



Crl.A.No.777 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 03.07.2025

CORAM

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

Crl.A.No.777 of 2025

G.Thenmozhi

.....Appellant / Complainant

Vs

V.R.Vinothkumar Shah

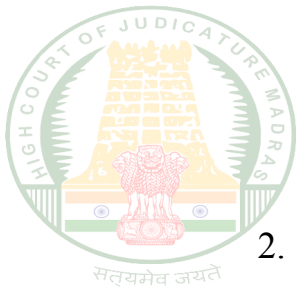
.... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378(4) of the Cr.P.C. to set aside the judgment dated 15.02.2024 passed in CC No.05/2021 on the file of the Hon'ble Judicial Magistrate Court II at Kancheerpuam.

For Appellant : Mr.R.Prem Narayan

JUDGMENT

This Criminal Appeal has been preferred as against the judgment dated 15.02.2024 passed in CC No.05/2021 on the file of the Hon'ble Judicial Magistrate Court II at Kancheerpuam thereby acquitted the respondent for the offences punishable under Section 138 of NI Act.



2. The appellant filed a complaint for the offence punishable under Section 138 of Negotiable Instruments Act as against the respondent alleging that the respondent borrowed a sum of Rs.5 lakhs as hand loan on 05.12.2018. In order to repay the said amount, the respondent issued cheque dated 26.07.2020 and the same was presented for collection. However, it was returned dishonoured for the reason “funds insufficient”. After causing statutory notice, the appellant filed a complaint and the same has been taken cognizance by the trial Court.

3. During the trial, the appellant had examined PW.1 and marked Ex.P1 to Ex.P5. On the side of the respondent, he examined himself as DW.1 and marked Ex.D1. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence punishable under Section 138 of Negotiable Instruments Act and acquitted her. Aggrieved by the same, the present appeal has been preferred.

4. Learned counsel for the appellant would submit that the trial Court dismissed the complaint only on the ground that the appellant failed to prove his financial capacity and it is immaterial when the respondent himself admitted that the he owes to pay a sum of Rs.5 lakhs. The respondent also denied his

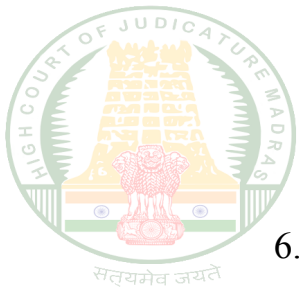


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signature and also issuance of cheque. When that being so, the trial Court ought

not to have acquitted the respondent.

5. Perusal of records revealed that the specific case of the appellant was that the respondent borrowed a sum of Rs.5 lakhs on 05.12.2018. However, on the date of borrowal, the appellant did not receive any other documents for security. Nearly after one year, the respondent issued a cheque for the said sum in order to repay the loan amount that too without interest. No prudent person would lend such a huge amount of Rs.5 lakhs that too without any security documents and also without any interest. It is not the case of the appellant that the respondent borrowed loan and agreed to pay any interest. The specific case of the respondent was that the appellant was conducting chit in which the respondent was one of the subscriber for the chit of Rs.5 lakhs. The prize chit amount was received by the respondent and thereafter, he committed default in repayment of the chit amount for 2 or 3 instalments. Thereafter, the entire prize chit amount was paid by the respondent, even then, the appellant failed to return the cheque and misused the same to file a complaint under Section 138 of Negotiable Instruments Act. Therefore, the respondent rebutted the presumption arising under Section 118 and 138 of Negotiable Instruments Act. However, the appellant failed to prove her complaint in accordance with law.



6. That apart, in support of the contention of the respondent, he also examined DW1. Perusal of the examination of DW.1 also revealed that the appellant was running chit in which the respondent was one of the subscriber. After taking the prize chit amount, the respondent repaid the entire loan amount. In her cross examination, nothing was elaborated by the appellant in her favour. Therefore, the trial Court rightly dismissed her complaint and acquitted the respondent.

7. In view of the above, this Court finds no infirmity or illegality in the judgement dated 15.02.2024 passed in C.C. No. 5 of 2021 on the file of the Judicial Magistrate Court-II, Kancheepuram.

8. Accordingly, this Criminal Appeal stands dismissed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Internet : Yes
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The Judicial Magistrate Court – II, Kancheepuram.



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G.K.ILANTHIRAIYAN, J.

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