



CrI.A.No.139 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 05.06.2025

CORAM:

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

CrI.A.No.139 of 2012

A.Gubendran

...Appellant

Vs.

D.Nainar Mohammad

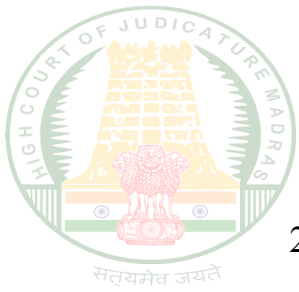
...Respondent

PRAYER: Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to allow this Criminal Appeal by setting aside the Judgment dated 10.10.2011 in C.C.No. 862 of 2010 on the file of Judicial Magistrate, Seergazhi.

For Appellant	: Mr.M.R.Sivakumar
For Respondent	: No appearance

ORDER

This appeal is filed by the complainant who filed the private complaint under Section 200 of the Code of Civil Procedure, complaining an offence under Section 138 of the Negotiable Instruments Act, as against the judgement of the Judicial Magistrate, Seergazhi dated 10.10.2011 in C.C.No. 862 of 2010.



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2. The case of the complainant is that the complainant advanced a loan of Rs.1,45,000/- to the accused and in repayment thereof, he issued the subject matter cheques which were returned with the endorsement "account closed" and when the complainant issued a notice on 23.03.2010 vide Ex.P4, even though the accused received vide Ex.P5 acknowledgement card, no reply whatsoever was given, neither was the amount paid and hence the complaint.

3. During the course of the trial, the complainant examined himself as P.W.1. and Ex.P1 to P5 were marked. On behalf of the accused, he examined himself as D.W.1 and Ex.D1 to D14 were marked. It is the defence of the accused that the cheques in question were left by way of security, since the accused and the complainant had business transaction, as the accused was having transaction in the name and style *Aleef Traders* with the complainant. They were dealing with dried fish and there were commercial transactions between them. The Trial Court, after appreciation of evidence, found that since there is no other documentary proof with reference to the advancement of loan, since the accused, by cross-examination and also by examining himself and marking the documents had provided the details of the commercial transactions and proved to the level of preponderance of probability that there is a likelihood that the cheque would have been issued



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as a security, at the time of entering into transactions, the Trial Court believed the version of the accused and acquitted the accused. Aggrieved thereby, the present appeal is filed.

4. Heard the learned counsel appearing on behalf of the appellant.

5. Taking this Court through the relevant portions of the judgment, he would submit that in this case, the accused had categorically admitted his signature on the cheque. The cheque is validly issued and was duly presented in the bank. The presumption in law is in favor of the complainant. Once the signature is not denied, the Trial Court ought to have held that it is issued for a valid consideration and ought to have convicted the accused. Over and above the same, when a notice of demand was issued by the complainant, not even a reply notice was issued by the accused and therefore the Trial Court ought not to have acquitted the accused.

6. Further, the plea of the accused is that he has left the cheque by way of security. However, nothing prevented the accused from demanding the cheques back if he had left the cheques by way of security. At no point of time, until the cheques were presented and notices were issued and the



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complaint was filed, the accused took any steps to get back the cheque which he pleads as security. Therefore, he would pray that this Court should upturn the finding into one of conviction, convict the respondent, and order that the entire cheque amount be paid to the complainant.

7. I have considered the said submissions made by the learned counsel for the appellant and perused the material records of the case.

8. Firstly, in this case, in the complaint, not even the particulars as to when the loan was granted is mentioned. Straightaway in paragraph No. 3, it is mentioned that the accused issued the cheque in repayment of a loan. Further, there is no other document that was produced by the complainant in support of the loan transaction. The entire case of the complainant is on the presumption. It is settled law that the presumption is rebuttable and the accused can rebut the presumption and the standard of proof required is preponderance of probabilities. The trial Court appraised the evidence on record and after considering Ex.D1 to D14 which are the commercial transactions, coupled with the finding that when the complainant claims that ten loads of dried fish were supplied by him and when the accused demonstrates that only three loads were supplied, the Trial Court found that in



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the backdrop of those transactions there was no probability of a separate loan transaction and that the case of the accused is more probable and rendered its finding. When the Trial Court appraises the evidence and renders a finding of acquittal, unless the same is perverse in nature, this Court, in an appeal against acquittal, will not interfere and upturn the said finding. In view thereof, I am unable to accept the submissions made by the learned counsel for the appellant on the sole ground of the accused had not issued a reply notice to the demand notice issued by the complainant.

9. In view thereof, finding no merits, this Criminal Appeal stands dismissed. No costs.

05.06.2025

Neutral Citation: Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

nsI

To
The Judicial Magistrate,
Seergazhi.

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