



CrI.A.No.658 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 06.06.2025

CORAM:

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

CrI.A.No.658 of 2012

A.Gulab

...Appellant

Vs.

A.Tasneem Banu

...Respondent

PRAYER: Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to set aside the order of acquittal passed by the Judicial Magistrate, (Fast Track Court), Vellore District in C.C.No. 183 of 2011 dated 30.07.2012, on the file of the 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.M.Ganesh
Legal Aid Counsel

For Respondent : Mr.E.Kannadasan

ORDER

This appeal is filed against the judgment dated 30.07.2012 made in C.C.No. 183 of 2011, passed by the learned Judicial Magistrate (Fast Track Court), Vellore. By the said judgment, the trial Court acquitted the



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respondent of an offence under Section 138 of the Negotiable Instruments

Act, 1881.

2. The case of the complainant is that the respondent/accused borrowed a sum of Rs.90,000/- and executed a promissory note in favour of the complainant, agreeing to repay the same with interest at the rate of 24% per annum on 06.04.2010. In repayment thereof, the accused issued three cheques on 09.10.2010. Upon presentation of the said cheques for collection, they were returned dishonoured and after issuance of a legal notice on 23.10.2010, a private complaint was filed.

3. *Mr. M.Ganesh*, the learned Legal Aid Counsel appearing on behalf of the appellant, would submit that this is a clear and categorical case where the accused borrowed the money, executed the promissory note, and issued the cheques. The cheques were returned dishonoured for insufficient funds. The signatures in the promissory note as well as on the cheques are not denied. The presumption is in favour of the complainant. The trial Court erroneously acquitted the accused on the ground that the complainant did not prove the source of funds and did not produce the accounts or other relevant documents.



WEB COPY4. The learned Legal Aid Counsel submits that none of the findings of the trial Court are sustainable. He further submits that the finding of the trial Court that there is no documentary evidence is incorrect, since Ex.P1, the promissory note, is already marked. The second finding of the trial Court, that there are ambiguities and contradictions in the evidence of the complainant, is also incorrect. The complainant has given clear and cogent evidence. Further finding that different inks were used in filling up the promissory note is concerned, the complainant has deposed that it was the accused who executed and handed over the note. Therefore, he submits that when the signatures on the promissory note and cheques are not disputed, the finding of acquittal is unwarranted.

5. Per contra, *Mr.E.Kannadasan*, the learned counsel appearing on behalf of the respondent submits that the trial Court has considered the detailed cross-examination of the complainant and has extracted the discrepancies in the evidence of the complainant in paragraph 4 of the judgment, and thereafter arrived at its finding. Therefore, no grounds exist to upturn the finding of acquittal.



WEB COPY6. I have considered the rival submissions made on either side and perused the material records of the case.

7. It can be seen that the case of the complainant is that he advanced the loan in cash for which Ex.P1 promissory note was executed. In cross examination, the complainant admitted that he is a money lender and is running a finance business. However, he deposed that the instant transaction alone was at a personal level and hence, no records were maintained. In the same breath, he stated that for the interest paid, he had been maintaining receipt books. When further questioned as to why he did not produce the said receipts, he reverted to his earlier statement that he was not maintaining any records. The same is taken into account.

8. Secondly, when it is the case of the complainant that he is in the professional finance business, his statement that the loan was advanced on a particular date and that it was to be repaid with 24% interest per annum, and that he paid the entire amount without deducting the interest is noted. Further, when it is stated that six months' interest were paid subsequently, the receipts which is allegedly with the complainant were not produced.



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WEB COPY 9. Coupled with the same, when D.W.1 was examined on behalf of the accused to state that the document was filled by a particular advocate clerk, and when the trial Court considered the evidence as a whole and though not given the finding expressly, it can be seen that it has broadly considered the fact that the accused had rebutted the presumption through the cross-examination of the complainant and by leading contra evidence in the form of D.W.1. As such, though every finding of the trial Court cannot be sustained, the ultimate conclusion of acquitting the accused cannot be said to be perverse so as to warrant interference in an appeal against acquittal.

10. Accordingly, finding no merit, the Criminal Appeal stands dismissed. No costs.

06.06.2025

Neutral Citation: Yes/No
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***Note:** Since the Court has appointed Mr.M.Ganesh, the learned Legal Aid Counsel to assist the Court. The Tamil Nadu Legal Services Authority, High Court, Chennai is requested to pay the fee for the learned Legal Aid Counsel as per the rules.*



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D.BHARATHA CHAKRAVARTHY, J.

nsI

To

1. The Judicial Magistrate,
(Fast Track Court),
Vellore District.
2. The Tamil Nadu Legal Services Authority,
High Court, Chennai.

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