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CrI.A.No.224 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

CrI.A.No.224 of 2015

K.Anbarasu ... Appellant/Complainant

v.

Rajan K.Moorthy ... Respondent/Accused

Criminal Appeal filed under Section 378 (4) of Code of Criminal Procedure, against the acquittal made in C.C.No.173 of 2012 on the file of the learned Judicial Magistrate, Harur, on 29.12.2014 by allowing the Criminal Appeal.

For Appellant : Mr.S.Manoj
for M/s.R.Ezhilarasan

For Respondent : No Appearance
(Notice dispensed with)

JUDGMENT

The appeal challenges the judgment of acquittal dated 29.12.2014 passed by the learned Judicial Magistrate, Harur in C.C.No.173 of 2012.



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2. It is the case of the appellant that he is a retired government employee; that he had received retirement benefits to the tune of Rs.23 lakhs and was also having agricultural income to the tune of Rs.7 Lakhs per annum; that the respondent was known to him; that respondent had requested the appellant to lend a sum of Rs.15 Lakhs for his urgent needs; that on 28.07.2012, the appellant lent a sum of Rs.15 Lakhs; that on the same day, the respondent has issued a post dated cheque dated 02.10.2012 for the said sum; that when the said cheque was presented for collection, it was returned for the reason, 'Insufficient Funds'; that inspite of statutory notice, the respondent failed to make the payment; and thus the respondent committed the offence under Section 138 of the Negotiable Instruments Act.

3. Before the trial Court, the appellant examined himself as PW1 and two other witnesses as PW2 and PW3 and marked Ex.P1 to Ex.P15. On the side of defense, the respondent marked Ex.D1 to Ex.D3.

4. The trial Court on consideration of the evidence on record, held that the appellant had failed to establish that he had the capacity to lend a sum of



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Rs.15 Lakhs; that the appellant had not established the loan transaction by producing any documents evidencing the loan; and hence, acquitted the respondent/accused.

5. Mr.S.Manoj, learned counsel for the appellant, submitted that the appellant had produced documents Ex.P7 to Ex.P15 to prove his source of income; that the respondent had not rebutted the statutory presumption and despite the same, the trial Court erred in ignoring the documents and the evidence adduced by the appellant and acquitting the respondent; and hence, he sought to set aside the judgment of acquittal.

6. It is seen from the record that the notice sent to the respondent had returned unserved. Since the appellant had not made out any ground for interference in the appeal, this Court dispenses with the notice to the respondent.

7. As stated earlier, it is the specific case of the appellant that he had obtained retirement benefits to the tune of Rs.23 Lakhs and therefore had the



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capacity to lend a sum of Rs.15 Lakhs. The bank statement pertaining to the relevant period of the complainant was marked as Ex.D2. When the appellant is said to have lent a sum of Rs.15 Lakhs, the balance in his Bank [Central Bank of India] account was Rs.1,007/-. The account statement of the complainant in another bank [State Bank of India] was marked as Ex.P4. The balance in said account as of 17.07.2012, was Rs.84,000/-, and on 31.07.2012 it was Rs.26,112/-. Therefore, the appellant had not proved his source of income. If the appellant had obtained retirement benefits, it ought to have been deposited in his bank account, and there is no proof of the same. The appellant had not produced any other record to show that he had another bank account.

8. Be that as it may. The appellant, in order to show that he had agricultural lands, had marked Ex.P7 to Ex.P10, the pattas which were issued by the revenue authorities either in his name or in his wife's name. However, there is nothing on record to prove the income earned from the said lands.



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9. Though the appellant had marked Ex.P11, which are the proceedings to show that he had obtained retirement benefits, it is not known as to how and when the said amount was withdrawn. Admittedly, as on the date of the alleged payment of loan, there was a very minimum balance in the account of the appellant. Therefore, the trial Court had disbelieved the evidence adduced on the side of the appellant to prove his source of income and rightly so.

10. It is also seen that the respondent had replied to the statutory notice, which the appellant had not filed along with the complaint. The appellant had admitted the receipt of the reply notice in the cross examination which was marked as Ex.D1. The appellant therefore, had not approached the Court with clean hands.

11. The Hon'ble Supreme Court in ***Basalingappa vs. Mudibasappa***, reported in (2019) 5 SCC 418, had held that the statutory presumption can be rebutted by the accused in several ways. He can either improbabilise the



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case of the complainant in the cross-examination or produce independent evidence.

12. The relevant portion of the judgment of the Hon'ble Supreme Court reads as follows:

25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.



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25.5. It is not necessary for the accused to come in the witness box to support his defence.”

The above observations of the Hon'ble Supreme Court squarely applies to the facts of this case.

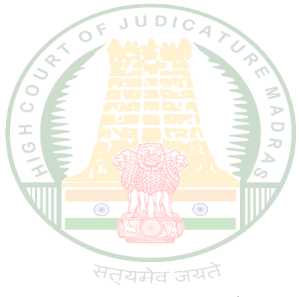
13. In the instant case, we find that the respondent had cross-examined the complainant and probalised the respondent's case that the appellant did not have the means to lend a sum of Rs.15 lakhs. Thereafter, the burden shifts to the appellant, which he had failed to discharge. Therefore, this Court finds no reason to interfere with the said judgment of acquittal.

14. Accordingly, the judgment of acquittal dated 29.12.2014 passed by the learned Judicial Magistrate, Harur in C.C.No.173 of 2012, is confirmed. The Criminal Appeal stands dismissed.

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Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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To



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SUNDER MOHAN, J.

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