



Crl.A.No. 831 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No.831 of 2022

J.Dhakshinamoorthy

...Appellant

Vs.

K.Dhanapal

..Respondent

Prayer: Criminal Appeal under Section 374(2) of Cr.P.C., as against the judgment passed by the learned 1st Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.143 of 2018 dated 31.01.2019 and confirming the judgment and sentence passed in C.C.No.81 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court), Vellore, Vellore District dated 03.10.2016.

For Appellant : Mr.Kannadasan E.

For Respondent : Mr.P.Govindarajan



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JUDGMENT

This Criminal Appeal is filed against the concurrent judgments of the learned Judicial Magistrate, (Fast Track Court), Vellore dated 03.10.2016 made in C.C.No.81 of 2014 and the learned 1st Additional District and Sessions Judge, Vellore in Crl.A.No.143 of 2018 dated 31.01.2019. By the said judgments, the respondent / accused was acquitted for the offences under Section 138 of the Negotiable Instruments Act.

2. It is seen that the appellant had originally filed this appeal as Criminal Revision but however, the Registry has objected and taken it on file as Criminal Appeal. Be that as it may, the matter has been argued on merits and, as such, it is disposed off on merits by this Court. This is a private complaint filed by the appellant, complaining an offence under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant is that the accused, who is in the business of painting contract in and around Vellore is known to the complainant and, in June 2013, he approached the complainant for a loan of Rs.3,00,000/- for his business purposes. The complainant arranged the



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amount and advanced to the accused on 01.07.2013 and the accused also executed a promissory note, agreeing to repay the same together with interest at the rate of 24% per annum. In discharge of the said liability, the accused issued a check due dated 10.03.2014 for a sum of Rs.3,00,000/-. When it was presented for collection, returned dishonoured with the endorsement 'funds insufficient' and thereafter, by issuing statutory notice, the present private complaint was filed.

4. Upon recording sworn statement, this case was taken on file and summons were issued to the respondent / accused. Upon appearance and furnishing of copies, the accused denied the allegations, stood trial. In order to bring home the charge, the complainant examined himself as P.W.1 and Exs.P1 to P6 were marked. Upon being questioned under section 313 Cr.P.C., about the incriminating evidence on record, the accused denied the same as false thereafter, no evidence was let in and the Trial Court thereafter, considered the case of the parties.



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5. The Trial Court considered the different versions made by the

complainant with reference to the manner, in which, the loan was advanced.

The Trial Court found that the complainant had come up with different different versions, such as, he had sold the property and out of the said amount, had paid the complainant but did not produce any evidence in respect of the same. The complainant has also further deposed that he has withdrawn from the Bank and paid the accused as cash but, however, did not produce any Bank statement, evidencing the withdrawal. The complainant also had stated that he has given the amount from the money given by Krishnamurthy and Elumalai and did not also examine them as witness. Therefore, the Trial Court, considering the background of the parties and, the sum involved being Rs.3,00,000/- and the financial status of the parties held that in the absence of the complainant proving the capability and the transaction, especially when the accused has denied Exs.P1 to P2 *in toto*, acquitted the accused giving him the benefit of doubt. Aggreived by the same, the present appeal is filed.

6. Heard, Mr.E.Kannadasan, learned counsel appearing on behalf



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the appellant and Mr.P.Govindarajan, learned counsel appearing on behalf of the respondent.

7. The learned counsel for the appellant would submit that in this case Ex.P2 / Promissory note is also marked. The presumption under the Negotiable Instrument Act that the promissory note was executed for due consideration and also the cheque was issued for the due liability arises in favour of the complainant. The accused has not done anything to disprove the liability. The capability of the complainant need not be proved, considering the fact that the amount was only Rs.3,00,000/- and the complainant had given reasons in the cross-examination as to how he mobilized the amount. In this case, when there is no rebuttal of presumption to the level of preponderance of probability, it was not incumbent upon the complainant to further proof with reference to his capacity etc. When the cheque has been duly marked and the signature in the cheque has been admitted then, the Trial Court ought not to have acquitted the accused.



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8. Per contra, the learned counsel appearing on behalf the respondent / accused would submit that the Trial Court has rightly appreciated the evidence and found that the complainant has not proved the very transaction itself. In this case, the accused has given a due reply notice whereunder, it has been specifically pleaded that the accused is an ordinary Painter and there was no necessity for him to borrow such a huge sum of Rs.3,00,000/- and the accused is existing only by his daily wages and it is specifically pleaded that the cheque was left as security in respect of a chit transaction.

9. I have considered the rival submissions made on either side and perused the material records on case.

10. The question as to the requirements of the complainant proving that he was in a position to advance the hand loan of a sum of Rs.3,00,000/-, depends on the facts and circumstances of the each case. In this case, the accused pleads that he is a Painter and the background of the complainant was also taken into account by the Trial Court and, when the



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complainant is coming up with a different different versions with reference to the mobilization of the amount, the Trial Court considered the same and given the benefit of doubt to the accused holding that the accused has rebutted the presumption. Such a finding cannot be said to be perverse finding or an impossible view. On the facts and circumstances of the case, both the Courts have concurrently held in favour of the accused.

11. In the said backdrop of the case, finding no merits, this Criminal Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

30.10.2025

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Internet:Yes

Index:No

Speaking

Nuetral Citation : No



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D.BHARATHA CHAKRAVARTHY, J.

KKN

To:-

- 1.The I-Additional District and Sessions Judge,
Vellore.
- 2.The Judicial Magistrate Fast Tract Court,
Vellore.

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