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Crl.A.No.955 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.955 of 2025

B.Nagarajan

... Appellant

Vs

S.Babu

... Respondent

Prayer: Criminal Appeal filed under Section 319(4) of B.N.S.S., 2023, pleaded to set aside the judgment passed in S.T.C.No.459 of 2022 by the Judicial Magistrate Court No.II, Chidambaram (FAC) dated 25.11.2024 and convict the respondent for the offence punishable under section 138 of the Negotiable Instruments Act and direct the respondent to pay the cheque amount as compensation to the appellant.

For Appellant : Mr.S.B.Viswanathan

JUDGMENT

This Criminal Appeal has been preferred as against the judgment dated 25.11.2024 passed by the learned Judicial Magistrate No.II, Chidambaram (FAC) in S.T.C.No.459 of 2022, thereby acquitting the

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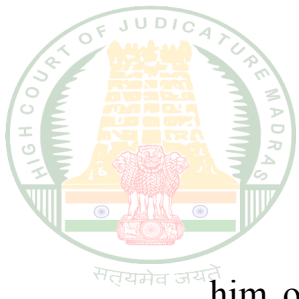
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respondent for the offence punishable u/s 138 of Negotiable Instruments Act (in short 'the NI Act').

2. The appellant has lodged a complaint against the respondent for the offence punishable u/s 138 of the NI Act alleging that the appellant and the respondent are friends and he had borrowed a sum of Rs.9,00,000/- on 25.03.2022 for his family expenses and other needs from the appellant. In order to discharge his liability, the respondent issued a cheque bearing No.000005 dated 27.09.2022 drawn on Karur Vysya Bank, Chidambaram Branch. The complainant presented the cheque for collection on 27.09.2022 and the same was returned dishonoured with the endorsement “Funds Insufficient” along with return memo dated 30.09.2022. After causing the statutory notice, the appellant filed a complaint u/s 138 of the NI Act.

3. On the side of the appellant, P.W.1 was examined and Ex.P1 to Ex.P4 were marked. On the side of the accused, D.W.1 was examined and Ex.D1 was marked. On perusal of the oral and documentary evidence, the Trial Court found the respondent not guilty and acquitted



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him of the charges u/s 138 of the NI Act. Aggrieved by the same, the present appeal is filed.

4. The learned counsel for the appellant would submit that the respondent did not deny the issuance of cheque and the signature found in the cheque. Therefore, the appellant had discharged his initial burden as contemplated u/s 138 of NI Act and on the other hand, the respondent failed to rebut the presumption u/s 118 and 139 of NI Act. Even then, the Trial Court mechanically dismissed the complaint. Further, he pointed out that the respondent had categorically deposed that he borrowed a sum of Rs.2,50,000/- on 24.05.2022 and the same was repaid, however, in the reply, he had contradictorily stated that he returned a sum of Rs.5,50,000/-. Therefore, the offence u/s 138 of the NI Act is clearly made out by the appellant and even then, the Trial Court acquitted the respondent on the ground that the appellant failed to prove his case.

5. Heard the learned counsel appearing for the appellant and also perused the materials available on record.



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6. On a perusal of records, it is revealed that on issuance of statutory notice, the respondent issued a reply notice, however the same was not marked before the trial court either by the appellant or by the respondent. The respondent was examined as D.W.1. The specific defence taken by the respondent is that he had borrowed a sum of Rs.2,50,000/- from the appellant on 24.05.2022 and agreed to repay the same by way of paying a sum of Rs.2,500/- per day on the basis of daily thandal. Accordingly, he had paid the entire borrowed amount along with interest to the tune of Rs.5,50,000/- to the appellant. In order to prove the same, he also marked the Thina Thandal note as Ex.D.1, which also shows that the respondent had repaid the entire borrowed amount to the appellant on the basis of daily thandal. Even thereafter, the appellant had misused the cheque issued by the respondent at the time of borrowal for security purpose. Therefore, the respondent had categorically rebutted the presumption arising u/s 118 and 139 of NI Act. However, the appellant failed to prove that the cheque was issued for legally enforceable debt. Therefore, no offence u/s 138 of NI Act is made out against the respondent. Hence, the Trial Court rightly acquitted the respondent of the offence u/s 138 of NI Act.



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7. In view of the above, this Court finds no infirmity or illegality in the Judgment dated 25.11.2024 made in S.T.C.No.459 of 2022 on the file of the learned Judicial Magistrate No.II, Chidambaram. Accordingly, this Criminal Appeal stands dismissed.

16.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
sp

To

The Judicial Magistrate No.II,
Chidambaram.



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G.K.ILANTHIRAIYAN, J.

sp

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