



Crl.A.No.4 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 11.08.2025

CORAM:

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.4 of 2015

Dr.M.Saravananaraj,
Rep. by his Power Agent,
Mr.K.Ponraj

...Appellant

Vs.

S.Salim

...Respondent

Appeal filed under Section 378 of Cr.P.C. to set aside the order dated 01.07.2014 made in C.C.No.1609 of 2011 on the file of the learned Metropolitan Magistrate, Fast Track Court No.4, George Town, Chennai and convict the respondent herein and impose punishment under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.Suchit Anant Palande

For Respondent : Mr.S.Chandrabose



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JUDGMENT

This Appeal has been filed challenging the judgement of the Metropolitan Magistrate, Fast Track Court No.4, George Town, Chennai dated 01.07.2014 made in C.C.No.1609 of 2011.

2. By the said judgement, the respondent/accused was acquitted of an offence under section 138 of the Negotiable Instruments Act, 1881.

3. In this judgment, the parties are referred to as the complainant and the accused as per the trial court.

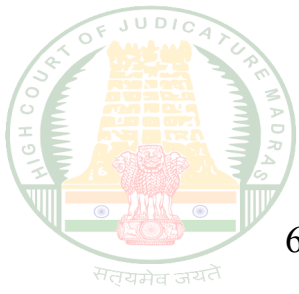
4. The case of the complainant is that, in discharge of his liability towards part payment of the loan amount borrowed, the accused issued a cheque dated 02.04.2011 for a sum of Rs.4,00,000/-. When the same was presented for collection by the complainant on 07.04.2011, the same was returned dishonoured on 08.04.2011 with the memo of dishonours of the bankers of the accused dated 08.04.2011 with an endorsement 'Payment stopped by the drawer'. The complainant caused a legal notice on 11.04.2011. However no reply whatsoever was issued by the accused and



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the amount was also not paid within the statutory period and as such the complaint was filed.

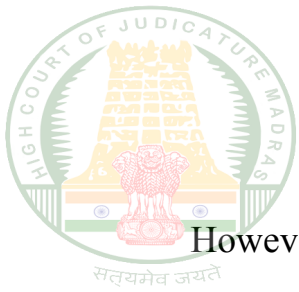
5. A Sworn statement was recorded and summons was issued to the respondent/accused. After appearance and furnishing of copies, the accused denied the charge and stood trial. In order to prove the charge, the power of attorney agent of the complainant namely K.Ponraj was examined as P.W.1 and exhibits P.1 to P.6 were marked. Upon being questioned about the incriminating materials that were on record under section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, the Bank Manager of the bankers of the accused was examined as D.W.1 and the accused examined himself as D.W.2 and exhibits R1 to R 3 were also marked. The trial court, thereafter, considered the case of the parties and by holding that, the accused by cross examination of the complainant has established his version and by further shifting the burden on the complainant that the complainant ought to have given further proof with reference to the advancement of loan, the accused was acquitted, against which, the present appeal is filed.



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6. Learned counsel for the appellant would submit that in this case, the power of attorney agent was examined, who was the person who has connection between the complainant and the accused and he took the accused to the complainant and got the loan for the accused and he was the witness to the entire transaction and as such had personal knowledge. Therefore, he has categorically deposed about the date of borrowal of the loan, date of issuance of the cheque and the promissory note that is executed etc. The promissory note is also produced as a document which further corroborates the liability.

7. Learned counsel would further submit that even though it is the case of the accused that the disputed cheque was given in respect of another transaction to the power of attorney agent with reference to purchase of Sarees, the same is a different transaction and has no connection whatsoever with the instant transaction. The case of the accused that he has given 22 cheques during the said transaction is unbelievable. In any event, it can be seen that the accused had also deposited the original document in respect of his property which is worth more than Rs.1.5 Crore and without a loan being borrowed, absolutely no justification is there for the accused to handover the said document.



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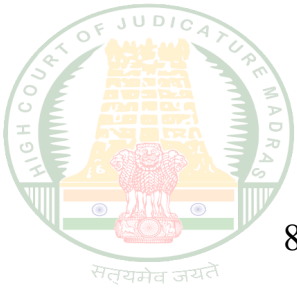
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However, there is absolutely no explanation from the side of the accused as to why would he handover the said documents. Even from the transaction with reference to purchase of Sarees which were all produced as the defence documents, it can be seen that the purchase was for meagre amount of Rs.30,000/- etc. For the same, the property document of such a high value could not have been given. Therefore, when the complainant has duly presented the cheque and when the accused admits the signature of the cheque and also the signature in the promissory note, the presumption arises under the Negotiable Instrument Act. Therefore, it is for the accused to have let in such cogent evidence to probablise any defence and rebut the presumption. The defence in this case is vague and without any proper explanation. In support of his submissions, the learned counsel would rely upon the following judgements:

(i) M/s. Kalamani tex & Anr. Vs. P.Balasubramanian reported in (2021) 5 SCC 283;

(ii) Bir Singh Vs. Mukesh Kumar reported in (2019) 4 SCC 197 and;

(iii) R.Vijayan Vs. Baby & Anr reported in (2012) 1 SCC 260.



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8. Per contra, the learned counsel for the respondent would submit

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that, the plea of the accused is that he never knew the complainant namely, Dr.M.Saravanaraj, who never came to the box. As a matter of fact, two cases were filed simultaneously complaining that two cheques were issued by the accused, one for the power of attorney agent and another for the principal. The case filed by the power of attorney agent for himself ended in acquittal and the same was also confirmed by the appellate court. As a matter of fact, the version of the accused that the said cheques were issued as a security at the time of having transactions with Jai Enterprises has been accepted in the said case. The present cheque is also one such cheque issued in the said transaction. The complainant had originally alleged that the cheque was given only on 02.04.2011. However it can be seen that the stop payment instruction was given much before and the concerned Bank Manager was also examined in that regard. The complainant never came to the box in spite of specific cross examination of the power of attorney agent and also the accused got into the box and deposed that he never knew the complainant. In view thereof, the trial court rightly acquitted the accused and the same does not call for any interference.



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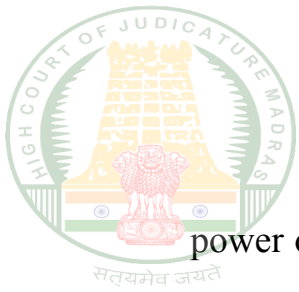
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9. I have considered the rival submissions made by the learned

counsel on either side and perused the materials available on record.

10. The first and foremost circumstance is that the accused has got into the box during the defence stage and has categorically deposed that he did not know the complainant Saravanaraj. The power of attorney agent who was examined as P.W.1 was also specifically cross examined in respect thereof. When the accused raises a defence that all these cheques were issued only to the power of attorney agent and there is absolutely no borrowal from the complainant, even though it can be said that the power of attorney agent was very much a witness to the said transactions, still in the context of the case, when the complainant did not even get into the box, the finding of the trial court that the accused has rebutted the presumption and should be given the benefit of the doubt cannot be said to be a perverse finding.

11. Further, the date of cheques in both the cases, the promissory note being executed in stamp papers of worth Rs.20/-, the date of borrowal in close proximity of time etc., all raises a reasonable doubt especially when the complainant kept himself away from the box and when the



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power of attorney agent is involved in direct transactions with the accused and he has filed one case by using a similar cheque and this case being filed in respect of another cheque of the same amount, the entire episode, raises a doubt as to the defence of the accused could have been probable also.

12. Though the contention of the learned counsel for the complainant that the accused has also deposited the title deed carries due weight, but in a criminal case where the accused is to be punished, if the finding of the trial court are made after due appreciation of evidence, merely because another view is possible this Court will not interfere.

13. As a matter of fact this Court has to hold that the finding of acquittal is perverse in nature or an impossible view. In the present case, I am unable to do so and therefore, this appeal is bound to fail and accordingly, this Criminal appeal stands dismissed.

11.08.2025

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Neutral Citation Case : Yes/No

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To

1. The Metropolitan Magistrate, Fast Track Court No.4,
George Town, Chennai.
2. The Public Prosecutor,
Madras High Court.



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D.BHARATHA CHAKRAVARTHY, J.

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