



Crl.A.No.581 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

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Mrs.Seetha

...Appellant/Complainant

-Vs-

1.M/s.Raagav Tourist Service,
rep. By its Proprietor,
Mr.Vasu,
S/o.Ramanujam,
No.R.40 A/12, TNHB Complex,
Ambattur Estate Main Road,
Mogappair, Chennai -37.

2.Mr.R.Vasu

...Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, against the judgment dated 16.02.2022 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, in C.C.No.272 of 2019.

For Appellant : Mr.V.Perarasu

For Respondents : Mr.S.Suresh



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JUDGMENT

This appeal is filed against the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, dated 16.02.2022 made in C.C.No.272 of 2019. By the said judgment, the Trial Court has acquitted the respondents/accused for an offence under Section 138 of the Negotiable Instruments Act.

2. This is a private complaint filed by the appellant herein under Section 200 of the Code of Criminal Procedure complaining of an offence under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant is that the accused was known to the complainant and her husband for over a period of seven years. Previously the complainant had lent certain amounts and had also been repaid and in that manner the accused gained the confidence of the complainant and her husband. While so, in the year 2017 they sold the property at Ayyappa Nagar, Ayyapakkam Village, Avadi Taluk, Tiruvallur and were having the sale consideration in their hands. At that time the accused approached them and sought a loan of a total sum of Rs.40 lakhs. The complainant lent a sum of Rs.20 lakhs and her husband lent another sum of Rs.20 lakhs in the last



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week of December 2017. After repeated demands made by the complainant and her husband the accused issued the subject-matter cheque dated 25.10.2018 for a sum of Rs.20 lakhs in her favour and another cheque in favour of her husband. When the cheque was presented by the complainant the same was returned dishonoured with an endorsement stating “Drawer's Signature Differs”. A statutory notice was also issued on 03.11.2018 which was received by the accused on 05.11.2018. However, no payment was made within the period of fifteen days and thereafter the private complaint was lodged.

4. Upon recording of the sworn statement summons was issued. The accused appeared and upon furnishing of copies and questioning denied the allegations and stood trial. In order to prove the charge, the complainant examined herself as PW1 and the cheque dated 25.10.2018 was marked as Ex.P1; the return memo dated 26.10.2018 as Ex.P2; the legal notice dated 03.11.2018 as Ex.P3; and the sale deed bearing Doc.No.16450 of 2017 as Ex.P4. When, upon being questioned about the incriminating evidence on record under Section 313(1)(b) of the Code of Criminal Procedure, the



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accused denied the same as false. Thereafter, no evidence was led on behalf of the defence.

5. The Trial Court considered the case of the parties. Since the original of the acknowledgment card of receipt of the legal notice was not produced and the photocopy that was sought to be marked was objected to and it was refused to be marked, the Trial Court held that the complainant failed to prove the service of the legal notice. Secondly, the Trial Court held that by cross-examination of PW1, the accused had also rebutted the presumption to the level of preponderance of probability and on that ground also gave the benefit of doubt to the accused and acquitted him.

6. Mr.V.Perarasu, learned counsel appearing on behalf of the appellant, would submit that the fact that the complainant had the money is proved by marking the sale deed under Ex.P4. When the original acknowledgment card was presented and was produced for perusal at the time of recording of the sworn statement, merely because the same was misplaced, the Trial Court erred in refusing to mark the photocopy. It must be seen that it is not even the case of the accused that no notice was served;



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no question was put to PW1 regarding the service of the statutory notice. In the absence of the same, the Trial Court ought to have held that the complainant proved the service of the statutory notice and the finding in this regard is erroneous. With reference to the liability, PW1 and her husband are illiterate persons and innocuously certain answers are given by PW1 but, however, when relevant questions were asked relating to advancing of the loan and the grant of the cheque, PW1 stood her ground that they had money on account of the sale (Ex.P4) and out of the sale consideration they had advanced the loan and only in repayment thereof the cheque was issued. Therefore, the Trial Court ought to have convicted the accused. He would submit that the poor complainant has been defrauded of a huge sum by the accused by reason of her lending and the Trial Court did not consider the same and left the complainant remediless.

7. Per contra, the learned counsel appearing on behalf of the respondents/accused, by pointing out the cross-examination, would submit that in this case it is the case of the accused that he had left the blank cheque during a chit transaction. When PW1 was cross-examined she categorically admitted that she had not given any money for interest. Secondly, even the



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sale by way of Ex.P4, when cross-examined, was admitted that they had pledged the jewels with the auditor and out of the sale consideration money was also paid and the jewels were also redeemed. Therefore, the capability to advance such a huge sum is also not proved before the Court. To top it all, PW1 has admitted that it was only her husband who had filled up the cheque. Therefore, when it is not the case in the complaint that the accused had given the blank cheque with authority to the complainant's husband to fill up the same and present it for collection, this crucial admission goes to the root of the matter and the Trial Court is right in acquitting the accused. This apart, when the accused has cross-examined that the complainant's husband was in the habit of getting a blank cheque at the time of entering into chit transactions, PW1 has admitted the same. In view thereof the Trial Court has rightly concluded that the case of the accused is probable and given the benefit of doubt.

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



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9. As rightly contended by the learned counsel for the appellant, the finding of the Trial Court regarding the issue of statutory notice cannot be accepted. When it is stated by the complainant that the original acknowledgment card is misplaced and the photocopy was sought to be marked, the same was rejected by the Trial Court. To top it all, during the entire cross-examination of PW1 there was no whisper on behalf of the accused that no notice was ever served on the accused. Therefore, I am not in agreement with the finding relating to the same. However, with reference to merits in this case the amount is said to have been advanced in the year 2017 the total amount is said to be Rs.40 lakhs. Such a huge amount is said to have been advanced without any document whatsoever. Secondly, PW1 has also admitted that it was not also for interest. When the complainant and her husband sold the house, it fails the reason as to why they would sell the house only to advance money to the accused without even any interest, especially when such a huge amount was paid. Thirdly, it is the averment in the complaint that a sum of Rs.60,000/- was paid towards interest and that goes contrary to the averment in the legal notice. The accused has requested the complainant to adjust the amount either towards interest or towards principal. It is not the case of the complainant in the complaint or the



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statutory notice that the cheque was handed over with authority to fill up and present it to the bank. Whereas, in the cross-examination it is admitted that it was only the complainant and her husband who filled up the cheque. Further, it is also admitted that the complainant's husband was running a chit transaction. It is further admitted that the accused was also a member of the chit transaction in the year 2017. It is further admitted that the complainant's husband used to take a blank cheque from every subscriber while entering into the chit transaction.

10. In view of all the admissions the Trial Court has rendered a finding that the case of the accused seems to be probable and the same cannot be held to be perverse or impossible.

11. In view thereof, in an appeal against acquittal, this Court is unable to upset the findings of the Trial Court. Accordingly, finding no merits, the criminal appeal stands dismissed.

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cda
Index : No
Speaking Order



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To

The Judicial Magistrate,
Fast Track Court (Magisterial Level), Ambattur.



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D.BHARATHA CHAKRAVARTHY, J.,

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