IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.768 of 2015

C.Basker …Appellant/Complainant

vs.

Krishnaveni ...Respondent/Accused

Criminal Appeal filed under Section 378 of Code of Criminal Procedure praying to set-aside the order dated 08.09.2015 passed in C.C.No.2956 of 2012.

For Appellant : Ms.V.S.Manimegalai
Legal Aid Counsel

For Respondent : Notice Dispensed with

JUDGMENT

The appeal challenges the Judgment of acquittal passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai – 600 001, in C.C.No.2956 of 2012 dated 08.09.2015.

2. It is the case of the appellant/complainant that the respondent's

husband and the appellant were friends; that the respondent/accused and her husband approached the appellant for a loan during the years 2010 and 2011 to fund their daughter's education; that the appellant lent a sum of Rs.21,00,000/- (Rupees Twenty One Lakhs only); that the respondent promised to repay the said sum by February 2012; that in order to discharge the said loan, the respondent issued a cheque for Rs.21,00,000/- on 01.03.2012, to the appellant; that when the appellant presented the said cheque for collection, it was returned for the reason "Funds Insufficient"; that the appellant thereafter, issued a statutory notice, and in spite of the statutory notice, the respondent did not make payment and instead sent a reply notice on 06.06.2012, with false averments, and thus, committed the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act).

3.The appellant/complainant examined himself as P.W.1 and the Bank Manager as P.W.2 and marked Exs.P1 to P7. The respondent/accused examined herself as D.W.1 and marked Exs.D1 to D3.

4. The trial Court found that the appellant had not established that he had lent a huge sum of Rs.21,00,000/-; that the appellant had suppressed that there were other transactions between the appellant and the respondent and also about the receipts of money from the respondent's account; and that the respondent had rebutted the statutory presumption. The trial Court therefore found that the burden shifted to the appellant, which he had failed to discharge and acquitted the respondent for the offence under Section 138 of NI Act.

5. Since there was no representation for the appellant on 31.07.2024 and on 18.07.2025, this Court had appointed Ms.V.S.Manimegalai, Advocate, as Legal Aid Counsel to represent the appellant.

6. Ms.V.S.Manimegalai, the learned Legal Aid Counsel for the appellant/complainant, submitted that the trial Court had erred in acquitting the respondent/accused merely because there was no document produced by the appellant to prove the debt; that the trial Court ought to have drawn the statutory presumption under Section 139 of NI Act, since the respondent

had not denied her signature in the cheque; and that the evidence adduced on behalf of the respondent was not sufficient to rebut the statutory presumption. The learned counsel, therefore, submitted that the Judgment of acquittal is liable to be set aside.

7. It is seen that the notice sent to the respondent/accused has not been served. The appellant/complainant had not chosen to send private notice, which was permitted by this Court. Since this Court finds that the appellant has not made a ground for interference for the following reasons, the notice to the respondent is dispensed with.

8. As stated earlier, the appellant examined himself as P.W.1 and the Bank Manager as P.W.2. It is the specific case of the appellant that the respondent's husband was known to him since 2010. In the cross-examination, he had stated that he had met the respondent's husband during travel on train and thereafter became, friendly with him and trusting the respondent, he had lent the sum of Rs.21,00,000/-. Admittedly, the appellant had not produced any document either to prove his source of

income or the capacity to lend a sum of Rs. 21,00,000/-. He had also not produced any document to show that he had lent the sum of Rs.21,00,000/- to the respondent. The appellant was not able to specify the exact date on which he had lent a sum of Rs.21,00,000/-. Though he would say that he had lent the sum on various dates, the trial Court found that it is highly improbable that the appellant would have lent a huge sum of Rs. 21,00,000/- to a person with whom he got acquainted during a train travel. This Court finds that there is no infirmity in the said finding of the trial Court.

9. Be that as it may. The respondent/accused has marked Ex.D1 to show that there were other transactions between the respondent and the appellant and the respondent was engaged by the appellant to sell certain foreign goods which the appellant was dealing with. From Ex.D1, it is seen that the appellant had transferred a sum of Rs.2,81,000/- (Rupees Two Lakhs Eighty One Thousand only) to the account of the respondent. When specifically asked about the payment made by the respondent to his account, the appellant denied having received any amount. When confronted with the Bank statements of the respondent, Ex.D1, he admitted that he had received

a total sum of Rs.4,84,000/- (Rupees Four Lakhs Eighty Four Thousand only) on various dates from the respondent.

10. All these facts were suppressed by the appellant in his complaint and in his proof affidavit filed before the Court. He had also given evasive answers to several questions in the cross-examination. The trial Court also found that the appellant had admitted that he had filed income tax returns for the Assessment Year 2010–2011 and he had not disclosed the fact of his lending a huge sum of Rs.21,00,000/- (Rupees Twenty One Lakhs only).

11. The appellant had also not produced any evidence to establish his source of income and the capacity to lend a sum of Rs.21,00,000/- (Rupees Twenty One Lakhs only). According to him, he had paid cash to the tune of Rs.18,00,000/- (Rupees Eighteen Lakhs only) and had transferred Rs.3,00,000/- (Rupees Three Lakhs only) to the account of the respondent.

12. This Court finds from the evidence adduced on either side that the

respondent had rebutted the statutory presumption. The appellant had failed to discharge the burden that was shifted to him. The trial Court therefore, rightly acquitted the respondent. Hence, there is no reason to interfere in the said Judgment of acquittal. Accordingly, the Criminal Appeal is dismissed.

13. The High Court Legal Services Committee, Chennai, shall pay the scheduled fees to Ms.V.S.Manimegalai, learned Legal Aid Counsel who appeared for the appellant.

21.07.2025

Neutral citation : yes/no
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Copy to:
The Metropolitan Magistrate,
Fast Track Court – IV,
George Town,
Chennai – 600 001.

SUNDER MOHAN,J.

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