



Criminal Appeal No.818 of 2011

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No.818 of 2011

M/s Sree Gokulam Chits and Finance Company Pvt Ltd.,
Rep.by its Authorised Representative
Mr.K.Satheesh Kumar
No.66, Arcot Road, Kodambakkam
Chennai – 600 024.

.. **Appellant/Complainant**

Vs.

S.Kumar

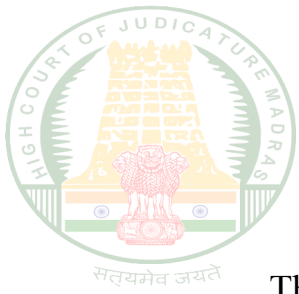
.. **Respondent/Accused**

Prayer: Criminal Appeal filed under Section 378 (4) of Code of Criminal Procedure, to call for the records in S.T.C.No.1720/2007 on the file of the Special Metropolitan Magistrate-XV, at Chennai, set aside the acquittal dated 29.09.2011 passed by the learned Magistrate for an offence under Section 138 of the Negotiable Instruments Act and pass such further or other order.

For the Appellant : Mr.T.C.Sajith Babu

For the Respondent : Mr.P.Balamurali
Mr.Arun Geobea Jose
Legal Aid Counsel

J U D G M E N T



Criminal Appeal No.818 of 2011

WEB COPY

This Criminal Appeal is directed against the Judgment of the learned Special Metropolitan Magistrate – XV, Chennai dated 29.09.2011 made in STC No.1720 of 2007. By the said Judgment, the Trial Court acquitted the respondent / accused of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the appellant / complainant is that, it is a private limited Company carrying on the business of chits and the accused is one of the subscriber. He has subscribed in G2H 13/17 group and was the successful bidder in the auction and after drawing the amount, in discharge of his liability, the respondent / accused issued a Cheque bearing No.388151 dated 24.08.2005, drawn on Indian Overseas Bank, Nehru Park, Chennai – 84, for a sum of Rs.1,68,181/-. When the same was presented for collection, the said Cheque was returned dishonoured on 04.02.2006, along with a memo of dishonour of the banker of the accused on 03.02.2006 with an endorsement 'funds insufficient'. Thereafter, the appellant issued notice on 21.02.2006. Since no payment was forthcoming, within a period of 15 days and there is no positive response, the complaint was filed.



Criminal Appeal No.818 of 2011

WEB COPY

3. After recording the sworn statement, the respondent / accused was summoned. Since the accused denied the allegations, the complainant in order to prove the charge, examined himself as P.W.1 and marked Exhibits P.1 to P.7. On behalf of the defence, one *Senthil* was examined as D.W.1 and the passbook of the accused was marked as Ex.R.1 and R2.

4. The Trial Court after considering the case of the parties, considered the defence that is made by the accused. It is contended that the Cheque was issued as a security and the complainant has filled up the same when the entire amount was discharged. The Trial Court found vide Ex.R2, being the copies of the passbook, in the relevant page, there is an endorsement that the balance is Rs.1,10,321/-. Therefore, the Trial Court held that even as per the Ex.R2, the balance is only lessor amount, then there is no liability for the accused to issue the Cheque and acquitted the accused. As against which, the present Criminal Appeal is filed.

5. The learned counsel appearing on behalf of the appellant would submit

Page 3 of 9



Criminal Appeal No.818 of 2011

WEB COPY

that a perusal of the case records, it can be seen that the details of the amount outstanding has been mentioned in the passbook. The same date backs to the date on which the accounts were checked and the endorsement was made. As a matter of fact, it can be seen that if some balance is due, then interest is calculated as per the installments that are due and only for that amount, the accused issued the Cheque, which is inclusive of the interest and a total sum of Rs.1,68,181/- was arrived at, which was paid by the accused. The learned counsel would submit that this was not specifically made a defence by the accused and all along, it is the case of the accused that he has repaid the entire amount.

6. *Per contra*, the learned counsel appearing on behalf of the respondent / accused, by filing a written arguments would submit that in a case of an appeal against acquittal, the scope for interference is very very less. In that regard, he would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Rohtash Vs. State of Haryana***¹, ***Chandrappa Vs. State of Karnataka***² and the Judgment of this Court in ***R.Vijayaraghavan Vs. Seegampatti Rajagopal and Others***³.

1 (2012) 6 SCC 589

2 (2007) 4 SCC 415

3 (2017) 2 MLJ CrL 243



WEB COPY

7. The learned counsel would further reiterate that it is for the complainant to produce the book of account and substantiate that the entire amount is due. When the accused as to the preponderance of probability rebutted the presumption, then the Trial Court was right in acquitting the accused.

8. Since the learned counsel on record for the respondent did not appear in the earlier occasions, this Court appointed *Mr.Arun Geobea Jose*, as the Legal Aid Counsel. However, after appointment of the legal aid counsel, the counsel on record turned up and argued the matter. This Court heard the arguments of both the legal aid counsel as well as the counsel on record for the respondent.

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

10. As a matter of fact, in an offence under Section 138 of the Negotiable Instruments Act, 1881, the presumption operates in favour of the complainant. When a cheque has been issued and the signature on the cheque is not disputed,



Criminal Appeal No.818 of 2011

WEB COPY

the only defence available to the accused is that the entire liability has been discharged. To the contrary, the accused himself has marked Exs.R1 and R2 being the passbook. The Trial Court itself has found that even on a perusal of the passbook, a sum of Rs.1,10,321/- was due. In that view of the matter, when it was explained by the complainant that a sum of Rs.1,68,181/- has been arrived at after considering the interest portion, it cannot be said that the accused has rebutted the presumption.

11. It should be seen that the defence of the accused is that the entire amount has been paid, whereas, the evidence that is let in by the accused itself show that the amount was due. As a matter of fact, the calculation was sought to be produced by way of additional document, by producing the statement of account. However, the same was not produced during the time of trial and at this stage, the same cannot be taken into account. In any event, I am of the view when the complainant's case was armed with the presumption, when it is not the specific case of the accused that a sum of Rs.1,10,321/- alone was due, on the contrary, it was the case of the accused that the entire amount has been repaid, I am of the view that the Trial Court ought not to have held that the accused



Criminal Appeal No.818 of 2011

managed to rebut the presumption.

WEB COPY

12. A perusal of the concerned Ex.R2 based on which, the finding has arrived, it can be seen that no such conclusion can be arrived at. Therefore, I am inclined to interfere with the finding of acquittal and it is liable to be upturned as into one of guilty. In view thereof, this Criminal Appeal is allowed, on the following terms,

(i) The Judgment of the learned Special Metropolitan Magistrate-XV, Chennai, dated 29.09.2011 made in S.T.C.No. 1720/2007 shall stand set aside;

(ii) The respondent / accused is found guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881;

(iii) Considering the time delay, within a period of twelve weeks from the date of receipt / production of the website uploaded copy of this Judgment, the respondent / accused shall pay the Cheque amount being a sum of Rs.1,68,181/- to the appellant / complainant. In default, the respondent / accused shall undergo the Simple Imprisonment of three months.

(iv) the respondent / accused shall directly pay the appellant / complainant



Criminal Appeal No.818 of 2011

and a joint memo/receipt thereof shall be filed before the Trial Court, failing which the Trial Court shall issue warrant to commit the respondent / accused into prison to undergo the sentence.

24.07.2025

Neutral Citation : Yes/No
Jer

To
1.The Special Metropolitan Magistrate-XV, Chennai.
2.The Section Officer
Criminal Section, High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.,

Jer



WEB COPY



Criminal Appeal No.818 of 2011

Criminal Appeal No.818 of 2011

24.07.2025