IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.530 of 2013

B.Padmanaban

Appellant(s)

Vs

M.Mohammed Rafeeq
Aged 58 Years, No.25, Gopal Street,
Thiruvannamalai 606 601.

Respondent(s)

Criminal Appeal filed under Section 378 of Code of Criminal Procedure, against the aquittal made in C.C.No.32 of 2011 on the file of the learned Judicial Magistrate (FTC), Vellore District on 18.06.2012 by allowing the Criminal Appeal.

For Appellant(s):
Ms.S.Sriranjani
For M/s.T.P.Prabakaran

For Respondent(s): Notice dispensed with

JUDGMENT

The appeal challenges the judgment of acquittal dated 18.06.2012 passed by the learned Judicial Magistrate (FTC), Vellore District, in C.C.No.32 of 2011.

2. (i) It is the case of the appellant that he knew the respondent, as the respondent was a registered scrap contractor for TNEB and was running business in the name and style of Al-Ameen and Al-Bismi Traders; that the appellant was working in Tamil Nadu Electricity Board; that after the appellant retired from service, the respondent requested the appellant to lend money for a short period and agreed to pay the interest at the rate of 24% per annum; and that believing the words of the respondent, the appellant who had received retirement benefits, deposited a sum of Rs.10 Lakhs in cash as loan into the account of the respondent bearing A/c.No.134150310875017 in Tamil Nadu Mercantile Bank, Vellore, on three different dates as follows:

Rs.5,00,000/- deposited on 26.04.2007.
Rs.2,70,000/- deposited on 03.05.2007.
Rs.2,30,000/- deposited on 04.05.2007.

(ii) It is the further case of the appellant that towards the discharge of his liability, the respondent had issued two cheques one dated 08.09.2009 and another dated 22.09.2009, each for Rs.5 Lakhs; that when the said cheques were presented for collection, it was dishonoured for the reasons, 'Funds Insufficient' and the respondent did not make any payment inspite of statutory notice; and thus, committed the offence.

(iii) Before the trial Court, the appellant examined himself as PW1 and the Assistant Manager of Tamil Nadu Mercantile Bank, Thiruvannamalai, as PW2 and marked 15 documents as Ex.P1 to Ex.P15. The respondent examined the Branch Manager of Tamil Nadu Mercantile Bank, Vellore Branch as DW1 and marked three documents as Ex.D1 to Ex.D3.

(iv) The trial Court found that the appellant had not established his source of income and the capacity to lend a sum of Rs.10 Lakhs; that the account from which the cheque was issued to the appellant was maintained by a Proprietary concern by the name Al-Bismi Traders; that the evidence disclosed that the Proprietor of Al-Bismi Traders was one Kaleel Rahuman; that the respondent was only a Manager and hence, the prosecution against him under Section 138 of the Negotiable Instruments Act, would not lie; and thus, acquitted the respondent.

3. (i) Ms.Sriranjini, learned counsel for the appellant strenuously contended that when the respondent had issued the cheques, the appellant was not aware whether the respondent was the Proprietor of the company; that believing the words of the respondent, the appellant had lent a sum of Rs.10 Lakhs; and that the trial Court ought not to have acquitted the respondent, as the respondent admitted the signature in the cheque.

(ii) The learned counsel further submitted that the appellant had established the remittance of the amount into the account of the respondent by marking Ex.P13 to Ex.P15 viz., Remittance Challans; that the respondent had not rebutted the statutory presumption; and hence, the judgment of acquittal is liable to be set aside.

4. It is seen that though notice was sent to the respondent, it was returned unserved. In fact, by order dated 06.09.2024, this Court has directed the concerned jurisdictional police to serve the notice on the respondent and directed the learned counsel for the appellant to provide necessary information to the Prosecutor. However, there is nothing on record that any such information was provided to the Prosecutor. Since this Court finds that the appellant had not made out a ground for interference for the following reasons, dispenses with further notice to the respondent.

5. As stated earlier, it is the specific case of the appellant that Rs.10 Lakhs was lent to the respondent on the request made by the respondent and the appellant had deposited Rs.10 Lakhs into the bank account as mentioned above. The appellant had examined PW2-Assistant Manager of Tamil Nadu Mercantile Bank, Thiruvannamalai, in which the said account was maintained. PW2 had deposed that the said account belonged to a Proprietary concern by name Al-Bismi Traders and its Proprietor was one Mr.Kaleel Rahuman. Therefore, the primary condition to prosecute a person for the offence under Section 138 of the Negotiable Instruments Act, that the

cheque must be drawn from an account maintained by the accused, has not been satisfied. The appellant after examination of PW2 had not taken any steps to implead the Proprietor of the said Proprietary concern. Even in the cheque which was marked as Ex.P1, the respondent is shown as the Manager of the said concern. Since the condition as stated above has not been satisfied, the other reason assigned by the trial Court for acquittal viz., the respondent was not authorised to issue a cheque may not be relevant to decide the instant appeal.

6. It is also seen that the appellant had also failed to establish that he had deposited Rs.10 Lakhs cash into the account of the said Al-Bismi Traders. In fact, PW2 was summoned by the Court at the instance of the appellant only for the said purpose. PW2 had categorically stated that he was not aware as to who deposited the said amount and that it was deposited in the Vellore Branch of their Bank. However, the respondent had examined DW1, the Branch Manager of the Tamil Nadu Mercantile Bank of the Vellore Branch, who had stated that the three challans mentioned above would show that it was not deposited by the appellant in favour of the

respondent. The first deposit was made by one Prabhu. The second deposit was made by one Parthiban and the third deposit was made by the abovesaid Prabhu. The appellant had also failed to establish that he had the capacity to lend Rs.10 lakhs as rightly found by the trial Court.

7. Therefore, this Court is of the view that the judgment of acquittal of the trial Court, is well reasoned and finds no reason to interfere with the said judgment. Accordingly, the judgment of acquittal dated 18.06.2012 passed by the learned Judicial Magistrate (FTC), Vellore District, in C.C.No.32 of 2011, is confirmed. The Criminal Appeal stands dismissed.

21.07.2025

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no

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To

The Judicial Magistrate (FTC),
Vellore.

SUNDER MOHAN, J.

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