



Crl.A.No.1014 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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S.Velusamy Appellant

Vs

D.Sangeetha Respondent

PRAYER : Criminal Appeal has been filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for records and set aside the Judgment and order dated 27.11.2024 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in C.C.No.1163 of 2017.

For Appellant : Mr.M.Vijayakumar

JUDGMENT

This Criminal Appeal has been filed against the order dated 27.11.2024 passed in C.C.No.1163 of 2017 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, thereby dismissing the complaint filed by the appellant and acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The appellant lodged a complaint against the respondent

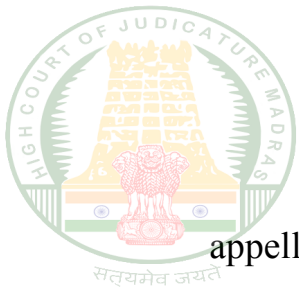


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for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that, on 15.06.2016, the respondent borrowed a sum of Rs.12,50,000/- from the appellant for the purpose of constructing her house and executed a promissory note in favour of the appellant. Subsequently, in order to repay the said amount, the respondent issued a cheque for a sum of Rs.14,50,000/- on 27.09.2017. However, when the said cheque was presented for collection, it was returned with an endorsement “Exceeds Arrangement”. After issuing the statutory notice, the appellant lodged a complaint and the same has been taken cognizance by the Trial Court in C.C.No.1163 of 2017.

3. On the side of the appellant, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked. On the side of the respondent, D.W.1 was examined and Ex.D1 to D11 were marked. On perusal of oral and documentary evidence, the Trial Court acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. Aggrieved by the same, the present Criminal Appeal has been filed.

4. The learned counsel for the appellant submitted that the

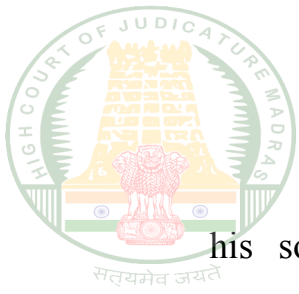


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appellant had categorically proved the offence under Section 138 of the Negotiable Instruments Act by discharging the initial burden as contemplated under Section 138 of the Negotiable Instruments Act. The respondent had also admitted the fact that the loan amount was borrowed from the appellant and failed to produce any evidence or documents to show that she repaid the loan amount. In fact, the respondent failed to rebut the statutory presumptions under Section 118 and 139 of Negotiable Instruments Act. The Trial Court erroneously held that the appellant was one of the Directors of M/s.Sri Vel Builders, though he categorically denied that he was not one of the Director of M/s.Sri Vel Builders. Further, the respondent did not dispute her signature and issuance of the cheque. The only defence taken by the respondent was that the cheque had been issued for security purpose. Even then, the Trial Court mechanically acquitted the respondent, without properly appreciating the evidence on record.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

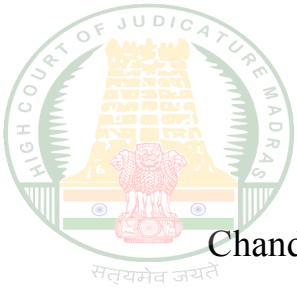
6. A perusal of the records reveals that the appellant and



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his son were directors of M/s.Sri Vel Builders. In his cross examination, the appellant categorically stated that he and his younger son were directors of M/s.Sri Vel Builders. However, in an earlier portion of the same deposition, he stated that he and one Rajan, viz., P.W.2 were not Directors, thereby creating a contradiction in his own evidence. Further, the specific case of the appellant was that the respondent borrowed a sum of Rs.12,50,000/- as a hand loan for the construction of her house, for which she executed a promissory note and agreed to pay interest as mentioned therein. In order to repay the said amount, the respondent issued the cheque. However, during cross examination, the respondent categorically stated that the appellant in order to construct the house, the loan was borrowed. Thereafter, the entire loan amount had already been repaid. The cheque was issued only for security purpose. After entire payment for the construction, the possession and key of the flat were also handed over to her. Therefore, the relationship between the appellant and the respondent was not merely that of borrower and lender, but in essence, that of owner and builder. It is also relevant to note that M/s.Sri Vel Builders was run by the appellant and his son, one



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Chandru, while one Palanisamy acted as a broker between them.

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7. A perusal of Exs.D2 to D8 reveals that the respondent had availed a loan from a financial institution. The respondent had paid the entire construction amount through one Palanisamy, who acted as a mediator between the appellant and the respondent herein. Ex.D8 also reveals that some amounts were paid by the appellant through the said Palanisamy. Therefore, though the appellant had discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act, the respondent had categorically rebutted the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act. Consequently, the burden shifted to the shoulder of the appellant to prove that the cheque was issued for any legally enforceable debt or liability. However, the appellant failed to substantiate that the cheque was issued towards any legally enforceable debt. Therefore, there was no liability on the part of the respondent to issue the cheque. Hence, the Trial Court rightly acquitted the respondent.

8. In view of the above, this Court finds no infirmity or



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illegality in the order dated 27.11.2024 passed in C.C.No.1163 of 2017 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore. Accordingly, this Criminal Appeal stands dismissed.

21.07.2025

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

The Judicial Magistrate,
Fast Track Court at Magisterial Level-II
Coimbatore.

G.K.ILANTHIRAIYAN, J.

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