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Crl.A.No.649 of 2022

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 25.11.2025

CORAM:

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

Crl.A.No.649 of 2022

K.Balasubramani

... Appellant

Vs

N.Saravanan

... Respondent

Prayer: Criminal Appeal filed under Sections 378 of Code of Criminal Procedure, 1973 to set aside the judgment dated 30.01.2020, passed in C.A.No. 52 of 2019 on the file of the Principle District & Sessions Judge, Vellore, confirming the judgment dated 30.04.2019, passed in S.T.C.No. 18 of 2018, on the file of the Judicial Magistrate, Fast Track Court, Vellore, by allowing this criminal Appeal.

For Petitioner : Mr.P.Raja

For Respondent : Mr.E.Kannadasan

ORDER

This appeal is directed against the judgment of the learned Judicial Magistrate, Fast Track Court, Vellore, dated 30.04.2019 made in S.T.C.No.18 of 2018 and the judgement of the Principle District & Sessions Judge, Vellore, dated 30.01.2020 made in C.A.No. 52 of 2019.



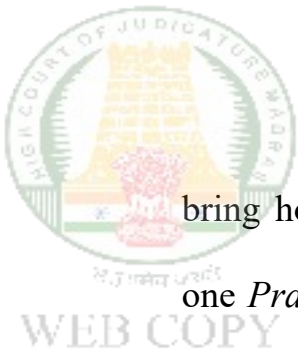
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2. By the said judgment, the Trial Court acquitted the respondent/accused of an offence under Section 138 of the Negotiable Instruments Act, 1881. This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure, 1973.

3. The case of the complainant is that he had been acquainted with the accused for several years. In the month of April 2015, the accused approached the complainant for a hand loan of Rs.5,50,000/- for his family necessity and business purposes. The complainant arranged a sum of Rs.5,40,000/-, which was paid to the accused on 27.04.2015 without any interest. In consideration thereof, a promissory note was also executed by the accused on the same day. When the complainant demanded repayment of the above amount, in partial discharge of the liability, the accused issued a cheque for Rs.2,50,000/- dated 18.09.2017. When the cheque was presented for collection, it was returned dishonoured with the endorsement “payment stopped by drawer”. Thereafter, a statutory notice was issued and within the statutory period, no payment was made. However, a reply notice dated 11.10.2017 was issued with incorrect facts and particulars. Therefore, the complaint was filed.

4. After recording the sworn statement, the case was taken on file as S.T.C.No. 18 of 2018. Upon issuance of summons, furnishing of copies and questioning, the accused denied the imputations and stood for trial. In order to

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bring home the allegations, the complainant examined himself as P.W.1 and one *Prabhakaran*, the witness to the promissory note and borrowal, as P.W.2.

The promissory note executed by the accused on 27.04.2015 was marked as Ex.P1; the subject cheque as Ex.P2; the return memo as Ex.P3; the statutory notice as Ex.P4; the acknowledgement card as Ex.P5; the reply notice as Ex.P6 and the signature of P.W.2 in Ex.P1 was marked as Ex.P7.

5. Upon being questioned about the material evidence and incriminating circumstances under Section 313 Code of Criminal Procedure, 1973, the accused denied the same as false. Thereafter, on behalf of the accused, one *Mohan Raj*, brother of the accused, was examined as D.W.1. The accused examined himself as D.W.2. The bank manager of the bank of the accused was examined as D.W.3. The letter given to the bank manager to stop payment under the subject cheque was marked as Ex.D1. The Trial Court considered the case of the parties. After appreciating the evidence of both sides, the Trial Court came to the conclusion that the evidence let in on behalf of the defence rebutted the presumption under the Negotiable Instruments Act, 1881 to the level of preponderance of probability. Since no further clinching proof was produced by the complainant to establish that Rs.5,40,000/- was borrowed by the accused on 27.04.2015, the Trial Court gave the benefit of doubt to the accused and acquitted him.



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6. As a matter of fact, in this case, an appeal was originally filed before the learned Principal District and Sessions Judge, Vellore, who also confirmed the acquittal. However, in view of the judgment of the Full Bench of this Court, the said appellate judgment was set aside and the criminal revision originally filed was renumbered as Criminal Appeal No. 649 of 2022. As such, this appeal is taken up as if it is an original appeal against the judgment of the Trial Court acquitting the respondent.

7. *Mr.P.Raja*, the learned counsel appearing on behalf of the appellant, by pointing out the evidence on record, would submit that this is not a case where the complainant relied upon the presumption alone. There is further evidence on record in the form of the promissory note Ex.P1 in support of the borrowal and the witness to the borrowal was also examined as P.W.2. Therefore, in this case the accused cannot rest with mere rebuttal of presumption. The complainant has duly proved the borrowal itself. As a matter of fact, when it is the case of the accused that he has repaid the earlier amount, as laid down by the Honourable Supreme Court of India, it is the duty of the party pleading discharge to produce the receipt for discharge; no such receipt was filed on behalf of the accused.



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8. Further, when it is the pleading of the accused that in view of the discharge and since the interest was not paid, the complainant threatened to present the cheque and therefore, under the said circumstances, the accused issued stop payment, it must be seen that Ex.D1 letter does not speak of the said facts and it is a general stop payment letter stopping payments in respect of several cheques. Therefore, it can be seen that the accused was in the habit of issuing cheques to several persons and to avoid criminal liability he has issued Ex.D1 in general so as to defraud his creditors. Therefore, the defence of the accused was not proved to the level of preponderance of probability and the Trial Court erred in holding that the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 had been rebutted. Even otherwise, it is not a case where the complainant is relying upon the presumption alone and when further evidence has been let in by examining himself as P.W.1 and the witness to the borrowal as P.W.2, and the borrowal is further corroborated by Ex.P1 promissory note, the Trial Court ought to have convicted the accused.

9. Per contra, *Mr.E.Kannadasan*, the learned counsel appearing on behalf of the respondent/accused would submit that the case of the accused is that he had borrowed only a sum of Rs.2,50,000/- on an earlier occasion from the complainant. The complainant did not issue any receipt and insisted on

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payment of additional interest and did not return the cheque. The fact that the accused has come up with a clear case that at the time of borrowal he issued the cheque and blank promissory note and that the amount was duly filled up in the cheque is corroborated by Ex.P2 cheque itself. It can be seen that the amount of Rs.2,50,000/- was filled up in the cheque. The signature and the said amount are in one handwriting whereas the name of the complainant and the date is filled up in different ink. Secondly, even the promissory note is not filled up by the accused. The manner in which the promissory note is filled up and the material alterations made and the fact that the scribe was not examined would all buttress the case that the promissory note was taken as a blank form. A reading of the evidence of P.W.2 makes it clear that he was not even able to properly identify the other witness who signed. From the signature and the father's name "Supramani", it cannot be concluded that the other witness was one *Raja*. Therefore, the very evidence of P.W.2 is doubtful. Under these circumstances, when the Trial Court has taken into account the attendant circumstances and granted the benefit of doubt, there is nothing for this Court to interfere in the appeal against acquittal.

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



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11. Firstly, the complainant had examined himself as P.W.1, the subject matter cheque is marked and the other ingredients of calling upon the accused to pay the amount due under the cheque and filing the complaint within time are proved. The complainant has also deposed that the cheque was issued in discharge of a legally enforceable liability pursuant to the borrowal of a sum of Rs.5,40,000/- on 27.04.2015.

12. With the above evidence on record, it can be seen that the complainant has discharged his initial onus and therefore the presumption under Section 139 of the Negotiable Instruments Act, 1881 arises in his favour. The question thereafter to be determined is whether the accused has let in evidence to the level of preponderance of probability to rebut the presumption and if the presumption stands rebutted, whether the complainant has discharged his onus to prove the legally enforceable liability for which the cheque is said to have been given. In order to consider the issue, it can be seen that the defense of the accused is that he had earlier borrowed a sum of Rs.2,50,000/- from the complainant in the year 2016, that is, on 16.02.2016 and issued the subject matter cheque. It is his further case that the said sum of Rs.2,50,000/- was also repaid in cash. While it is true that a person pleading discharge should prove the same by producing evidence in proof of discharge, in this case the very transaction proposed by the complainant is not admitted

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and therefore the question of production of discharge receipt does not arise.

The case of the accused is that the subject transaction is not true and that the borrowal happened only in the year 2016 during which period he handed over the cheque.

13. There are three circumstances which the Trial Court has considered. Firstly, on behalf of the accused, a reply notice dated 11.10.2017 was issued taking this clear stand. Secondly, on perusal of Ex.P2 cheque, it can be seen that the signature and the amount written as Rs.2,50,000/- are in the same ink which supports the case of the defence. Thirdly, when a sum of Rs.5,40,000/- is said to be advanced to an acquaintance and is said to have been arranged without any interest, this circumstance has also been taken into account. The manner in which the promissory note, being a printed form, is filled out and the evidence of P.W.2 mentioning one *Raja* as witness, which is doubtful, are other circumstances to be taken into account. When the accused is said to have given a cheque only in the year 2017 for a borrowal of the year 2015, especially when the amount is only Rs.2,50,000/-, the same was also considered. The accused also examined his brother, who deposed that he was present when the principal amount of the earlier loan transaction was settled. It can be seen that even before the presentation of the cheque on 18.09.2017, the letter Ex,D1 was given by the accused on 06.02.2017 itself. Of course, as

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contended by the learned counsel for the appellant, it was not for one particular cheque, but the fact remains that the payment was stopped in February 2017 itself.

14. All the above evidence let in on behalf of the accused can firstly be considered as evidence to the level of preponderance of probability in rebutting the presumption. Secondly, when the loan is said to be a sum as high as Rs.5,40,000/-, when there is no explanation on the side of the complainant regarding the difference in ink and handwriting with reference to the amount, name and date and when there is no further proof placed on record to show that the complainant had the cash on the particular date for advancing it to the accused, it can be seen that the finding of the Trial Court that not only the presumption stands rebutted but that the accused was successful in creating a credible doubt with reference to the case of the complainant cannot be termed as a perverse or implausible view.

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

25.11.2025

Neutral Citation: Yes/No

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To

1. The Principle District & Sessions Judge, Vellore,

2. The Judicial Magistrate, Fast Track Court, Vellore.

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D.BHARATHA CHAKRAVARTHY, J.

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