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CrI. A. No.711 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2025

CORAM

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**CrI. A. No.711 of 2022**

D.Kalaiselvi  
W/o.Late.V.Deivasigamani,  
No.24, Ponnann Street,  
Purasawalkam, Chennai-600 007. ... Appellant/ Complainant

Vs.

C.Sekar,  
S/o.M.Chinnakannu,  
No.2, 3<sup>rd</sup> School Street,  
Virugambakkam, Chennai-600 092. ... Respondent(s)

**PRAYER:** Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure praying to call for the records in C.C.No.3000 of 2016 on the file of Fastrack Court No.1, Magistrate Level, Egmore at Allikulam and set aside the order dated 26.02.2021, acquitting the respondent herein of the offence under Section 138 of the Negotiable Instrument Act.

For Appellant(s) : Mr.K.Balasubramaniam

For Respondent(s) : Mr.K.Govindan  
Legal Aid Counsel

**ORDER**

This appeal is filed against the judgment of the learned Metropolitan Magistrate - Fast Track Court – 1, Allikulam, Chennai, dated 26.02.2021



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made in C.C.No.3000 of 2016. By the said judgment, the Trial Court acquitted the respondent accusing of an offence under Section 138 of the Negotiable Instruments Act. This is a private complaint filed by the complainant under Section 200 of Code of Criminal Procedure, alleging an offence under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that the accused is the friend of the brother of the complainant. For his business purpose, he requested a loan in the month of December, 2015, promising to repay the same with a period of two months. Accordingly, the complainant advanced a sum of Rs.6,00,000/- (Rupees six lakhs) in cash at her home and in discharge of the liability, on the same date the accused issued the subject matter cheque dated 15.02.2016 for a sum of Rs.6,00,000/-. Upon being presented, the same returned dishonoured with the endorsement “funds insufficient”. Thereafter, a statutory notice was issued demanding the amount due under the cheque. Since there is no payment, the private complaint is filed. Upon recording a sworn statement the complaint was taken on file, summons were issued and copies were furnished. Upon questioning, the accused denied the allegations. In the Trial, in order to bring home the charge, the complainant examined herself as P.W.1. The subject matter cheque was marked as Ex.P1. The

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memo of dishonour was marked as Ex.P2. The statutory notice was marked as Ex.P3. Acknowledgment card was marked as Ex.P4. Upon being questioned under Section 3B of the Code of Criminal Procedure about the incriminating evidence on record, the accused denied the same as false. Thereafter, accused examined himself as P.W.1 and the notice issued on behalf of accused was marked as Ex.D1. The counter foil book and the cheque book belonging to the accused was marked as Ex.D1A and photocopy of a bond written in stamp paper is marked as Ex.D2. Thereafter, the Trial Court considered the case of the parties. The Trial Court considered the fact that the complainant was a housewife and was not paying any income tax and her averments relating to her capability and from where the amount was mobilised by her and considering the fact the accused has pleaded about borrowing only a sum of Rs.3,00,000/-, that too at the instance of her brother and thereafter it is pleaded that the amount was repaid but however, the cheque was misused, the Trial Court held the defense of the accused as probable and the accused rebutted presumption to the level of preponderance of probability and granted the benefit of doubt and acquitted him. Aggrieved thereby, the present appeal has been filed.

3. Learned counsel for the appellant by taking this Court through the



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entire evidence on record firstly would submit that as far as Ex.D2 bond is concerned, the same is a photocopy marked with objection. Secondly, he would submit that in the chief examination of the accused, he has taken a different stand that with reference to payment of lease amount to the brother of the complainant, accused issued cheque. But, however, in the cross-examination, he took a difference stand that he has borrowed a sum of Rs.3,00,000/- by virtue of Ex.D2. Absolutely the case of the accused is irreconcilable even the reply notice was not given within time and only after summons was served in the complaint Ex.D2 notice was given after recall of NBW. Even in the same, a different version is given, thus, accused attempted to hoodwink the Court by telling lies. Absolutely no defence is made out much less to the level of preponderance of probability. When the signature in the cheque is admitted and when the complainant has duly proved the other ingredients, presumption under the Negotiable Instruments Act would arise in complainant's favour. Considering the nature of the amount, the Trial Court ought to have believed the version of the complainant and convicted the accused. In a case under Section 138 of the Negotiable Instruments Act, mere raising of a doubt itself is not enough. In the scheme of things, accused should have let in credible evidence. In the absence thereof, on the



presumption alone the case of the complainant is liable to be upheld and accused is liable to be convicted.

4. Per contra, learned Senior Counsel appearing on behalf of the accused would submit that the case of the complainant itself is doubtful. The complainant had different answers with reference to her capability and also on how she had mobilised the amount. When she was cross-examined by producing Ex.D2, she had denied the same but however, it must be seen that only for the sum of Rs.3,00,000/- which was paid and it was repaid, the cheque was issued as security and the same was being belatedly misused by the complainant.

5. I have considered the rival submissions made on either sides and perused the materials placed on record.

6. Firstly, even though the learned counsel for appellant would argue with reference to the weakness of the defense of the accused, first the case of the complainant has to be considered. It is not the case of the complainant that the accused is a relative or complainant's friend. The complainant has



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categorically stated that the accused is only an acquaintance and friend of her brother. Secondly, it was not pleaded by the complainant in the complaint or in the statutory notice or in the chief evidence that the amount of Rs.6,00,000/- was lent to the accused for any interest.

7. The case of the complainant is that the accused borrowed the sum as a hand loan and promised to repay within two months and issued a post dated cheque on the same date. In this regard, two very important facts have to be noticed. It is not the case of the complainant that the accused has filled up the entire cheque and has given it to her. It is only the signature which is said to be that of the accused and the details in the post-dated cheque namely the amount, date, name etc., are not filled up in the handwriting of the accused. Second most important thing that the complainant states is that she had managed to scramble the total amount of Rs.6,00,000/- from the two lakhs she borrowed and kept for her daughter's wedding and other small savings from the income and also by pledging the jewels she raised the balance amount and paid for the accused. That defies any logic or reasoning especially when the accused is not even her friend or relative and the fact that she had pledged her jewels for interest and lent the loan without interest



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is to be considered. Further, the amount is said to have been advanced in the year 2015, the amount is Rs.6,00,000/-. When such a huge amount is being lent without any document whatsoever and even the cheque is not entirely filled up by the accused, the approach by the Trial Court in holding that by due cross-examination the accused has rebutted the presumption and in the absence of any further proof, granting benefit of doubt to the accused cannot be said to be a perverse view or an impossible view to be upturned in an appeal against acquittal.

8. Accordingly, the appeal is without any merits and the same is dismissed. No costs.

**05.11.2025**

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Index: Yes/No  
Speaking/ Non-Speaking order  
Neutral Citation: Yes/No

**D. BHARATHA CHAKRAVARTHY, J.**

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To:

1.The Metropolitan Magistrate  
Fast Track Court – 1,  
Egmore, Allikulam, Chennai.

2.The Public Prosecutor,  
Madras High Court.

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