



CrI.A.No.741 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03-03-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.741 of 2012

D. Kiyanchand

.. Appellant

Versus

C.R. Umapathy

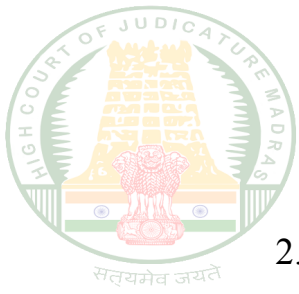
.. Respondent

Criminal Appeal filed under Section 398 of Cr.P.C., to set aside the Judgment passed by the learned Judicial Magistrate No.I, Cuddalore acquitting the Accused in STC.No.126 of 2011 dated 14.08.2012

For Appellant	:	Mr. R. Ganesh Kumar
For Respondent	:	Mr. R. Ganesh for Mr. S. Swamidoss Manokaran

JUDGMENT

This Criminal Appeal had been filed to set aside the Judgment passed by the learned Judicial Magistrate No.I, Cuddalore acquitting the Accused in STC.No.126 of 2011, dated 14.08.2012.



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2. The brief facts, which are necessary for disposal of this Criminal

Appeal, are as follows:-

2.1. The Appellant herein is the Complainant. The Complainant had filed the Complaint in S.T.C. No. 126 of 2011 alleging that on 01.09.2008, the Respondent herein had borrowed a sum of Rs.5 lakhs from him for business purpose. Subsequently, on 13.10.2008, a cheque for Rs.5 lakhs was issued by the Respondent towards the said loan amount. However, when the cheque was presented for collection on 13.10.2008, it was dishonoured by the bankers of the Respondent on 15.11.2008. Therefore, for having caused the dishonour of the cheque, a legal notice dated 17.11.2008 was issued by the Complainant for which a reply notice dated 03.12.2008 was issued with false and untenable averments. Therefore, the complaint was filed by the Appellant/Complainant.

2.2. Before the trial Court, the Complainant examined himself as P.W-1 and one Ravirajan was examined as P.W-2. Ex.P-1 to Ex.P-7 were marked by the Complainant. On behalf of the Accused, one Mr.Thamaraiselvan was examined as D.W-1 and documents Ex.D-1 and Ex.D-2 were marked.

2.3. The trial Court, on considering the oral and documentary evidence, by referring to the deposition of P.W-1 in his cross-examination that what was borrowed by the Respondent is only Rs.3 lakhs, declined to accept



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the case of the Complainant. The trial Court also pointed out that even though the Complainant filed Ex.P-7, balance sheet as on 31.03.2009, the author of the said document was not examined and Ex.P-7 was not a certified copy issued by the Income Tax Department. Even in Ex.P-7, there is nothing to show that the outstanding loan of Rs.5,00,000/- is to be received from the Respondent/ Accused. Above all, the trial Court, by referring to the reply notice of the Respondent pointed out that the Respondent had clearly stated that at the time of borrowing loan, 2 promissory notes, signature in 3 blank papers and five cheques in blank was issued and one such cheque was the cheque in question. Therefore, the trial Court had concluded that when the Respondent/Accused had successfully rebutted the initial presumption raised by the Complainant, by way of reply notice, the burden shifts on the Complainant to disprove the same. In the present case, the Complainant failed to discharge the burden by sending a rejoinder to the reply notice and therefore, by the judgment dated 14.08.2012, the trial Court acquitted the Respondent/Accused.

2.4. Challenging the judgment of acquittal dated 14.08.2012 in S.T.C. No. 126 of 2011, the present Criminal Appeal is filed.

3. The learned Counsel for the Appellant submitted that the



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Respondent borrowed Rs.5,00,000/- on 01.09.2008 for business purpose and agreed to repay the same within a week. For this purpose, the Respondent issued the cheque for Rs.5,00,000/- bearing cheque No.071019 drawn on Corporation Bank, Pondicherry in favour of the Complainant. When the cheque was presented for collection on 13.10.2008 it was returned on 15.11.2008 for the reason “funds insufficient”. Therefore, the Complainant issued a legal notice on 17.11.2008 calling upon the Accused to repay the cheque amount for which the Accused sent a reply notice. In order to prove the averments in the complaint, the Complainant examined himself as P.W-1, another person as P.W-2 and marked documents under Ex.P-1 to Ex.P-7. The learned Counsel for the Appellant invited the attention of this Court to the impugned Judgment wherein it had been observed as follows:

“9. As submitted by the learned Counsel for the Complainant the evidence of P.W-1 and P.W-2 and Ex.P-1 to Ex.P-3 reveals that the Accused borrowed Rs.5,00,000/- for which he issued the cheque in Ex.P-1 and the same was returned as funds insufficient through Ex.P-2 for which a demand for repayment was made through Ex.P-3. The Accused also did not deny his signature in Ex.P-1 nor denied that Ex.P-1 not belong to him. As such the evidence of P.W-1 and P.W-2 and Ex.P-1 and Ex.P-2 give rise to an initial presumption that Ex.P-1 is supported by proper consideration and issued towards discharge of legal enforceable debt.”

4. According to the learned Counsel for the Appellant, the Trial

Judge, in the subsequent paragraphs, had contradicted himself and had given a



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finding that the Complainant, in his cross-examination, admitted that he had been a moneylender for the past 22 years, but he had not produced the Accounts regarding the transaction between the Complainant and the Accused. The fact remains that the Complainant had produced Ex.P-7, Income and Expenditure statement from the Income Tax Department to show that he is an Income Tax Assessee and the liabilities are clearly shown. Though the debts owed by various individuals to the Income Tax Assessee had been given, still the learned Judge rejected the claim of the Complainant on the ground that the auditor who prepared the statement of accounts for the Income Tax Assessments was not examined as a witness. Further, the signature of the Accused in the cheque was not disputed by the Accused. The resources of the Complainant to pay such amount were not disputed by the Accused. However, Ex.P-7-statement of accounts produced by the Complainant through the Income Tax Department was rejected by the trial Court on the ground that the author of the said document was not examined. The Accused had not entered the witness box, instead, he had examined one Thamarai Selvan and marked the letter dated 29.04.2021 under Ex.D-1 and the statement of accounts of the Accused under Ex.D-2. In such circumstance, the trial Court ought to have taken adverse inference against the Respondent and allowed the complaint.

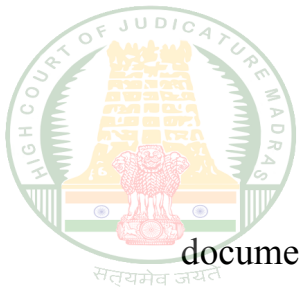
The judgment of acquittal passed by the Court below is against the settled



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position of law. Therefore, the learned Counsel for the Appellant prayed for allowing this Appeal.

5. Per contra, the learned Counsel for the Respondent/Accused submitted that the Complainant/Appellant was a Financier. It was alleged in the Complaint that the loan was given on 01.09.2008 to the tune of Rs.5 lakhs for which a cheque was issued after 43 days of receipt of the loan amount of Rs.5 lakhs. The learned Counsel for the Respondent placed heavy reliance on the reply notice dated 03.12.2008 in which it was clearly stated that a sum of Rs.3 lakhs was borrowed by the Respondent/Accused from the Complainant/Appellant during April 2005 and the loan amount was given by means of a demand draft, drawn on Canara Bank, Cuddalore. At the time of disbursement of the loan amount, the Complainant had obtained from the Respondent 2 promissory notes in blank, 3 signed blank papers of the Respondent, five blank cheques, which is inclusive of the subject cheque. It was also stated in the reply notice dated 03.12.2008 that the borrowed amount was repaid at the rate of Rs.20,000/- per month in cash for 14 months and during the 15th month, a sum of Rs.1,10,000/- was paid, whereby, the entire loan amount was repaid. However, when the blank promissory notes and cheques were demanded, the Complainant feigned ignorance by stating that he had to search for those



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documents and he will return them sometime later. For this reply notice dated 03.12.2008, the Complainant had not issued any rejoinder, but straightaway filed the complaint. The trial Court, by referring to Ex.P-7, balance sheet, had specifically rejected it that it does not contain the loan amount or the amount repaid in interest, if any by the Respondent/Accused. Further, the author of Ex.P-7 was not examined and Ex.P-7 is not the certified copy of the balance sheet issued by the Income Tax Department. In any event, by virtue of the reply notice dated 03.12.2008, the Respondent had successfully rebutted the initial presumption raised by the Appellant/Complainant, while so the entire burden is on the Complainant to disprove the same. In the present case, the Complainant failed to discharge the burden on his shoulders and therefore, the trial Court had rightly passed the judgment of acquittal.

6. The learned Counsel for the Respondent relied on the ruling reported in **(2005) 1 ALD Cri 33: III (2005) BC 565: 2005 CriLJ 269** in the case of **Sri Murugan Financiers Vs. P.V.Perumal**, in which this Court had held as under:

“Complainant being a finance company no book of accounts produced in support of claim – Order acquitting Accused on finding that Complainant has not proved debt or legally enforceable liability satisfactorily and cheque was in fact issued as guarantee – not interfered with”



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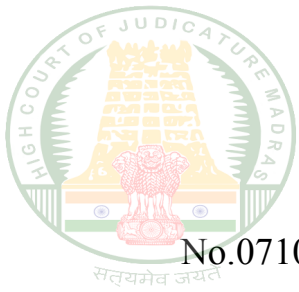
7. By placing reliance on the above ruling, the learned Counsel for the Respondent/Accused submits that this Appeal lacks merits and is to be dismissed. The Complainant had not assigned any reason for not examining the author of Ex.P7. In any event, what was borrowed by the Respondent/Accused was only Rs.3 lakh and it was also repaid. Accordingly, the learned Counsel for the Respondent/Accused prayed for dismissal of this Appeal.

Point for consideration:

Whether the Judgment passed by the learned Judicial Magistrate No.I, Cuddalore acquitting the Accused in STC.No.126 of 2011, dated 14.08.2012 is to be set aside as perverse?

8. Heard the learned Counsel for the Appellant as well as the learned Counsel for the Respondent and perused the materials placed.

9. During the course of trial, documents were marked by the Appellant/Complainant as well as the Respondent/Accused in support of their respective case. Among the documents, Ex.P-1 is the cheque bearing



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No.071019 dated 13.10.2009 drawn on Corporation Bank for Rs.5,00,000/- in favour of the Complainant. Ex.P-2 is the memo of return of cheque issued by the Canara Bank, Cuddalore Branch dated 15.11.2008 as “insufficient funds”. Ex.P-3 is the legal notice issued on behalf of the Complainant dated 17.11.2008. Ex.P-4 and Ex.P-5 are acknowledgment cards. Ex.P-6 is the reply notice issued on behalf of the Accused dated 03.12.2008. Ex.P-7 is the income and expenditure accounts and balance sheet. Prominent among the documents marked is the reply notice issued by the Respondent/Accused, stating that he had not borrowed the sum of Rs.5,00,000/- from the Complainant.

10. In the reply notice, it is stated that the Accused borrowed only Rs.3 lakhs which he repaid in instalments at the rate of Rs.20,000/- per month for 14 months and on the 15th month, he paid Rs.1,10,000/- to the Complainant. Thus, it is stated that the Accused repaid the entire borrowed amount of Rs.3 lakhs. According to the Respondent/Accused, at the time when the loan amount was borrowed, he had tendered promissory notes duly signed – 2 Nos; signed blank papers – 3 Nos; and Five cheques bearing Cheque Nos. 071018, 071019, 071020, 071021 and 071022 drawn on Corporation Bank, Puducherry. Thus, it is the assertive submission of the



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Respondent/Accused that one of the blank cheques issued by him at the time of borrowing Rs.3 lakhs, towards security was misused by the Complainant by filling it up for Rs.5 lakhs and presented it with the bankers. In the reply notice, it was also stated that it was the only time he borrowed loan from the Complainant in April, 2005 and that was also repaid by him in the manner aforesaid. The Respondent-Accused claims that he is also an Income Tax Assessee and the Complainant is also a Income Tax Assessee. Therefore, the Accused had received the borrowed amount of Rs.3,00,000/- from the Complainant by means of a demand draft. In the reply notice, it was also stated that when the Accused sought for the return of signed blank promissory notes, signed blank papers, cheques and two RC books of his oil tankers, the Complainant stated that he had to search for the documents as he had misplaced those documents and would return them to the Respondent/Accused after some time. When such a reply was issued by the Respondent/Accused, the initial presumption raised by the Complainant/Appellant gets rebutted successfully and the burden shifts on the Complainant/Appellant. It is also to be mentioned that for the reply notice of the Respondent/Accused, the Appellant/Complainant had not issued any rejoinder. Given the nature of assertion made in the reply notice, this Court is of the view that the non-issuance of a rejoinder by the Complainant would give rise to a presumption



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that the contents of the reply notice are *per se* acceptable.

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11. In the cross-examination of P.W-1 he marked Ex.P-7 after summoning them from the Income Tax Department. The trial Court, on appreciation of Ex.P-7 noted that in Ex.P-7, income and expenditure statement, Rs.5,00,000/- was shown as liability but the names of the individual from whom the amount had to be collected by the Complainant-assessee had not been mentioned. Thus, it was concluded that Ex.P-7 will not in any manner help the Complainant/Appellant to show that he had paid Rs.5 lakhs to the Respondent/Accused as loan. Therefore, the learned Judge arrived at a conclusion that Ex.P-7 does not support the claim of the Complainant.

12. As far as the Accused is concerned, he had examined the Manager of the Corporation Bank as D.W-1 and furnished the transactions between the Complainant and Accused to prove his defence that the cheque presented by the Complainant was provided as security for the loan availed by the Accused but it was misused. The Branch Manager, Corporation Bank, had clearly stated that the cheque bearing No.071019 was issued long back. The deposition of PW1 is in tune with the reply notice sent by the Respondent-Accused and it has adequate force.



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13. The notice issued by the Complainant under Ex.P-3 did not contain the details as to whether the loan amount was paid by cash or cheque or any other instrument. Even in the complaint, the Complainant/Appellant had not stated as to how he paid the amount by cash or any other instrument. On the other hand, the Respondent/Accused had stated that the loan amount was paid through a demand draft. Thus, it is very clear that the Appellant/Complainant had only paid Rs.3 lakhs as loan to the Respondent/Accused, but had demanded Rs.5 lakhs through the impugned cheque. Therefore, the learned Judicial Magistrate No.-I, Cuddalore, arrived at a conclusion that the version of the Complainant is not true. When D.W-1 had stated that the cheque in question was issued long back and that the cheque book issued to the Accused on 28.09.2004 was exhausted on 09.08.2005. It is clear that the cheque which was issued by the Respondent/Accused long back had been misused by the Appellant/Complainant to institute the vexatious criminal complaint under Section 138 of The Negotiable Instruments Act, against the Respondent/Accused.

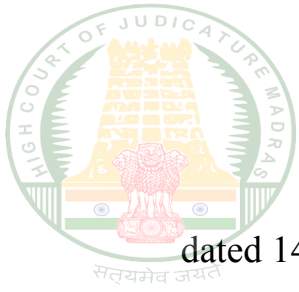
14. On perusal of the Judgment of the learned Judicial Magistrate – I coupled with the deposition of P.W-1, D.W-1, documents under Ex.P-1 to



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Ex.P-7 as well Ex.D-1 and Ex.D-2, it is glaringly evident that the Complainant is a financier, who used to lend money to third parties. In the course of such transaction, the Complainant used to secure blank promissory notes and cheques from the borrower. It is also evident that the Appellant/Complainant paid Rs.3 lakhs to the Respondent/Accused as loan, however, by misusing one of the cheques issued by him towards security, he had instituted the complaint under Section 138 of The Negotiable Instruments Act. The learned Judicial Magistrate – I, Cuddalore, upon appreciation of the documents made available, had rightly concluded that the initial presumption raised by the Complainant-Appellant through the Cheque in question had been successfully rebutted by the Respondent/Accused and consequently acquitted the Respondent/Accused. The judgment of acquittal of the Respondent/Accused is elaborate, well considered, both on law and facts and it has to be confirmed. Thus, there is nothing for this Court to interfere with such judgment of acquittal passed by the trial Court.

15. 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 passed by the learned Judicial Magistrate No.I, Cuddalore acquitting the Accused in STC.No.126 of 2011



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dated 14.08.2012 is found proper and the same is to be confirmed.

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In the result, **this Criminal Appeal is dismissed.** The Judgment dated 14.08.2012, passed in STC.No.126 of 2011 on the file of the learned Judicial Magistrate No.I, Cuddalore acquitting the Respondent/Accused is confirmed.

03-03-2025

dh/srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

- 1.The Judicial Magistrate-I,
Cuddalore.
- 2.The Section Officer,
Criminal Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh/srm

Judgment made in
Crl.A.No.741 of 2012

03-03-2025