



CrL.A.No.605 of 2015

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during March 2009 and promised to repay the same as and when demanded by the appellant with interest at the rate of 24% per annum; that towards discharge of the said liability, the respondent had issued a cheque dated 02.07.2012 for Rs.5,00,000/-; that when the said cheque was presented for collection, it was returned for the reason, 'Funds Insufficient'; that the appellant issued a legal notice through his counsel on 10.07.2012; that even after the receipt of the statutory notice, the respondent failed to make any 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 marked Ex.P1 to Ex.P4. On the side of defense, the respondent examined himself as DW1 and one Srinivasan as DW2 and marked exhibits Ex.D1 and Ex.D2.

4. The Trial Court found that the cheque was not issued for a legally enforceable debt or liability, as it was barred by limitation and acquitted the respondent.



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5. Mr.M.N.Balakrishnan, learned counsel for the appellant, submitted that the judgment of the trial Court is perverse; that the cheque was issued only towards discharge of the liability; that the respondent had not even cared to reply to the statutory notice; that both DW1 and DW2 are interested witnesses and the trial Court ought not to have accepted their evidence to disbelieve the case of the complainant; and thus, prayed for setting aside the judgment.

6. Mr.A.Sriram, learned counsel for the respondent, *per contra* submitted that there is evidence to show that a blank cheque was issued by the respondent to the appellant's wife with whom he had an independent transaction and he had repaid the loan obtained from her and when the respondent demanded return of the cheques and blank papers, the appellant's wife instigated the appellant to file the false complaint belatedly. He would further submit that the reasons assigned by the trial Court for acquittal are justified and do not warrant any interference.



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7. As stated earlier, it is the specific case of the appellant that he had lent a sum of Rs.5,00,000/- to the respondent in March 2009. Though the appellant had claimed that the respondent had paid the interest for a period of one year, the appellant had not adduced any evidence to prove the same. The appellant had also not produced any document to prove the acknowledgement of liability by the respondent. Therefore, this Court is of the view that the trial Court was right in holding that the cheque dated 02.07.2012 for an amount that was issued allegedly in March 2009 is not for a legally enforceable debt or liability, as the debt was barred by limitation.

8. That apart, this Court finds that in the cross-examination the appellant had admitted that the respondent had obtained a loan from the appellant's wife and mortgaged his property and that after repayment of the loan, the mortgage was discharged in the year 2012. The respondent had also marked the mortgage deed Ex.D1, to prove his case. The appellant had also not produced any documents to show that he had lent a sum of Rs.5,00,000/- in March 2009. He had also not proved his financial capacity to lend such a huge sum.



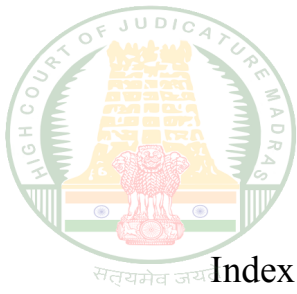
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9. Further, the accused had also examined himself as DW1 to prove the transactions between himself and the wife of the appellant. Nothing has been elicited in the cross-examination to disbelieve his version. DW2, who was known to both the appellant's wife and the respondent, had spoken about the transaction between the two of them. Nothing has been elicited in his cross- examination as well to discredit his testimony.

10. Thus, this Court finds that the respondent had rebutted the statutory presumption besides showing that on the date of the cheque, there was no legally enforceable debt or liability. Therefore, this Court is of the view that the judgment of acquittal by the trial Court is in accordance with law and well-reasoned. There is no reason to interfere with the said judgment. Accordingly, the judgment of acquittal dated 04.04.2014 passed by the learned Judicial Magistrate, FTC-II, Coimbatore in C.C.No.135 of 2013, is confirmed. The Criminal Appeal stands dismissed.

18.07.2025



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Index : yes/no

Speaking /Non-speaking order

Neutral citation : yes/no

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SUNDER MOHAN, J.

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To

The Judicial Magistrate, FTC-II, Coimbatore.

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