



Crl.A.No.187 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.187 of 2010

John Wesley

...Appellant/Complainant

-Vs-

Mahesh

...Respondent/Accused

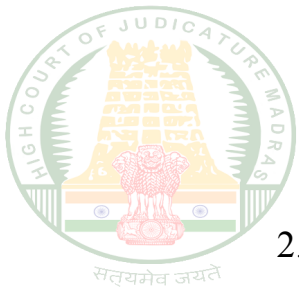
Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, against the judgment of acquittal passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2829 of 2005 dated 14.12.2009.

For Appellant : Mr.Dhilip Roshan
for Mr.V.Rajamohan

For Respondent : Mr.A.Nagarajan

JUDGMENT

The appeal is directed against the judgment dated 14.12.2009 made by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2829 of 2005. By the said judgment, the respondent/accused was acquitted of an offence under Section 138 of the Negotiable Instruments Act.



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2. Heard Mr.Dhilip Roshan, learned counsel for the appellant.

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3. The learned counsel would first submit that when the complainant has duly presented the cheque, and upon the cheque being returned dishonoured, had issued a notice of demand under Section 138 of the Negotiable Instruments Act, 1881 and the complainant has examined himself as P.W.1 and marked all those documents. The complainant has discharged his initial onus. Once the complainant produces the cheque and discharges the initial onus, then the presumption under the Negotiable Instruments Act, 1881 is in favour of the complainant. The accused has not let in any contra evidence except to examine one witness, who is the Manager of the Bank, to mark the statement of accounts of the complainant himself. As a matter of fact, the Court went into the case as if the complainant could have only one bank account. Therefore, when the accused has not even issued any reply notice and has not disputed the liability at that stage, in the absence of any positive evidence, or even in the cross-examination, disputing the very liability by way of any answers elicited from the complainant, the Court ought not to have acquitted the accused.

4. Merely because the bank account revealed only a sum of Rs.8,000/- as the maximum amount lying without ascertaining as to the fact that the



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complainant had businesses and was very much capable of advancing the loan, the Trial Court erroneously acquitted the accused. Further, the finding of the Trial Court, as if the cheque was left with the complainant for the earlier transaction, is also erroneous in law. Even as per the accused, he settled the earlier dues long back, and thereafter he has not taken any steps to demand the cheque back from the complainant. Therefore, in the absence of any document on the side of the accused demanding the cheque that is said to have been given as security, the Trial Court ought to have found that the cheque should be presumed to be issued only for the discharge of the liability of the amount that is mentioned in the cheque. Therefore, the learned counsel would submit that in this case, the finding of the Trial Court is perverse in nature and is absolutely unsustainable, and therefore this Court should overturn the finding by allowing the appeal.

5. The learned counsel would also file written submissions and would rely upon the judgments of the Hon'ble Supreme Court of India in ***Rajesh Jain v. Ajay Singh*, 2023 INSC 888**, to contend that the perversity should be noted by this Court by considering the findings of the Trial Court. Further, the learned counsel would rely upon the judgments in ***Rangappa v. Sri Mohan*, (2010) 11 SCC 441**, for the proposition that once the accused admits



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his signature in the cheque, then the presumption comes into play in favour of the complainant. Certain other judgments were also relied upon in support of the said proposition.

6. The learned counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Kumar Exports v. Sharma Carpets, 2009 (2) SCC 513***, to contend that the rebuttal of presumption should be to the level of preponderance of probabilities, which was not done by the accused in the instant case. Therefore, only on the basis of the financial capacity alone, the Trial Court ought not to have acquitted the accused, especially considering the fact that the cheque amount is only three lakhs and that it is said to be advanced as hand loan by the complainant.

7. The said submissions are resisted by the learned counsel appearing on behalf of the respondent/accused, who submitted that the Trial Court has come to the correct findings and acquitted the accused.

8. I have considered the rival submissions made on either side and perused the material records of the case.

9. The case of the complainant is that in discharge of the existing liability, that is, the loan advanced to the respondent/accused, the cheque was



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issued. This is a case on presumption, as no other documentary evidence is filed before the Court. Therefore, the question that is to be considered is whether the accused has rebutted the presumption to the level of preponderance of probability. Firstly, the Trial Court has taken into account the defence of the accused that there were earlier transactions and the cheque was handed over to the complainant in the year 1997. The complainant did not deny that there were earlier transactions.

10. Secondly, the Trial Court has considered the fact that when the bank account of the complainant was marked through D.W.1. The maximum balance outstanding at the relevant point of time is only around Rs.8,000/-, which was much lower, and the Trial Court also considered that apart from the present loan said to have been advanced, which is for a sum of Rs.3 lakhs, during the relevant period, the complainant has also filed yet another case against yet another individual for another sum of Rs.1,50,000/-. The third thing is that when the complainant stated in the cross-examination that the loan was advanced to be repaid with 12% interest for a period of about two years, there was not even any whisper or demand from the complainant, either the principal or the interest, when it has been stated that nothing is paid by the accused. For all the above reasons, the Trial Court appraised the



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evidence on record and believed the version of the accused and held that the accused had rebutted the presumption to the level of preponderance of probability and, in the absence of further proof from the complainant, he had failed to prove beyond doubt that there exists any pre-existing liability/debt for the purpose of the issue of the cheque.

11. I am of the view that the various contentions made by the learned counsel for the appellant cannot be accepted by this Court in an appeal against acquittal, especially when the findings are made after due appraisal of the evidence.

12. In view thereof, finding no merits, the appeal stands dismissed.

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Speaking Order

To

- 1.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
- 2.The Public Prosecutor,
Madras High Court.

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D.BHARATHA CHAKRAVARTHY, J.,

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