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CRL A No. 456 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-06-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No. 456 of 2011

N.Soundararajan

... Appellant

Vs

R.Dhanapal

... Respondents

PRAYER

Criminal Appeal under Section 378(4) of the Criminal Procedure Code against the judgment dated 20.10.2010 in C.C.No.769 of 2004 on the file of the Judicial Magistrate No.III, Coimbatore.

For Appellant : Mr.R.Selvakumar

For Respondent : Mr.N.Ponraj

JUDGMENT

This appeal is directed against the judgment of the learned Judicial Magistrate No.III, Coimbatore dated 20.10.2010 made in C.C.No.769 of 2004. By the said judgment, the trial Court acquitted the respondent / accused of an offence under Section 138 of the Negotiable Instruments Act, 1881.



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2. The case of the complainant is that, upon the business transactions culminating into a Memorandum of Understanding, in discharge of his liability the accused has issued the subject matter cheque for a sum of Rs.1,75,000/- and when the same was presented for collection, the same returned dishonoured and thereafter, issuing a notice for payment the complaint was filed.

3. Learned counsel for the appellant would submit that in this case, only on the ground that no liability is made out, the trial Court has acquitted the respondent/accused. The accused had not let in any proof that he has made good the liability and in the absence of the same, when the accused has not proved to the level of preponderance of probabilities, the presumption would operate in favour of the complainant, and therefore the trial Court ought not to have acquitted the accused.

4. Per contra, the learned counsel for the respondent would submit that in this case it is the specific case of the complainant that on 16.12.2002 a Memorandum of Understanding was entered into and the complainant failed to produce the Memorandum of Understanding. Even if any ground is taken under the said Memorandum of Understanding, it is the specific case of the complainant that on the same day the accused entrusted this cheque.



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To counter thereof, the accused has examined as D.W.2, the Manager of the concerned Bank to prove that the account in which the cheque was issued viz., Account No.2856 itself was opened only on 20.12.2002 and therefore the cheque could not have been issued to the complainant on 16.12.2002, and only after considering the same and other evidences on record, the trial Court has acquitted the accused.

5. I have considered the rival submissions of the learned counsel for both sides and have perused the materials placed on record.

6. From a perusal of the judgment of the trial Court and the other material records, it can be seen that it is the specific case of the complainant that the accused has issued nine cheques on the same date ie., 16.12.2002, whereas as per the evidence of D.W.2 it can be seen that the account itself was opened only on 20.12.2002 and after a perusal of the various answers in the cross examination, the trial Court ultimately concluded that after obtaining the cheque leaves as per the version of the accused on 23.12.2002 for a different purpose, the complainant has been misusing the nine cheques on various dates as if the accused issued the same for liability and on that score did not believe the case of the complainant and believed the case of the accused and acquitted the accused.



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7. When on a detailed appreciation of evidence, such a finding has been arrived at by the trial Court, unless the finding is perverse and untenable, this Court cannot upturn the said finding. Accordingly, finding no merits in this appeal, the Criminal Appeal stands dismissed.

19-06-2025

KST

Neutral Citation: No

To

1.The Judicial Magistrate No.III
Coimbatore.

2.The Public Prosecutor
High Court, Madras



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D.BHARATHA CHAKRAVARTHY J.

KST

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