



Criminal Appeal No.338 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 27.06.2025

JUDGMENT PRONOUNCED ON: 07.07.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No.338 of 2010

K.S.Subramaniam

.. **Appellant/Complainant**

Vs.

A.Rangarajan

.. **Respondent/Accused**

Prayer: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to set aside the Judgment dated 29.03.2010 made in STC No.1935/2007 on the file of the Judicial Magistrate No.1, Namakkal.

For the Appellant : Mr.Harish Chowdhry

For the Respondent : Mr.C.D.Johnson

J U D G M E N T

This Criminal Appeal is directed against the Judgment of the Judicial Magistrate No.1, Namakkal, dated 29.03.2010 in STC No.1935 of 2007. By the



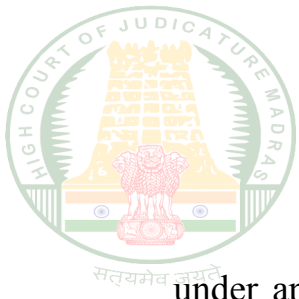
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said Judgment, the respondent/accused herein was acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the appellant/complainant is that the respondent/accused had borrowed the hand loan of Rs.3,20,000/- for his agricultural expenses and for his business in automobiles. In discharge of the liability to repay the loan on 28.05.2007, the accused had issued a cheque for a sum of Rs.3,20,000/- in favour of the complainant. Upon presenting the said cheque for collection, the same was returned dishonoured on 28.05.2007 with an endorsement 'account closed'. The complainant issued a legal notice dated 11.06.2007 which was received by the accused on 20.06.2007. Since there was no repayment, the complaint was filed. Upon issue of summons, the accused denied the charges and stood trial.

3. The complainant in order to prove the allegations examined himself as P.W.1 and Exhibits P.1 to P.5 were marked. Upon being questioned under Section 313 of Cr.P.C., the accused denied the incriminating evidence against him as false. Thereafter, no evidence was let in on behalf of the defence and the Trial Court proceeded to hear the learned counsel on either side and by the Judgment



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under appeal, considered the various decisions on the proposition, whether the return of cheque with an endorsement 'account closed' would come within the purview of the Section 138 of the Negotiable Instruments Act, 1881 and held that the same will not come within the said provision.

4. The Trial Court further gave a finding that in the instant case, the accused has not admitted the signature expressly and therefore, no presumption would also arise under the Negotiable Instruments Act, 1881 and on that ground also acquitted the accused.

5. Heard, *Mr.Harish Chowdhry*, the learned counsel appearing on behalf of the appellant/complainant and *Mr.C.D.Johnson*, the learned counsel appearing on behalf of the respondent/accused.

6. The learned counsel appearing for the appellant/complainant would submit that the legal position in this regard has since been settled that even if the cheque is dishonoured on the ground that 'account closed', the same would fall within the mischief of Section 138 of the Negotiable Instruments Act, 1881,



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provided the complainant to prove that the cheque was issued in discharge of a subsisting liability and only to evade the cheque being dishonoured with the reason of inception funds, the cheque was issued from a closed account.

7. Secondly, the learned counsel would submit that in this case, the accused never denied his signature. As a matter of fact, his case in the cross examination reveals that the cheque which was issued in favour of one *Asokan* is being used by the present complainant, in collusion with the said *Asokan*. Therefore, the second finding of the Trial Court is also incorrect.

8. *Per contra*, *Mr.C.D.Johnson*, the learned counsel appearing on behalf of the respondent/accused would submit that the Trial Court has rightly considered that there was no proof for the loan being taken by the accused and in the absence of proof, for such an higher amount of Rs.3,20,000/-, this Court should not upturn the findings of acquittal into one of conviction.

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



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10. Firstly, the legal position with regard to the fact that even if the cheque was returned on the ground of 'account closed' would also attract the Section 138 of the Negotiable Instruments Act, 1881. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in *M/s Laxmi Dychem Vs. State of Gujarat & Ors.*¹. Therefore the finding in this regard has to be upturned as incorrect in law.

11. As far as the second finding relating to the presumption is concerned, once the cheque is presented and the signature is not denied, the presumption operates in favour of the complainant and it is for the accused to rebut the presumption. As a matter of fact, the Trial Court has found that the accused has not admitted his signature.

12. The specific cross examination is that the accused did not issue the cheque to the complainant and on the instructions of the said *Asokan*, the complainant has filed a false case. A reading of the entire cross examination, it

¹ (2012) 13 SCC 375



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will be clear that this is not a case where the accused has expressly denied his signature in the subject matter cheque. Therefore, the finding of the Trial Court as if the accused has denied the signature is again perverse and against the material evidence on record, therefore, the Judgment of the Trial Court is liable to be interfered with.

13. Except for the suggestion during cross-examination that the cheque was misused at the instance of *Asokan*, no inroads were made in the cross-examination, nor was any other evidence adduced to demonstrate that the complainant had misused the cheque. In the absence thereof, when the accused has miserably failed to rebut the presumption to the level of preponderance of probabilities, by virtue of the Negotiable Instruments Act, 1881, it can be presumed that the cheque has been issued for a valid debt and therefore, upon dishonour thereof, the accused is liable to be convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881.

14. Now, considering the punishment, in view of the efflux of time, I am of the view that the respondent / accused be directed to pay the cheque amount



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of Rs.3,20,000/- within a period of one month from the date of receipt of the order, failing which, he has to undergo the Simple Imprisonment for a period of one month.

15. In the result,

(i) this CrI.A.No.338 of 2010 stands allowed. The Judgment dated 29.03.2010 made in STC No.1935/2007 on the file of the Court of the Judicial Magistrate No.1, Namakkal, is set aside;

(ii) the respondent / accused is convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881 and the sentence is awarded as follows:

“The respondent / accused shall pay the cheque amount of Rs.3,20,000/- on or before 31.08.2025 to the appellant / complainant, failing which the respondent / accused shall be committed to undergo Simple Imprisonment for a period of one month”.

(iii) the respondent / accused shall directly pay the appellant / complainant the said sum of Rs.3,20,000/- and a joint memo/receipt thereof shall be filed before the Trial Court on or before 31.08.2025, failing which the Trial Court



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shall issue warrant to commit the respondent / accused into prison to undergo the sentence.

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Neutral Citation : Yes/No

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To

1.The Judicial Magistrate No.1, Namakkal.

2.The Section Officer
Criminal Section
High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

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