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Crl.A.No.1190 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.1190 of 2025

K.K.Govindaraj

... Appellant

Vs.

Mahalakshmi

.. Respondent

PRAYER: Criminal Appeal filed under Section 419(2) of BNSS, praying to set aside the judgment of acquittal in Crl.Appeal No.28 of 2023 dated 08.08.2024 passed by the learned Additional Sessions Judge, Krishnagiri and by reversing the judgment in STC.No.536 of 2019 dated 29.08.2023 passed by the learned Judicial Magistrate No.1, Krishnagiri and to allow this criminal appeal.

For Appellant : Mr.C.Samivel

For Respondent : Mr.P.G.Thiyagu

JUDGMENT

This criminal appeal has been preferred against the judgment passed in Crl.A.No.28 of 2023 dated 08.08.2024 on the file of the Additional Sessions Judge, Krishnagiri, thereby setting aside the



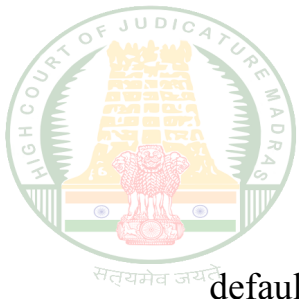
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conviction and sentence imposed by the trial court in STC.No.536 of 2019 dated 29.08.2023 on the file of the Judicial Magistrate-I, Krishnagiri for the offence punishable under Section 138 of NI Act.

2. The appellant lodged complaint against the respondent for the offence punishable under Section 138 of NI Act alleging that the respondent borrowed loan on 24.01.2018 and in order to repay the loan, the respondent issued cheque and it was presented for collection. The same was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the complaint was lodged, which was taken cognizance by the trial court.

3. On the side of the appellant, he was examined as PW1 and marked Ex.P1 to Ex.P6. On the side of the respondent, she was examined as DW1 and marked Ex.D1 to Ex.D5. On perusal of oral and documentary evidences, the trial court found the respondent guilty for the offence punishable under Section 138 of NI Act and she was sentenced to undergo six months simple imprisonment. She was also ordered to pay compensation to the tune of double the cheque amount to the appellant, in



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default, to undergo two months simple imprisonment. Aggrieved by the same, the respondent preferred appeal and the same was allowed and the order of the trial court was set aside by the appellate court. Aggrieved by the said order, this criminal appeal has been filed by the complainant.

4. The learned counsel for the appellant would submit that the trial court rightly found the respondent guilty for the offence punishable under Section 138 of NI Act since the respondent admitted the signature found in the cheque and also the issuance of the cheque. Therefore, the appellant had discharged his initial burden as contemplated under Section 138 of NI Act. However, the respondent failed to rebut the same and as such, the trial court rightly convicted the respondent. However, the appellate court found that the cheque was not issued for any legally enforceable debt since it was issued for security purpose and mechanically acquitted the respondent. He further submitted that in fact the cheque was presented for collection on three occasions on the instructions of the respondent. However, the cheque was returned dishonoured for the reason 'funds insufficient'. After receipt of the statutory notice, the respondent did not even send any reply notice.



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Without considering the same, the appellate court mechanically acquitted the respondent.

5. Per contra, the learned counsel for the respondent would submit that the respondent never borrowed any loan amount from the appellant. In fact, after the alleged date of borrowal, the appellant herein after the receipt of the entire sale consideration of Rs.15,00,000/-, had executed sale deed in favour of the respondent. No prudent person would execute sale deed when the borrowal amount is pending. The appellant agreed to execute sale deed for two properties. One set of property was registered in favour of the respondent and in order to execute sale deed insofar as another set of property, the appellant received cheque for security purpose. However, thereafter the appellant failed to execute any sale deed and also refused to return the cheque. The said cheque was misused for initiation of proceedings under Section 138 of NI Act. Therefore, the appellate court rightly acquitted the respondent and it does not warrant any interference by this Court.

6. Heard, the learned counsel appearing on either side and

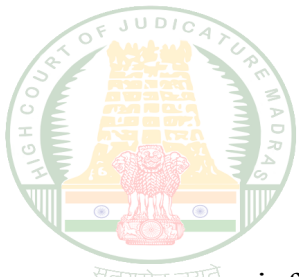


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perused, all the materials placed before this Court.

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7. The specific case of the appellant was that the respondent borrowed a sum of Rs.4,95,000/- till 24.01.2018 by installments. Thereafter, in order to repay the said amount, the respondent issued cheque and the same was presented for collection and however it was returned dishonoured for the reason 'funds insufficient'. Though the respondent did not issue any reply notice, the respondent was examined as DW1 and marked Ex.D1 to Ex.D5. The appellant was examined as PW1 and he categorically deposed in his cross examination that three months after the date of the alleged borrowal, the appellant received a sum of Rs.15,00,000/- as sale consideration and executed sale deed in favour of the respondent. Therefore, if at all any loan amount was pending from the respondent herein, the appellant would have asked for return of the loan amount while registering the sale deed. Therefore, the respondent raised categorical rebuttal by marking Ex.D1 to Ex.D5 and also by way of cross examining PW1. Even then, the appellant failed to prove that the cheque was issued for any legally enforceable debt. Hence, the appellate court rightly acquitted the respondent and this Court finds



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no infirmity or illegality in the impugned judgment.

8. In view of the above discussion, this criminal appeal is dismissed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
lok

To

- 1.The learned Additional Sessions Judge, Krishnagiri
- 2.The learned Judicial Magistrate No.1, Krishnagiri



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