, the learned Counsel appearing on behalf of the respondent / accused submits that after appraising the evidence in detail including the various answers that are given in the cross examination, the trial Court has believed the version of the accused and has entered a finding of acquittal.

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

7. In this case, in the demand notice as well as in the complaint, the statement made is as follows:

> *"1. The accused approached the Complainant for an urgent loan of Rs.50,000/- for his business purpose and accordingly the accused borrowed a sum of Rs.50,000/- (Rupees fifth thousands only) as loan from the complainant and inconsideration of which the Accused issued the South Indian Bank Ltd. Pondicherry Branch Cheque bearing No.015513 dated 15.09.99 for a sum of Rs.50,000/- in favour of the Complainant."*

8. In the amended complaint, the statement made is as follows:

> *"1. The Accused approached the Complainant for an urgent loan of Rs.50,000/- for his business purpose and accordingly the Accused borrowed a sum of Rs.50,000/- (Rupees fifty thousands only) as loan from the Complainant and inconsideration of which the Accused issued the South Indian Bank Ltd.Pondicherry Branch cheque bearing No.015513 dated 15.9.99 for a sum of Rs.50,000/- in favour of the Complainant."*

9. The version that the loan itself was borrowed on 15.09.1999 is not categorically mentioned. Secondly, for the first time in the cross examination only, the complainant states that the borrowal was also made on the same day and he further admits that the loan was advanced for the further interest at the rate of

24% per annum. Nothing is stated about the interest and the accused said to have given the cheque on the same day of borrowal. Further, with reference to several questions that are posed in the cross examination, the complainant P.W.1 deposed that he doesn't remember. Taking the said answers of the complainant, coupled with the fact that circumstance exists in which all the other cheques of the same book were used during the year 1997 and 1998 and coupled with the fact that it is the case of the accused that it was misused; when the accused came along with one Kandasamy during the year 1997; and especially, when P.W.1 complainant is wobbly in his cross examination that, whether the accused accompanied the said Kandasamy during the said transaction, cannot be remembered by him; especially in the teeth of the admission by the complainant that he knows the respondent accused for over a period of 12 years; when the trial Court appraised the evidence in toto and took into account all the circumstances and held that the cross examination and the answers would amount rebutting of the presumption to the level of preponderance of probability and thereafter, since there is no positive proof in respect of the loan, has entered into a finding of acquittal by giving the benefit of doubt.

10. I am unable to accept the argument of the learned Counsel for the appellant that the findings are perverse in nature or that it is totally unsustainable and accordingly, finding no merit, the present appeal against acquittal stands dismissed. No costs.

27.06.2025

Neutral Citation : yes/no
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To
Judicial Magistrate No.II,
Puducherry.

D.BHARATHA CHAKRAVARTHY, J.

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