IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.11.2025

CORAM:

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

Crl.A.No.853 of 2022

R.Rajasekar ... Appellant / Respondent / Complainant

-Vs-

V.Nandakumar ... Respondent / Appellant / Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. Praying to call for the records and set aside the judgment in C.A.No.92 of 2021 dated 28.02.2022 on the file of IV Additional District and Sessions Judge, Coimbatore, reversing the conviction and sentence imposed in C.C.No.79 of 2018 dated 10.03.2021 on the file of the Judicial Magistrate Fast Track Court – I, Coimbatore.

For Appellant : Mr.S.Venkatesan

For Respondent : Mr.B.Nedunchelian

JUDGMENT

This Criminal Appeal is filed as against the judgment of the learned IV Additional District and Sessions Judge, Coimbatore dated 28.02.2022 made in C.A.No.92 of 2021. By the said judgment, the appellate Court reversed the judgment of the trial Court, namely, the learned Judicial Magistrate, Fast Track

Court – I, Coimbatore dated 10.03.2021 made in C.C.No.79 of 2018. By the said judgment, the trial Court found the respondent / accused guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo Simple Imprisonment for a period of six months and to pay compensation of Rs.7,50,000/- being the cheque amount and in default to undergo two months Simple Imprisonment.

2.This is a private complaint filed by the appellant / complainantt under Section 200 Cr.P.C., complaining of an offence under Section 138 of the Negotiable Instruments Act, 1881.

3.The case of the complainant is that, the accused is known to the complainant, to discharge the liability, the accused has issued a cheque dated 18.05.2017 for a sum of Rs.7,50,000/- and upon being presented for collection, the said cheque returned dishonoured with an endorsement "Funds Insufficient". Thereafter, statutory notice was issued on the respondent / accused calling upon to pay the cheque amount due. The amount was not paid within the 15 days time and hence, the private complaint was filed. Upon recording the sworn statement, the complaint was taken on file as C.C.No.79 of 2018. Upon issuing a summons and furnishing of copies, the accused was questioned, the accused denied the allegations and stood trial.

4.In order to bring home the allegations, the complainant examined himself as PW-1. The subject matter cheque dated 18.05.2017 was marked as Ex.P1. The return memo was marked as Ex.P2. The statutory notice was marked as Ex.P3 and the acknowledgment card was marked as Ex.P4. Upon being questioned about the incriminating evidence on record, the accused denied the same as false. Thereafter, the accused examined himself as DW-1 and one Chandramohan was examined as DW-2.

5.The trial Court considered the case of the parties. The trial court held that the evidence of the complainant that he was an employee and out of his retiral benefits, he had paid the amount to the accused as hand loan, since the accused was a friend of his son-in-law and in discharge thereof, the cheque was issued on 18.05.2017 is believable and even though the accused tried to project the defence has not proved the same to the level of preponderance of probability and accordingly, found the accused guilty of the offence under Section 138 of Negotiable Instruments Act and sentenced him as aforesaid.

6. Aggrieved thereby, the respondent / accused filed C.A.No.92 of 2021. Upon re-appreciation of evidence, the appellate Court took into account that it is the deposition of PW-1 that he advanced the loan to the accused towards the end

of the year 2014 and it is his further evidence, that he did not obtain pronote or any other document at the time of advancement of loan. He has initially deposed that, at the time of obtaining the loan, the accused issued the cheque and submitted that, in the event, the money is not paid the complainant can deposit the cheque and realise the amount. But however, in the further cross examination, the complainant had stated that the accused did not issue the cheque on the date of the obtaining loan, but one month thereafter. In the further cross examination, he has admitted that the cheque was issued on 18.05.2017 i.e., three years after the date of issue of loan.

7.Thus, the lower appellate Court found that the case of the complainant is not clear either the accused had issued a blank cheque or a postdated cheque for the complainant to fill up and present the same or as per the third version, the cheque is issued way after a period of three years. By adopting any version, especially when the complainant has also denied that he filled up the cheque, the version of the complainant is inherently ridden with controversies and has held that through such cross examination, the accused has rebutted the presumption. Once the presumption is rebutted even though the complainant has stated that he has withdrawn the money from his bank account and has paid the accused nothing was forthcoming from the complainant in proof of the same and granted the benefit of doubt to the accused and allowed the appeal against. Aggrieved by which, the present appeal is filed.

8.The learned counsel appearing on behalf of the appellant would submit that, firstly it has been denied by the complainant that it is the complainant who filled up the cheque and he has categorically stated that the accused who had filled up the cheque and given it to him. When the complainant has proved that he was employed and retired from employment and was having money out of the retiral benefits and when the signature in the cheque was admitted by the accused, then the presumption arises in favour of the complainant. Even though the accused raised a defence by examining himself and also examining one Chandramohan as DW-2, it can be seen that in the cross examination, the DW-1 had completely denied about the said defence and even the accused could not get any favourable answer. Even in the examination except for the ipse dixit absolutely no credible material is presented by them that the cheque was given as security only for the borrowal of DW-2. Absolutely nothing is produced regarding the discharge of the said loan or any document is produced in respect of the said transaction. The complainant also categorically cross examined DW-2 that DW 2 is the friend of DW-1 and only to save him from the case, he is letting in false evidence and the same are all not considered by the appellate Court and the appellate Court ought not to reverse the finding, especially when the trial Court has given a finding after due appreciation of evidence.

9.The learned counsel appearing on behalf of the respondent / accused would submit that the appellate court has duly appreciated the evidence and with reference to the issue of cheque when different versions are given by the complainant, the same throws grave doubt on the very transaction and in spite of specific cross examination, the complainant did not even file the bank statement or any other evidence in support of his claim and in the absence thereof, the appellate Court has rightly acquitted the accused.

10.I have gone through the entire evidence and also considered the submissions made by the learned counsel for the appellant. I am in agreement with the Appellate court that the complainant has made prevaricating statements through his evidence. Considering the background of the parties that the sum of Rs.7,50,000/- is a huge amount is admitted even by the complainant in the cross examination.

11.In that case, when he is supposed to have advanced the loan in the year 2014, it is the initial case of the complainant that at the time of borrowal itself the accused has issued a cheque. Even then, if there is an assertion that the accused had only filled up the cheque including the date in the cheque and all particulars, based on the cheque alone, the accused can be convicted. But that is not the case. The complainant thereafter went back from the statement and initially stated that the cheque was issued one month thereafter and in which case, as rightly pointed out that it should have been a postdated cheque or if the accused issued a cheque only after a period of three years after the loan was advanced, especially it is not pleaded that any part payment made. Thus, the case of the complainant becomes not only contradictory and makes the very transaction doubtful.

12.Even though there is no further corroborating evidence for the statements that are made in the box by DW-1 and DW-2, when the complainant himself has come up with different statements during the cross examination, especially when it is the specific pleading of the complainant that he has drawn the entire amount from the bank and he has given, the bank statement not been produced and the exact date of advancement of loan is not also mentioned in the evidence, no exception can be taken to the findings of the appellate Court.

13.In this case, it must be seen that, in the statutory notice and in the complaint, the complainant has not even come up with any version with reference to what is the liability, except to say that, in discharge of the liability, the accused has issued cheque.

14.For all the above reasons, the findings of the lower of appellate Court cannot be termed as a perverse finding or an impossible view and therefore, this

Court is unable to upturn the same in an appeal against acquittal and as such the appeal is dismissed.

05.11.2025

smv

Neutral citation : Yes/No

To:

1.The IV Additional District & Sessions Court, Coimbatore
2.The Judicial Magistrate [Fast Track Court No.1] @ Magistrate Level, Coimbatore.

D.BHARATHA CHAKRAVARTH, J.

smv

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