



CrI.A.No.313 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 10.07.2025

CORAM:

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

CrI.A.No.313 of 2010

M.Ramadoss Rao

...Appellant

Vs.

1. N.Chandramohan

2. The Propreitor,
Kowsalya Traders,
residing at Bhavasa Kalyana Mandapam,
Ponniamman Koil Street,
Amburpet, Vaniambadi- 635 751.

...Respondents

PRAYER: Criminal Appeal filed under Section 378(1) of Cr.P.C, to set aside the judgement in C.C.No.84 of 2003, dated 15.02.2010 on the file of the Principal District Munsif Cum Judicial Magistrate, Vaniambadi.

For Appellant : M/s.A.G.Vedavikas for Ms.V.Srimathi

For Respondents : Ms.K.Nithyashree
Legal Aid Counsel



CrI.A.No.313 of 2010

ORDER

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This appeal is directed against the judgment dated 15.02.2010 made in C.C.No.84 of 2003 on the file of the learned Principal District Judge-cum-Judicial Magistrate, Vaniyambadi. By the said judgment, the trial Court found the respondents herein not guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant is that the accused was known to the complainant and they had transactions between them. In August 2002, the accused borrowed a sum of Rs.1,20,000/- as a hand loan and in discharge of the said liability, issued the subject matter cheque. When the cheque was presented, it was dishonoured. A due demand notice as per Section 138 of the Negotiable Instruments Act, 1881 was issued and there was neither any reply nor any payment and hence the complaint was filed.

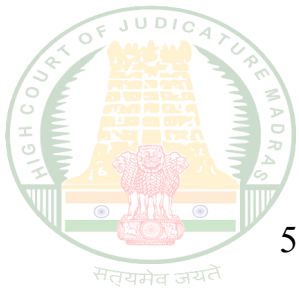
3. After recording the sworn statement, summons were issued to the respondents/accused. After appearance and furnishing of copies, the accused denied the allegations and stood trial. The complainant, in order to prove the charges, examined himself as P.W.1, one *Parameswaran* was examined as



Crl.A.No.313 of 2010

P.W.2, and *Vishwanathan* was examined as P.W.3. Exhibits P1 to P6 were also marked. Upon being questioned under Section 313 of the Code of Criminal Procedure regarding the incriminating evidence on record, the accused denied the same as false. Thereafter, on behalf of the defence, the first accused was examined as D.W.1, and one *Shanmugam* was examined as DW2. Ex.D1 was marked on behalf of the defence. The trial Court thereafter considered the case of the parties. It found that though the complainant stated the cheque was issued in discharge of liability, he did not immediately present the same after obtaining the cheque and instead presented it only toward the end of its validity. The Court considered this delay as one of the circumstances.

4. The second reason given by the trial Court is that it is the specific case of the accused that Ex.D1 receipt was issued in respect of the said loan and that the loan stood discharged. The Court believed the version of the accused, particularly considering the evidence of D.W.2 *Shanmugam*, who witnessed the receipt. On the strength of said findings, the Court concluded that the accused is not guilty of an offence under Section 138 of the Negotiable Instruments Act. 1881, Against which, the present appeal is filed.



CrI.A.No.313 of 2010

WEB COPY

5. Heard *Mr.A.G.Vedavikas*, the learned Counsel appearing for the appellant and *Ms.K.Nithyashree*, the learned legal Aid Counsel appearing on behalf of the respondents.

6. The learned counsel appearing for the appellant/complainant would first submit that when the complainant has pleaded that the cheque was issued in discharge of liability, the mere fact that the cheque was presented at the end of the validity period cannot, by itself, be a ground for acquitting the accused. It was open to the complainant to wait for some time to enable the accused to make the payment. Further, it was only at the request of the accused that the complainant waited and the cheque was presented within the validity period. When the signature in the cheque is admitted by the respondents/accused, the presumption under the law favors the complainant. Therefore, the trial Court ought to have held that the cheque was issued in discharge of a legally enforceable liability and ought to have convicted the accused.

7. The case of the complainant regarding Ex.D1 is that he is a theatre owner and for the purpose of film screenings, he always keeps signed letterheads ready so that it can be issued as a permission for screening of the film to the various persons. When the complainant specifically claims that one



such letterhead was misused by the accused, the trial Court was not justified in holding Ex. D1 as a receipt for repayment. If that would have been the case, the respondents/accused would not have left the cheque in the custody of the complainant even after the alleged receipt date. The very fact that no steps were taken by the respondents/accused to retrieve the cheque until it was deposited would itself show that Ex.D1 is nothing but a concocted document. He would further submit that if that be the case, the accused also very well replied to the demand notice that was issued under Section 138 of the Negotiable Instruments Act, 1881.

8. For all the above reasons, the learned counsel would pleads that the trial Court erred in acquitting the accused. He further submits that the very conduct of the accused in delaying the trial and producing Ex.D1 would also be considered by this Court.

9. Per contra, the learned counsel appearing on behalf of the respondents/accused, pointing to various findings of the trial Court, submits that it is open to the respondents to rebut the presumption under Section 138 of the Negotiable Instruments Act, 1881. By duly cross examining the complainant and also pointing out the circumstances of the case, where the



Crl.A.No.313 of 2010

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loan is alleged to have been taken at an earlier date and the cheque is said to have been given at a later date in discharge of liability, the normal conduct of any person would be to deposit the cheque. That was only one of the circumstances considered by the trial Court. Secondly, when Ex.D1 has been duly proved, as the witness to the receipt has been examined as D.W.2, and when D.W.2 has categorically deposed that the complainant had in fact accepted the money and had promised to return the cheque orally and when the complainant does not dispute the signature in Ex.D1, the trial Court was right in acquitting the accused.

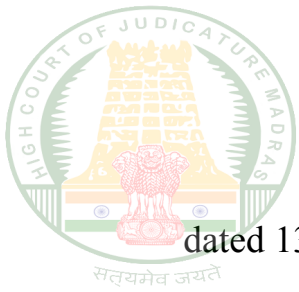
10. The learned counsel appearing for the respondents also relied upon the following judgments of this Court in support of her contention:-

(i) *N. Gopalakrishnan vs. S. Chandra Mohan* in Cr.R.C.No. 663 of 2019 dated 30.03.2023

(ii) *P. Gnanambigai vs. S. Krishnasamy & Another* in Crl.R.C.No.1307 of 2005 dated 23.12.2010

(iii) *G. Karthikeyan vs. M/s. P.K. Systems* in Crl.R.C. No. 609 of 2017 dated 22.07.2022.

(iv) *G.Nachimuthu, Prop. M/s. Ess Pee International (Export Division), Tiruppur vs. Mehala Machineries India Limited* in Crl.R.C. No. 1074 of 2016



Crl.A.No.313 of 2010

dated 13.04.2018.

WEB COPY(v) *N. Lakshmi vs. P. Damodarasamy in Crl.A.No.554 of 2014 dated 22.03.2018.*

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

12. Even agreeing with the learned counsel appearing for the appellant that the mere belated deposit of the cheque cannot be held against the complainant, especially when no reply was issued to the demand notice, when it is the specific case of the accused that the liability has been discharged and a receipt has been duly executed by Ex.D1 and when the witness to the receipt, namely *Shanmugam*, was examined as D.W.2, it is the contention of the learned counsel for the appellant that the receipt was prepared on a signed blank letterhead belonging to the complainant. However, after considering the oral depositions of the witnesses and their demeanour and after examining the original receipt, the trial Court has specifically rendered a finding that Ex.D1 does not appear to be interpolated or typed later. When the trial Court appreciates the oral and documentary evidence on record and enters a finding that the defence of the accused is a probable defence unless the same is



CrI.A.No.313 of 2010

perverse or finding which is on the face of it unsustainable in an appeal against acquittal, this Court cannot overturn the said finding even if an alternative view is possible.

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

10.07.2025

Neutral Citation: Yes/No
nsl

To

The Principal District Munsif Cum Judicial Magistrate,
Vaniambadi.



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Crl.A.No.313 of 2010

D.BHARATHA CHAKRAVARTHY, J.

nsI

Crl.A.No.313 of 2010

10.07.2025