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Crl.A.No.382 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.382 of 2016

Rajendra Prakash

.. **Appellant**

Vs.

P.Udaya Kumar

.. **Respondent**

Prayer: Criminal Appeal filed under Section 378 (4) of Cr.P.C., to set aside the Judgment of the Fast Track Judicial Magistrate – IV of George Town dated 04.01.2016 in C.C.No.2252 of 2008 acquitting the accused and allow this appeal.

For the Appellant : Service awaited

For the Respondent : Notice served



Crl.A.No.382 of 2016

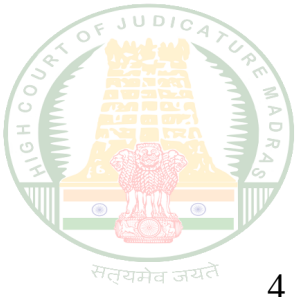
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JUDGMENT

This Criminal Appeal is filed challenging the Judgment passed by the learned Fast Track Judicial Magistrate – IV, George Town, Chennai, dated 04.01.2016 made in C.C.No.2252 of 2008. By the said Judgment, the Trial Court acquitted the respondent from the offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The parties are referred to as 'Complainant' and the 'Accused' as per the array in the Trial Court.

3. The case of the complainant is that the accused borrowed a sum of Rs.5 Lakhs on 10.05.2007 and in discharge of his liability issued a Cheque on 25.08.2007. The same was presented for collection on 12.02.2008, as per the request of the accused. However, the same was returned, dishonoured with an endorsement 'insufficient funds'.



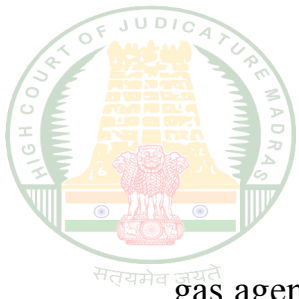
Crl.A.No.382 of 2016

WEB COPY

4. On 14.02.2008, a demand notice was issued, which was refused by the accused. Neither any amount was paid nor any reply was issued within the statutory time and as such the above complaint was filed. The sworn statement was recorded and the accused was summoned. Copies were furnished. The accused denied the allegations and stood trial. In order to prove the charge, the complainant examined himself as P.W.1 and marked documents in Exs.P1 to P4.

5. Upon questioned about the incriminating evidence on record under Section 313 of Cr.P.C., the accused denied the same as false. Thereafter, the accused examined himself as D.W.1 and marked documents in Exs.D1 to D11.

6. The Trial Court considered the case of the parties. The Trial Court further considered the fact that the manner of advancement of loan was not even mentioned in the complaint or in the demand notice. For the first time before the Court, it was mentioned on behalf of the complainant that the loan amount of Rs.5 Lakhs was given as cash. The Trial Court then considered the background of the parties. Even though the complainant testified that he was working in a



Crl.A.No.382 of 2016

WEB COPY

gas agency and drawing a sum of Rs.20,000/- p.m., no such proof was filed and the complainant has not let in any evidence to prove the source of such a huge amount of Rs.5 Lakhs. The Trial Court then considered the defence of the accused that he had transactions with one Sub Inspector of Police, by name, *Kabilan* and with reference to the said transactions, already he has executed certain plots in their favour and demanding more plots, the Cheque which is issued as a security to the said *Kabilan* was misused. The accused examined himself as D.W.1 and those transactions were marked as Exs.D1 to D11 and the complainant was cross examined in details, with reference to the same. Therefore, the Trial Court held that by cross examining the complainant and also by letting in evidence, the accused has rebutted the presumption and in the absence of any other proof by the complainant towards the source or advancing the money of Rs.5 Lakhs, granted the benefit of doubt to the accused and acquitted him. Aggrieved by the same, the Appeal is filed.

7. The Appeal is filed on the ground that the learned Trial Judge erred in holding that there is no legally enforceable debt and the presumption operates in



Crl.A.No.382 of 2016

WEB COPY

in favour of the complainant and the complainant need not adduce any further proof. Even though it is mentioned that the document was handed over to one *Kabilan* and his family members, there is nothing to show the nexus between the *Kabilan* and the complainant. Similarly, the accused has not let in further evidence to prove the said allegations.

8. I have considered the said grounds raised on behalf of the appellant.

9. Even though in every case, the complainant need not prove the source of funds or his capability, in a given case where the attending circumstances are such that, it creates a genuine doubt, in the minds of the Court and such an approach adopted by the Trial Court cannot be held to be perverse. The amount of loan, in this case was Rs.5 lakhs, in the year 2008 and considering the background of the parties, the amount was on the higher side. No other proof is provided and there is no pleading by the complainant, as to how he came to be vested with such huge sum as cash. Even after the cross examination of the complainant, neither in the cross examination nor thereafter any further evidence



Crl.A.No.382 of 2016

is provided by the complainant.

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10. In view thereof, when the accused has successfully rebutted the presumption and in the absence of the further proof, the view taken by the Trial Court cannot be held to be perverse view or impossible view and therefore, the same cannot be upturned in an appeal against acquittal and finding no merits, the Criminal Appeal stands dismissed.

12.08.2025

Neutral Citation : Yes/No

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To

1.The Fast Track Judicial Magistrate – IV,
George Town, Chennai.

2.The Section Officer
Criminal Section

High Court of Madras.

3.The Section Officer
VR Section

High Court of Madras.

Page 6 of 7



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Crl.A.No.382 of 2016

D.BHARATHA CHAKRAVARTHY, J.

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Crl.A.No.382 of 2016

12.08.2025

Page 7 of 7