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Crl.A.No.557 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2025

CORAM:

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

Crl.A.No.557 of 2022

S.Rajamani

... Appellant / Respondent / Complainant

-Vs-

R.Kumar @ Sivakumar
Proprietor,
M/s.Durga Neunatic Tools,
B-23, Balan Nagar,
Masakalipalayam Road,
Peelamedu Post,
Coimbatore – 641 004.

... Respondent / Appellant / Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the judgment dated 24.01.2022 made in C.A.No.87 of 2021 on the file of the learned IV Additional District and Sessions Judge, Coimbatore, reversing the judgment dated 17.02.202 made in C.C.No.715 of 2013 on the file of the learned Judicial Magistrate – VI, Coimbatore.

For Appellant : Mr.S. Arjun

For Respondent : No appearance



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JUDGMENT

This appeal is filed as against the judgment of the IV Additional District and Session Judge coimbatore dated 24.01.2022 made in C.A.No. 87 of 2021. By the said judgment, the appellate Court reversed the conviction and sentence by the trial Court namely, the Judicial Magistrate - VI, Coimbatore vide judgment dated 17.02.2021 made in C.C.No.715 of 2013. By the said judgment, the trial Court found the accused guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo Rigorous Imprisonment for a period of one year and to pay the cheque amount of Rs.6,00,000/- as compensation.

2.The case of the appellant / complainant is that the appellant and the accused had business relations. The accused used to supply recondition rod to the complainant and the complainant used to attach and supply it back to the accused. Out of the said transactions, the accused and the complainant got acquainted to each other. While so, in order to develop his business at Andhra



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Pradesh, the accused borrowed sum of Rs.6,00,000/- promising to repay the same with interest at the rate of 18% per annum. In discharge of the said liability, the accused issued a cheque dated 08.07.2013 for the said sum of Rs.6,00,000/-. Upon the said cheque being presented, the same got returned with an endorsement 'No such account' and a statutory notice was issued. Instead of paying the amount, the accused issued a reply containing frivolous allegations. For which, a rejoinder notice was also issued. Thereafter, the above complaint was filed as a private complaint under Section 200 Cr.P.C., and the complaint was taken on file after recording of sworn statement. Upon service of summons and issue of copies, the accused denied the allegations stood trial.

3.In order to bring home the allegations, the complainant examined himself as PW-1 and exhibits P1 to P9 were marked. Upon being questioned about the material evidence on record under Section 313 of Cr.P.C., the accused denied the same. Thereafter, the accused examined himself as DW-1 and exhibits D1 to D6 were marked.



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4.The trial Court considered the case of the parties and agreed with the complainant that the other evidence projected by the accused by way of defence related to the business transaction. Whereas the instant cheque was issued, in discharge of his liability to repay the loan and accordingly found that, when the accused has not denied the signature and when the complainant duly discharged his initial onus by presenting the cheque and examining himself, the accused was found guilty of the offence under section 138 of the Negotiable Instruments Act and sentenced as above.

5.Aggrieved thereby, the accused preferred an appeal in C.A.No. 87 of 2021. The appellate Court considered the fact that the accused through his evidence have proved that, on every occasion, the accused had issued post dated cheques towards the transaction and the complainant has given it back after the transaction, as the accused has paid the amount due. The accused has also produced the Statement of Accounts in due discharge of liability stating that only a sum of Rs.1,43,650/- was due by the accused and this cheque which was issued in the year 2006, even before the closure of the account is belatedly filled up by



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the complainant himself and he is using the same. The lower appellate Court held that the version of the defence as probable and reversed the finding of the trial Court by giving the benefit of doubt to the accused.

6.Mr.S.Arjun, learned counsel appearing for the complainant would submit that when the accused had issued a reply notice trying to plead about the transactions relating to the business, a due rejoinder has been issued, whereunder it has been categorically reiterated that the issue of hand loan is different from the regular transaction. As a matter of fact, by the reading of the said rejoinder, it would be clear that the accused is due both in respect of Rs.6,00,000/- that is borrowed as hand loan and also the other amount that is due pursuant to the business transactions.

7.In the teeth of the same, merely because the accused had issued the old cheque voluntarily, the same cannot be put against the complainant. The complainant has duly filled up the same and presented it for collection and the cheque got dishonoured.



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8.The learned counsel would point out to the defence of the accused that on every occasion that he has paid the cash and got back the postdated cheques, which was given to the complainant. If that being the case, absolutely no explanation whatsoever is given from the accused, as to why he did not demand the subject matter cheque as and when he discharged the liability.

9.Further, in this case, it can be seen that the accused has categorically filled up the amount, in respect of the business transaction, including the date everything, in all those cheques, which is handed over by the accused to the complainant and there is absolutely no explanation whatsoever as to why this cheque alone was issued as a blank cheque. All these would only cumulatively prove that this cheque was issued in respect of the different transaction, that is the hand loan. Therefore, the lower appellate Court ought not have upset the findings of the trial Court, especially when the trial Court has duly appreciated the evidence on record and has arrived at the finding of the guilt.



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10.I have considered the said submissions made by the learned counsel the appellant.

11.As rightly argued by the learned counsel for the appellant, there are flaws in the case of the defence also. But in a criminal case, the weakness of the defence by itself would not fortify the case of the complainant. It is for the complainant to discharge his initial onus, so as to rely upon the presumption under the Negotiable Instruments Act and if the accused rebuts the defence, it is for the complainant to let in such further evidence in proof of the existence of the legally enforceable debt.

12.In this case, the categorical assertion of the complainant in the statutory notice, rejoinder and in the complaint is that, the accused had issued the cheque by duly dating it as 08.07.2013. However, in the cross examination, once the complainant had to accept that it is the complainant who has filled up all the details in the cheque including the date, name, amount etc., it can be seen that,



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only at that point, the complainant brings in a new case that the cheque was issued in the month of May 2013.

13.In that regard, there is inconsistency in the case of the complainant. If the cheque has been issued as a postdated cheque and if the accused has issued a blank cheque, why the complainant has filled up the amount exactly for the loan amount and the date was also filled up two months after the date of issue of the cheque, all remain to be explained by the complainant.

14.In this regard, when the accused has let in plausible evidence with reference to the other transaction, where under *prima facie* it is proved that the accused is in the habit of issuing postdated cheques / blank cheques to the complainant with reference to the business transaction.

15.In the absence of any other evidence, when the accused has rebutted the presumption by way of due cross examination, no exception can be taken to the finding of the Trial Court holding that the version of the accused is probable.



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When the finding of the lower appellate Court cannot be said to be an impossible view, this Court in an appeal against acquittal cannot upturn the said findings into one of the guilt. Accordingly, finding no merits, the Criminal Appeal is dismissed.

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Neutral citation : Yes/No



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D.BHARATHA CHAKRAVARTH, J.

smv

To:

- 1.The IV Additional District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate – VI, Coimbatore.

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