



.Crl.A.No.653 of 2012.

IN THE HIGH Court OF JUDICATURE AT MADRAS

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DATED : 18.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.653 of 2012

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K.B. Raju

.. Appellant

Versus

K.Asokan

.. Respondent

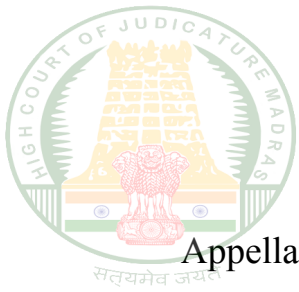
Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the Judgment dated 30.07.2012 made in C.C.No.765 of 2011 passed by the learned Judicial Magistrate (Fast Track Court), Vellore, Vellore District.

For Appellant	:	Mr. T.M. Hariharan
For Respondent	:	Mr. A. Sasidharan

JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment dated 30.07.2012 passed in C.C. No.765 of 2011 on the file of the learned Judicial Magistrate (Fast Track Court), Vellore, by which the Respondent/Accused was acquitted of the offence under Section 138 to 142 of The Negotiable Instruments Act.

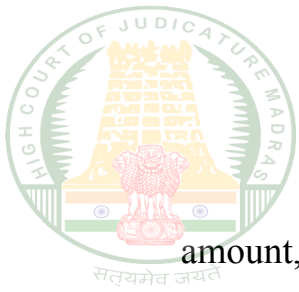
2. The complaint under Section 138 to 142 of The Negotiable Instruments Act, in C.C. No. 765 of 2011 was filed by the



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Appellant/Complainant complaining that the Respondent/Accused had borrowed Rs.2 lakhs from him and also executed a promissory note along with one Mohan, Kandipedu Village. The Respondent/Accused promised to repay the loan amount with interest at the rate of 36% per annum. On demand the Accused had issued a cheque dated 08.11.2011 for Rs.4 lakhs and on its presentation, the cheque was dishonoured by his bankers – The Tamil Nadu Mercantile Bank Limited, Vellore. The complainant issued a legal notice dated 11.11.2011 calling upon the Respondent/Accused to repay the cheque amount. On receipt of the notice dated 11.11.2011, the Respondent/Accused sent a reply dated 19.11.2011 repudiating the averments contained in the notice dated 11.11.2011. Thereafter, the complainant has filed the complaint complaining that the Respondent/Accused issued the cheque for a legally enforceable debt and liability but it was dishonoured on its presentation.

3. Before the trial Court, the Appellant/Complainant examined himself as P.W-1 and Ex.P-1 to Ex.P-9 were marked. The Respondent/Accused has neither examined any witness nor marked any document. The trial Court, on appreciation of the deposition of P.W-1/ Complainant and on perusal of the oral and documentary evidence, held that the amount said to have been borrowed by the Respondent/Accused is Rs.2 lakhs, but the cheque was said to have been issued for Rs.4 lakhs. When the cheque is more than the borrowed



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amount, the provisions under Section 138 of The Negotiable Instruments Act are not attracted. Accordingly, the trial Court acquitted the Respondent/Accused by the judgment dated 30.07.2012.

4. Aggrieved by the judgment of acquittal dated 30.07.2012 passed in C.C. No. 765 of 2011, the instant Criminal Appeal is filed by the Appellant/Complainant.

5. When this Criminal Appeal No. 653 of 2012 was listed for hearing, this Court, by Judgment dated 18.01.2018, on the basis of the judgment of the Full Bench of this Court in the case of ***Shanmuga Sundaram vs. S. Mani*** reported in ***(2017) 3 MLJ (Crl.) 591*** transferred this Appeal to the concerned Court of Principal District and Sessions Judge and directed the Registry to transmit the entire case records to the concerned Principal Sessions Court. Subsequently, the case was once again re-transferred to this Court and accordingly, it was taken up for hearing.

6. The learned Counsel for the Appellant/Complainant submitted that the Respondent/Accused has not denied that a promissory note was executed for Rs.2 lakhs towards the amount borrowed by him. The Respondent/Accused promised to pay interest at the rate of 36% per annum as the transaction is



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commercial in nature. As the Respondent/Accused failed to pay the interest amount for a long time, the Appellant/Complainant demanded the amount together with interest. The interest alone works out to Rs.2,04,000/- and therefore, towards principal and interest, a cheque for a sum of Rs.4 lakhs was issued by the Respondent/Accused. The learned Judicial Magistrate made an observation that the Appellant/Complainant failed to maintain accounts for receipt of interest. Even assuming that the Appellant/Complainant did not maintain any such record, it will not be a ground for the Court below to pass the judgment of acquittal. The Respondent/Accused did not deny the issuance of the cheque. The Respondent/Accused did not step into the witness box to prove the contrary. While so, the trial Court ought to have allowed the complaint filed by the Appellant/Complainant. The judgment of acquittal is therefore perverse and it is liable to be interfered with by this Court.

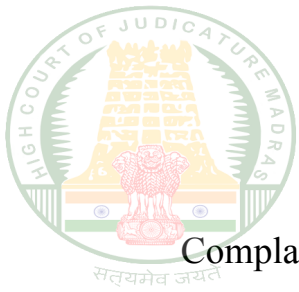
7. The learned Counsel for the Appellant/Complainant further submitted that, in the statutory notice issued by the Appellant/Complainant to the Respondent, nowhere it was stated that the Accused had paid part of the claim. In the absence of such specific averments in the statutory notice, the trial Court ought to have considered that the cheque was issued towards principal as well as interest. Therefore, the judgment of acquittal by the learned Judicial Magistrate, Fast Track Court, Vellore, is perverse. The learned Trial Judge



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misdirected himself and acquitted the Accused. The Complainant had received cheque for Rs.4 lakhs from the Respondent/Accused which he deposited into his bank account. When the cheque was dishonoured, a statutory notice was issued. Thus, the initial presumption has been raised by the Appellant/Complainant as required under Section 139 of the Negotiable Instruments Act and it was not properly appreciated by the learned trial Judge. In any event, the judgment of acquittal is contrary to law and perverse. The learned Counsel for the Appellant/Complainant therefore prayed for allowing this Criminal Appeal

8. Per contra, the learned Counsel for the Respondent/Accused, by way of reply, submitted that even in the complaint, it was stated that the Respondent/Accused received Rs.2 lakhs as loan. When the loan was given, and on what date the promissory note was executed are not stated in the complaint. Further, it is the contention of the learned Counsel for the Respondent/Accused that in the cross-examination, the Appellant/Complainant, as P.W-1, had clearly stated that he was not maintaining the accounts to show to whom he had lent the amount and what was the amount lent to various persons. In the absence of specific documents regarding lending of the amount by the Complainant, the presumption under Section 139 of the Negotiable Instruments Act, 1881, cannot be invoked in favour of the



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Complainant. In any event, the loan was for Rs.2 lakhs but the cheque was obtained for Rs.4 lakhs. The trial Court, rightly held that the cheque amount cannot be more than the borrowed amount. The Appellant/Complainant also did not say that the cheque was towards the principal and interest. While so, the learned Trial Judge is wholly justified in acquitting the Respondent/Accused. Therefore, the learned Counsel for the Respondent/Accused prayed for dismissal of this Appeal.

Point for consideration:

Whether the Judgment of acquittal passed by the learned Judicial Magistrate (Fast Track Court), Vellore in C.C.No.765 of 2011 dated 30.07.2012 is to be set aside as perverse?

9. Heard the learned Counsel for the Appellant/Complainant and the learned Counsel for the Respondent/Accused. Perused the judgment of acquittal rendered by the learned Judicial Magistrate, Fast Track Court, Vellore, in C.C. No. 765 of 2011, dated 30.07.2012.

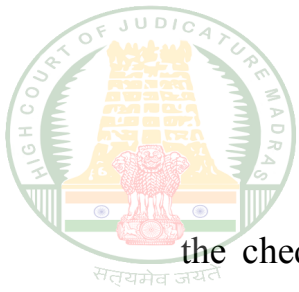
10. At the outset, it must be stated that the complaint filed by the Complainant is bereft of material particulars. In the complaint, the Complainant has not stated as to when and where the amount was paid to the Respondent, whether the amount was paid by way of cash or by any other



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mode. Even the date of promissory note has also not been mentioned in the complaint. The complaint is also completely absent as to whether, after receipt of the borrowed amount, the Respondent has paid any amount towards interest or not. It is simply stated that the cheque was dated 08.11.2011. In this Appeal, it is contended on behalf of the Complainant that interest alone is worked out to more than Rs.2 lakhs and the cheque was issued towards principal and interest. Even in the Appeal, it was not stated as to whether any interest was paid by the Respondent and what is the period for which the interest has to be paid by the Respondent. Thus, the complaint as well as the present Appeal are bereft of any material particulars.

11. For the notice sent by the Complainant on 11.11.2011, the Respondent/Accused has issued a reply notice on 19.11.2011 stating that he borrowed some amount in the year 2006 for which blank promissory note and blank cheque was given to the complainant as security. However, the loan obtained from Complainant was repaid to him in the year 2006 itself and the account was closed in the year 2006 itself. When the complainant was asked to return the promissory note and cheque he replied that he misplaced them and that as soon as he traced them, he will return the same, and thereby, demolished the case projected by the Appellant/Complainant. Further, on perusal of the deposition of P.W-1, he has stated that the Respondent borrowed Rs.2 lakhs,



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the cheque was issued for Rs.4 lakhs. It is not his case that the cheque is towards the principal and interest. If it is so, what was the period for which interest has to be paid by the Respondent/Accused is unknown.

12. On perusal of the Judgment passed by the learned Judicial Magistrate, Fast Track Court, Vellore, the learned Judicial Magistrate observed that in cross-examination of P.W-1, he had stated that he does not maintain accounts regarding the names of the borrower and details of the borrowed money and interest collected. If that is the admission of the Complainant/ P.W-1, it is futile to contend that the total amount payable by the Respondent to the tune of Rs.4 lakhs is towards principal and interest. It was stated that the loan involves 36% interest. If that be the case, the Complainant ought to have maintained and produced records to show the transaction involved in this case. In such circumstances, the learned Judicial Magistrate, Fast Track Court, Vellore on appreciation of evidence, rightly dismissed the Complaint thereby acquitting the Accused.

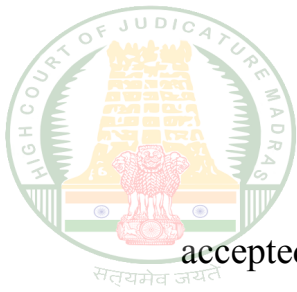
13. On perusal of the original records, it is found that the Complainant had only stated that the Accused borrowed Rs.2,00,000/-. He had not clearly stated the date of borrowal. In the statutory notice issued by the Complainant under F.P-7 also, he had not stated the date on which the Accused borrowed



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Rs.2,00,000/-. The notice states that the amount was borrowed for the purpose of fabrication business of the Accused admitting to repay along with 36% interest per annum on demand. The second Paragraph of the notice states that the Cheque bearing No.443563 drawn on Andhra Bank, Vellore, was issued by the Accused on 08.11.2011 for Rs.4,00,000/- towards partial discharge of the promissory note debt due to the Complainant. In the reply notice under Ex.P-9, the Accused had disputed the claim of the Complainant. It is the contention of the Accused that he had repaid the entire debt in 2006 itself. When he sought return of the promissory note and the cheque furnished by him as security towards the loan availed by him, the Complainant stated that he will return it after he traces it out. He claimed an excuse for missing of the documents viz., promissory note and cheque. It is the claim of the Accused that he had repaid the entire amount. Therefore, the Complainant ought to have been clear in his Complaint, the date of execution of the promissory note by the Accused and the claim of interest calculated by the Complainant.

14. As per the provisions of Section 138 of Negotiable Instruments Act, as far as the offence under Section 118 of Negotiable Instruments Act is concerned, the initial burden is on the Complainant that the Negotiable Instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was



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accepted, indorsed, negotiated or transferred for consideration. The Section

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118 of the Negotiable Instruments Act is extracted hereunder:-

“118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—

a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

15. For the claim made by the Complainant in the notice under Ex.A-7 which was disputed by the Accused under Ex.A-9, the Complainant ought to have specifically stated the date from which the interest is calculated because

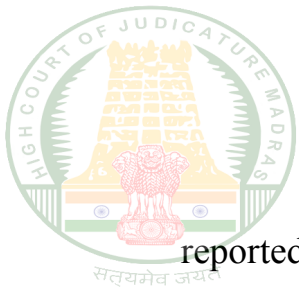


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he had used the word for partial discharge of the debt in the notice under Ex.A-

7. When the principal amount is Rs.2,00,000/-, towards partial discharge of the debt is Rs.4,00,000/-, then the Complainant ought to have furnished details of the calculation of the interest by furnishing the books of accounts maintained by him regarding money lending. In his cross-examination, P.W-1 was unable to furnish books of accounts regarding the persons to whom he had advanced loans, dates of advancing loans and dates of repayment, either partially or fully. When the Complainant clearly states that Rs.4,00,000/- was paid by cheque by the Accused towards partial discharge of the loan, then he is duty bound to prove the claim of Rs.2,00,000/- as loan, how it is Rs.4,00,000/- towards principal and interest. Only when he furnishes books of accounts then the claim made by him can be considered as the Accused had not paid the dues. When the Complainant during his cross-examination was unable to satisfy the Court regarding the principal, regarding the interest over the principal from the date of borrowal, from the date of executing promissory note by the Accused, the initial burden, as per Section 118(g) of the Negotiable Instruments Act was on the Complainant. He failed to establish the initial burden. When he establishes the initial burden, it shifts on the Accused under Section 139 of Negotiable Instruments Act to discharge the rebuttal burden as per the ruling of the Hon'ble Supreme Court in the case of **Rangappa Vs. Sri Mohan** reported in

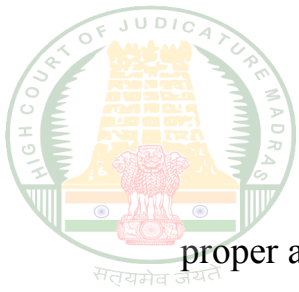
<https://www.mhc.tric.gov.in/judis> (2010) 11 SCC 441 and **Krishna Janardhan Bhat Vs. Dattatraya G.Hedge**



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reported in **(2008) 4 SCC 54**. To discharge the rebuttal burden, the Accused

need not enter the witness box, it is enough the Accused is able to establish his defence through preponderance of probabilities. The burden to prove the Charge against the Accused on the Prosecution is greater whereas the burden on the Accused towards rebuttal evidence is enough if the Accused is able to probablise the defence of the Accused through cross-examination of the Prosecution Witnesses. The burden to discharge rebuttal evidence is not as equal to that of the burden on the Prosecution. Here, the Accused was able to satisfy the Court by preponderance of probabilities that the Complainant is not maintaining account. When he is not maintaining account, he will not be able to establish the fact that the Accused owed Rs.4,00,000/- on the date of issuance of cheque towards principal amount of Rs.2,00,000/- and interest at the rate of 36% per annum from the date of execution which is not available before the Court to calculate the interest from which day. These details are not available in the notice as well as in the Complaint to indicate that the rate of interest is calculated at the rate of 36%. If what had been claimed in the notice as per Ex.P-7 is to be accepted, it attracts the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act which is a punishable offence and which cannot be enforced through a Court of law. Therefore, the learned Judicial Magistrate, Vellore rejecting the claim of the Complainant who is the Appellant before this Court and acquitting the Accused is found proper and on



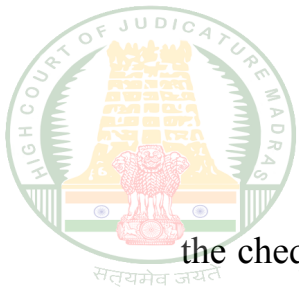
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proper appreciation of evidence.

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16. In the case of *V.Sejappa Vs. State* reported in *2016 (12) SCC 150*, when the Appellate Court re-assessed the evidence and it was found that the trial Court had assessed evidence as per the Provisions of the Indian Evidence Act, the Appellate Court, even if it arrive at a different conclusion shall not reverse the finding of the trial Court and thereby set aside the Judgment of the trial Court. Under those principles, the finding of the learned Judicial Magistrate, Vellore acquitting the Accused is found well-reasoned Judgment which does not warrant interference of this Court even otherwise the learned trial Judge had the advantage of observing demeanour of witnesses and the Accused which is not available to the High Court sitting in Appeal as Appellate Court. Under those circumstances, the High Court shall not reverse the finding of acquittal. The High Court shall be slow on reversing the finding of trial Court. In the light of the above ruling, the learned Judicial Magistrate in his Judgment, acquitting the Accused is found proper.

17. The learned Judicial Magistrate, in the judgment, which is impugned in this Appeal, placed reliance on the decision of this Court in *Acq.D.C.C 801 "The Negotiable Instruments Act, 1881, Section 138* wherein it was held that if the cheque is more than the amount of the debt due, Section 138 cannot be attracted. In this case, the borrowed amount was Rs.2 lakhs, but



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the cheque was obtained for Rs.4 lakhs. The Complainant, in his complaint as well as in his deposition as P.W-1 had not explained how the Respondent is liable to pay Rs.4 lakhs, what was the interest component, the period for which interest is paid etc., Under those circumstances, the Judgment of the learned Judicial Magistrate, Fast Track Court, Vellore is found proper. This Appeal lacks merits and is to be dismissed.

18. In the light of the above discussion, the point for consideration is answered in favour of the Respondent/Accused and against the Appellant/Complainant. The Judgment of the learned Judicial Magistrate, Fast Track Court, Vellore in C.C.No.765 of 2011, dated 30.07.2012 is found proper and the same is to be confirmed.

In the result, **this Criminal Appeal is dismissed.** The Judgment of the learned Judicial Magistrate, Fast Track Court, Vellore in C.C.No.765 of 2011, dated 30.07.2012 is confirmed.

18.03.2025

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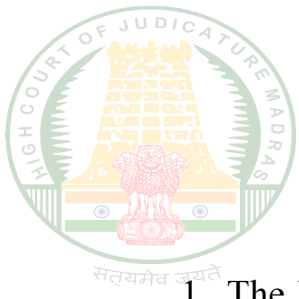
Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

To

<https://www.mhc.tn.gov.in/judis>



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1. The Judicial Magistrate,
Fast Track Court,
Vellore, Vellore District.

2. The Section Officer,
Criminal Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment in
Criminal Appeal No.653 of 2012

18.03.2025