IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-07-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL A No. 613 of 2011

1. V.Subashkumar
S/o Velayutham
A.K.R.Parcel Service Private Limited,
D.No.68/28, Dharapuram Road,
Udumalpet.

Appellant

Vs

1. S.Geetha
W/o Subramaniam,
No.60, Thennaimarathu Street,
Udumalpet.

Respondent

PRAYER

This Criminal Appeal is filed under Sec.378 of Cr.P.C. Against the judgement passed in C.C.No.422/2008 dated 12.07.2011 on the file of the Judicial Magistrate No.I, Udumalpet.

U/s.138 N.I. Act / Acquittal.

For Appallent: Mr.M.N.Balakrishnan
For Respondent: M/s.L.Mouli

ORDER

This Appeal is directed against the judgement of the Judicial Magistrate No.I, Udumalpet dated 12.07.2011 in CC.No.422/2008. By the said judgement the respondent was acquitted for the offences under Sec.138 of the Negotiable Instruments Act, 1881.

2.The case of the complainant is that on 10.11.2007 the accused borrowed a sum of Rs. 4,90,000/- and in consideration thereon executed Ex.P1 promissory note. Thereafter, in repayment thereof, a cheque dated 20.03.2008 was issued for the said sum of Rs. 4,90,000/-. On presenting the same, the cheque was returned dishonoured; therefore, the complainant issued a legal notice dated 31.03.2008. but the cover was returned as the accused evaded receiving the notice. Since no payment was made within the statutory period, the complaint was filed.

3. Upon recording the sworn statement of the complainant, the accused was summoned. Upon appearance and furnishing of the copies, the accused denied the allegation and chose trial. To prove the allegations, the complainant

examined himself as PW.1, and the witness to the promissory note, one Gururajan, was examined as PW.2, and on behalf of the complainant's Exs.P1 to P.5 were also marked. Upon questioning about the incriminating evidence on record, the accused denied the same as false. Thereafter one Muthulakshmi was examined as DW.1, and Sankareswari was examined as DW.2, and the accused examined herself as DW.3. Ex.D1 to Ex.D5 were also marked on behalf of the accused.

4. The Trial Court considered the case of the parties, while denying the part of the defence that the complainant is acting as an accomplice / agent of 3 sisters who are abusing the cheque for want of appropriate evidence on behalf of the accused, finally the trial court took into consideration the social status of the complainant being an agent in a parcel service and the witness to the promissory note being the auto driver who was also helping the complainant in transferring the parcels and in that context considered the answer that were given by the complainant in the cross examination that the said amount of Rs. 4,90,000/- was her life time savings which she was advanced and considering the fact that neither any other proof nor the fact that no other steps to have

taken until the cheque was given and in the overall facts and circumstances of the case held that the very ability of the complainant to advance that huge amount is in doubt and therefore in that context held that when there is no other proof for payment of the amount or that the complainant was having such an amount to his credit at the time lending the loan, gave the benefit of doubt to the accused and acquitted the accused against which the appeal is filed.

5. The learned counsel appearing on behalf of the appellant submits that this is a case in which the borrowal is duly proved also by Ex.P1 promissory note. The witness to the Promissory Note was also examined as PW.2. When the complainant has duly proved the promissory note, then the presumption under the Negotiable Instruments Act arises with reference to the promissory note also as well as the cheque that is given in repayment thereof. In the instant case, therefore, the burden on the accused is heavy to dislodge the presumption. The accused had only pleaded about the cheque being entrusted to three sisters pursuant to a chit transaction, and they were indulging in asking exorbitant interest and setting up the complaint.

6. The trial court categorically considered the evidence of DW.2 and held that it was unnatural for her to remember even the cheque numbers, and in the absence of any other evidence pinpointing the relationship of the complainant with those three sisters against whom the accused has given the complaint earlier, disbelieves the case of the accused. Therefore, the natural course that should have been adopted by the trial court is to find the accused guilty of the offence, and in this case it cannot be expected of the complainant to further prove her capability, especially when the presumption has not been rebutted with any effort on the part of the accused.

7. Per contra, the learned counsel for the respondent would submit that the trial court has rendered the judgement after duly appreciating the evidence and the well-considered order need not be interfered with by this court.

8. It can be seen that the other ingredients of the offence under Sec. 138 are proved, and Ex.P1 promissory note is also produced to buttress that there was a borrower. It is now well settled that in every case the complainant need not be called upon to prove his ability. The law in this regard has been

encapsulated by the judgement of this Court in Crl.R.C.No.768 of 2022, particularly in para No.7, which is extracted hereunder for ready reference:

> *"7. .... But, at the same time, it is well settled that it is not in every case for non-production of the Income Tax Returns or adducing further documentary evidence, the Court will non-suit the complainant. The facts and circumstances of the case should be such that the non~production of the Income Tax Returns or letting in any further evidence with regard to the capability of the complainant, should cast a doubt on the very transaction. Useful reference in this regard can be made to the judgments of the Hon'ble Supreme Court of India in Dattatraya Vs. Sharanappa1, Rajaram (Since Deceased) through L.Rs. Vs. Maruthachalam (Since Deceased) through L.Rs.2 and G.Pankajakshi Amma and Ors. Vs. Mathai Mathew (D) through L.Rs. and Ors.3."*

9. In that background it can be seen that though in every case it is not necessary, in an appropriate case where the attendant circumstances raise a doubt, the Court can always insist upon the ability of the complainant to advance the loan being proved. The first circumstance in the case is that the loan is said to have advanced for a sum of Rs. 4,90,000/- as cash. The second circumstance is the answer that is given by the complainant in the cross-examination that it was her lifetime savings. If it is her lifetime savings for the past 7 years, therefore, easily, the manner in which the amount was saved could

have been proved by the complainant also. Further, the status of the complainant being working as an agent of the parcel service and the status of the witness, who is the auto driver, were also taken into account by the trial court.

10. On the overall facts and circumstances of the case in view of the defence as pleaded by the accused and detailed findings rendered, I am not able to find fault with the trial court insisting upon the complainant proving his ability in the instant case, considering the nature of the status of the parties and loan amount and nature of transaction, and the view that was taken by the trial court cannot be said to be an impossible view or a perverse view so as to be interfered with in an appeal against the acquittal.

Accordingly, finding no merit in the appeal, it is dismissed.

10-07-2025

jrs
Index:Yes
Speaking order
Internet:Yes
Neutral Citation:No

D.BHARATHA CHAKRAVARTHY J.

jrs

To
1.The Judicial Magistrate No.I, Udumalpet.

2.S.Geetha
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