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Crl.A.No.569 of 2022

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 27.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

Crl.A.No.569 of 2022

M.Veeramani

... Appellant

Vs

Sridharan

... Respondent

Prayer: Criminal Appeal filed under Sections 378 of Code of Criminal Procedure, 1973 to set aside the judgment made in C.C.No.2727/2017 dated 29.01.2020 on the file of Metropolitan Magistrate, Fast Track Court No. 4, George Town at Chennai.

For Petitioner : Mr.A.N.Rajan
for Mr.K.Ravikrishnasamy

For Respondent : Ms.S.Meeha

ORDER

This appeal is filed against the judgment of the Metropolitan Magistrate, Fast Track Court IV, Georgetown, Chennai, dated 29.01.2020 in C.C.No. 2727 of 2017. By the said judgment, the respondent was acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881. This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure, 1973.



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2. The case of the complainant/appellant is that the accused and the complainant reside in the same locality. The accused and his wife became family friends of the complainant. Taking advantage of this relationship, the accused borrowed money from the complainant during 2015–2016 as hand loans on several occasions to meet his medical expenditures and the basic needs of his family, totaling Rs. 8,00,000/-. To discharge this liability, the accused issued a cheque dated 04.05.2017 for the said sum.

3. Upon presentation of the cheque for collection, it was returned dishonoured on 09.05.2017 with the endorsement “payment stopped by the drawer.” When the complainant informed the accused, the accused expressed his financial situation, requested re-presentation of the cheque. Accordingly, the cheque was again presented for collection on 20.06.2017 and this time it was returned dishonoured with the endorsement “insufficient funds.” A statutory notice dated 07.07.2017 was issued, calling upon the accused to pay the cheque amount within the statutory period. However, the accused evaded the notice. Hence, the complaint was filed.



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4. Upon recording the sworn statement, the case was taken on file. Upon the appearance of the accused, copies were furnished and questioning, the accused denied the imputation and stood trial. In order to bring home the guilt, the complainant examined himself as P.W.1. The subject matter cheque was marked as Ex.P1, the first return memo as Ex. P2, the second return memo as Ex. P3, the statutory notice as Ex. P4, and the return cover as Ex. P5.

5. Upon being questioned about the material evidence and incriminating circumstances under Section 313 of the Code of Criminal Procedure, 1973, the accused denied the same as false. Thereafter, no evidence was presented on behalf of the defence. The trial Court considered the case of the parties, the answers given by the complainant/P.W.1 during cross-examination and after noting their discrepancies with reference to the nature of advancing the loan, the number of installments, the time and period of advancing the loan and the relationship between the accused and the complainant, held that by the said cross-examination, the accused had rebutted the presumption. In the absence of further evidence, since the case of the complainant was doubtful, the trial Court gave the benefit of doubt to the accused and acquitted him.

6. *Mr.A.N.Rajan*, the learned counsel appearing for the appellant by taking this Court through the judgement of the trial Court would point out that



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firstly in this case the trial Court itself has admitted that the complainant has duly discharge is onus in proving the ingredients of the offence under Section 138 of the negotiable instruments Act, 1881. Once the complainant discharges is initial onus, the presumption under Section 139 and 118 comes into play and the presumption is there for the fact that the cheque is issued only for a legally enforceable debt. In that circumstances, it is for the accused to have proved that there was no legally enforceable debt even the defence that is taken is that the wife of the accused had borrowed sum of Rs.2,00,000/- and the cheque was issued in respect thereof. Absolutely no proof in respect thereof was filed on way of the accused. Not even any discharge receipt is filed. When the complainant was cross examined that they are not friends and the complainant does not know about the family of the accused then in that case how the accused borrowed sum of Rs.2,00,000/- and no document in respect thereof was not obtained is not explained by the accused. Thus, it can be seen that only a plea defence was attempted. The trial Court relied merely on minor inconsistencies and acquitted the accused. Therefore, this is a fit case for this Court to interfere.

7. The learned counsel appearing for the appellant also relied upon the judgment of this Court in ***R.Inbaraj vs. The State in Crl.A.(MD).No.554 of 2019 dated 24.03.2025***, more specifically relying upon paragraph 24, for the

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proposition that if the finding of the trial Court is perverse in nature, this Court can interfere.

8. Per contra, the learned counsel appearing for the respondent submitted that, knowing fully well that the accused had sold his house and gone away, the statutory notice was willfully served at the said address. Therefore, the complainant did not properly comply with the mandate of Section 138 of the Negotiable Instrument Act, 1881 and the presumption itself will not arise in this case. Further, the complainant made prevaricating statements in respect of every aspect of his case and as such, the trial Court rightly gave the benefit of doubt.

9. I have considered the rival submissions and perused the material records in the case.

10. Even though a suggestion was made that the accused had gone away from the address, no further evidence was let in by the accused to establish that he was not residing at the address mentioned in the statutory notice nor that the complainant was aware of this at the material time. In the absence of such evidence, I am not in a position to accept the contention of the learned counsel for the respondent.



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11. On perusal of the evidence as a whole, it can be seen that the signature on the cheque is admitted. The complainant has proved the other ingredients of the presentation of the cheque and by examining himself as P.W.1, pleaded that it was issued for a legally enforceable debt and therefore has discharged his initial onus. What remains to be determined is whether the accused has done enough to rebut the presumption and if so, whether the complainant has still proved the case or whether there is any credible doubt with reference to the case of the complainant. In this case, the complainant stated in the statutory notice and in the complaint that during 2015 to 2016, on several occasions, the accused borrowed the total amount. In the sworn statement, it was stated that the accused borrowed the loan in three installments of Rs. 2,00,000/-, Rs. 4,00,000/-, and Rs. 2,00,000/-. In the chief examination, it was generally stated that the accused borrowed the money during 2015 to 2016. In the complaint, sworn statement and chief affidavit, it was specifically stated that after repeated reminders and demands to repay the sum, the cheque dated 04.05.2017 was issued.



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12. However, during cross-examination, the complainant retracted from each and every statement. Firstly, with reference to the period of borrowing, he stated it was 2014 and 2015. Secondly, with reference to the issue of the cheque, he stated that even during the course of borrowal, the cheque was issued and the complainant filled it in the presence of the wife of the complainant. Thirdly, he stated it was the wife of the complainant who borrowed the amount. Even with reference to the acquaintance, he denied any knowledge of the affairs of the accused's family. Finally, it is the case of the accused that the cheque was issued in respect of the borrowal made by the wife of the accused and there is a family dispute between the wife of the accused and the accused. The complainant partly admitted that the borrowal was made through the wife alone. Thus, on a cumulative reading of the entire cross-examination, the complainant made prevaricating statements when detailed cross examination is done and his case was thoroughly exposed. No definitive or conclusion of facts can be drawn from the complaint, sworn statement, proof affidavit and cross-examination. Therefore, by the cross-examination of P.W.1, the accused rebutted the presumption. Not only is the presumption rebutted, but a credible doubt also arises regarding the complainant's case.



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13. In view thereof, the trial Court's finding giving the benefit of doubt to the accused cannot be said to be perverse or implausible.

14. Accordingly, finding no merits, the appeal stands dismissed.

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Neutral Citation: Yes/No

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To
The Metropolitan Magistrate,
Fast Track Court No. 4,
George Town, Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

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