



Crl.A.No.747 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.747 of 2011

S.Karthikeyan

... Appellant

Vs.

S.Selvi

... Respondent

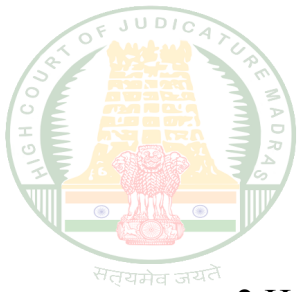
PRAYER : Criminal Appeal filed under Section 378 of Code of Criminal Procedure, pleaded to set aside the judgment dated 10.08.2011 passed in C.C.No.443 of 2010 on the file of the Court of the Judicial Magistrate No.2, Coimbatore, acquitting the respondent herein.

For Appellant : M/s.K.Govi Ganesan

For Respondents : Not ready in Notice

JUDGMENT

This appeal is directed against the judgment of the learned Judicial Magistrate No.2, Coimbatore, in C.C.No.443 of 2010 dated 10.08.2011. By the said judgment, the respondent herein was acquitted for the offence under Section 138 of Negotiable Instruments Act.



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2.Heard Mr.K.Govi Ganesan, the learned counsel for the appellant.

3.The learned counsel for the appellant would submit that the complainant is involved in selling of spare parts under the name and style of M/s.Extreme Computers. While so, the accused who was the owner of a Commercial Complex promised to let out a shop to the complainant. Accordingly, part advance amount was given by the complainant to the accused as cash and the balance by way of a cheque. However, the accused did not rent out the said premises and agreed to return the advance amount of Rs.4,00,000/- along with interest. Accordingly, in discharge of the said liability, the subject matter cheque was issued for a sum of Rs.4,13,500/- which upon presentation with the bank returned, dishonoured and hence the complaint. The trial Court as such ought not to have acquitted the accused especially in the absence of any contra evidence on behalf of the accused. The complainant is entitled for the benefit of presumption.

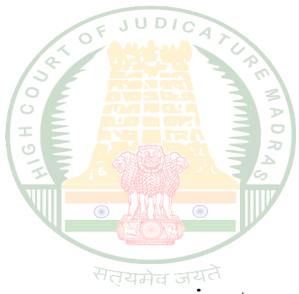
4.I have considered the said submission made by the learned counsel for the appellant and perused the material records of the case.



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5.The trial Court after considering the case of the complainant had considered the fact that the son of the accused was conducting a business under the name and style of M/s.Limbix Infotech and Limbix Technology and there has been transactions between the complainant and the said concern. In the same, the accused was also a director and therefore, a cheque was issued by him with reference to the said transactions. Since, it is not even mentioned as to on what date the amount was given by the complainant and no rental agreement receipt was also given, after appraising the evidence in detail, the trial Court has come to a finding, that to the level of preponderance of probability, the accused has rebutted the presumption. Once the same has been rebutted in the absence of any further proof relating to the payment of advance or the transaction relating to the leasing out of the shop, the trial Court has held that the complainant has not proved the case and acquitted the accused. A detailed appraisal of evidence has been undertaken by the trial Court by considering the various documents that were marked as exhibits, especially Ex.A7 and also the reply notice and the cross examination of the complainant and arrived at a finding that there seems to be other commercial transaction between the parties. However, there does not seem to be any evidence relating to the leasing out of the shop. This Court in an appeal



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against acquittal cannot upturn the findings unless the finding is perverse in nature. In view thereof, finding no merits, this Criminal Appeal is dismissed.

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Neutral citation : Yes/No



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D.BHARATHA CHAKRAVARTHY, J.

ep

To

The Judicial Magistrate No.2, Coimbatore.

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