



Crl.A.No.556 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.06.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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T.N.Venkatesan

.. Appellant

Versus

Anthony Francis

.. Respondent

Prayer : Criminal Appeal filed under Section 378(4) of Cr.P.C., to set aside the order of acquittal passed by the learned Judicial Magistrate, (Fast Track Court), Vellore district in C.C.No.287 of 2011, dated 22.06.2012, on the file of the learned Judicial Magistrate, (Fast Track Court), Vellore district and convict the respondent and order for the payment of maximum compensation to the appellant herein under Section 357 of Cr.P.C.

For Appellant : Mr.S.Deivasigamani,
for Mr.V.Madhavan



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JUDGMENT

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This Criminal Appeal is filed aggrieved by the judgment of the learned Judicial Magistrate, Fast Track Court, Vellore district, dated 22.06.2012 made in C.C.No.287 of 2011. By the said judgment, the respondent/accused is acquitted for an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the appellant/complainant is that the accused borrowed hand loan by executing **Ex.P-1** promissory notice and in order to discharge the said liability, issued the subject matter cheque for a sum of Rs.1,48,000/- which includes the principal amount along with the interest and when the same was presented to the bank for collection, the same was returned with an endorsement 'insufficient funds' on 09.02.2010. The respondent/accused issued statutory notice on 28.02.2010 and even after receipt of the notice through certificate of posting, the respondent/accused did not repay the amount in time and hence the complaint.



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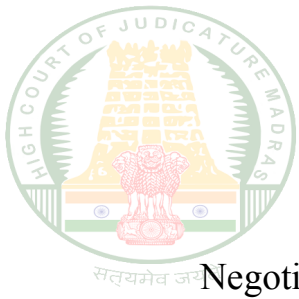
3. Upon issue of summons, the respondent/accused appeared before the Trial Court and denied the charge. In order to prove the case, the appellant/complainant examined himself as **P.W.1** and **Exs.P-1** to **P-7** were marked. The respondent/accused denied the evidence that is let in upon being questioned under Section 313 of Cr.P.C., and thereafter, no evidence was let in on behalf of the defence. Under the circumstances, the Trial Court considered the case of the parties and acquitted the respondent/accused. The Trial Court found that **Ex.P-1** promissory note was not witnessed by anybody and when it is mandatory under law that the document should be proved by a witness, in the absence of a witness to the promissory note in **Ex.P-1**, held that the said document as invalid. Further, it noticed that the promissory note is dated 06.02.2008 and is also beyond the period of limitation and there is no acknowledgment of debt. The said finding that the period of limitation is over, cannot be sustained as the promissory note is dated 06.02.2008 and the cheque was issued on 08.02.2010. Therefore, it is



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within the period of limitation and the said finding of the Trial Court is
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perverse in nature.

4. However, the Trial Court also considered the answer of the appellant/complainant with reference to various questions that were made relating to the cross-examination that if the records are produced relating to the financial transactions between him and his customers, the fact that the appellant/complainant had initial transaction with the wife of the respondent/accused and this unfilled promissory note was handed over at that time, will come to light and in view of the answer given by the appellant/complainant, held that the case of the appellant/complainant is not believable and to the level of preponderance of probability, the respondent/accused had dislodged the presumption under the Negotiable Instruments Act, 1881 and in the absence of any further proof to prove the debt, held that the appellant/complainant failed to prove the case and acquitted the respondent/accused of an offence under Section 138 of the



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Negotiable Instruments Act, 1881.

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5. Heard *Mr.S.Deivasigamani*, learned Counsel for the appellant/complainant.

6. As stated supra, even though one of the findings of the Trial Court is perverse in nature, there are other findings with reference to the validity of the promissory note and also the appreciation of the evidence relating to non-production of the accounts and the other answers given by the appellant/complainant that are taken into account by the Trial Court. In that view of the matter, I am unable to hold that the judgment of the Trial Court is completely perverse or wholly untenable and if the view taken by the Trial Court is a plausible view, then, this Court, in an appeal against acquittal, will not overturn the finding.

7. Accordingly, finding no merits, this Criminal Appeal stands



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dismissed.

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Neutral Citation : no
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To

The Judicial Magistrate,
Fast Track Court, Vellore.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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