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Crl.A.No.802 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2025

CORAM :

THE HON'BLE **MR.JUSTICE SUNDER MOHAN**

Crl.A.No.802 of 2013

E.S.Srinivasan

...Appellant/Complainant

VS.

N.Velusamy

...Respondent/Accused

Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to call for the records and set aside the Judgment passed in C.C.No.30 of 2013 by the Special Judicial Magistrate, Anti-Land Grabbing Court, Tirupur on 31.10.2013.

For Appellant : Mr.A.Balamurugan
Legal Aid Counsel

For Respondent : Ms.S.Vasavi Sridevi
Legal Aid Counsel



Crl.A.No.802 of 2013

WEB COPY

JUDGMENT

The appeal challenges the Judgment of acquittal passed in C.C.No.30 of 2013 by the learned Special Judicial Magistrate, Anti-Land Grabbing Court, Tirupur, on 31.10.2013.

2. It is the case of the appellant/complainant that the appellant/complainant and the respondent/accused were close friends; that the respondent had borrowed a sum of rupees Rs.4,00,000/- (Rupees Four Lakhs only) for his urgent personal needs on 26.02.2010 from the appellant and had executed a promissory note on 26.02.2010 agreeing to repay the loan with the interest @ 12% p.a.; that towards discharge of his liability, the respondent had issued a cheque for Rs.3,00,000/- (Rupees Three Lakhs only); that when the said cheque was presented for collection, it was returned for the reason “Funds Insufficient” and thus the respondent had committed the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act).



Crl.A.No.802 of 2013

WEB COPY

3. Before the trial Court, the appellant examined himself as P.W.1 and marked Exs.P1 to P5. The respondent/accused examined himself as D.W.1 and his friend, one Mr.Selvaraj, as D.W.2 and did not mark any document.

4. The trial Court, after considering the evidence on record, held that the appellant had not established his financial capacity to lend a sum of Rs.4,00,000/-; that he had not filed the promissory note said to have been executed by the respondent at the time of filing the complaint; that though the respondent had denied his signature in the promissory note, the appellant had neither examined the witnesses in the promissory note nor sent the signature for comparison; and that the respondent had established that he had a transaction with the appellant's brother and not with the appellant and hence acquitted the respondent for the offence under Section 138 of the NI Act.

5. Since there was no representation for the appellant after the learned counsel for the appellant had withdrawn his appearance, this Court had



Crl.A.No.802 of 2013

appointed Mr.A.Balamurugan, Advocate, as Legal Aid Counsel to represent the appellant.

6. Mr.A.Balamurugan, learned Legal Aid Counsel for the appellant, submitted that the trial Court ought to have seen that if the respondent had denied the signature, the burden was on him to show that it was not his signature and ought not to have insisted upon the appellant to establish that fact.

(b) The learned counsel further submitted that once the cheque had been issued, the Court ought to have drawn the presumption under Section 139 of the NI Act, and in the facts, the respondent had not rebutted the said statutory presumption, especially when the respondent had not denied the signature in the cheque.

(c) The learned counsel further submitted that the other reasons assigned by the trial Court for acquittal are perverse and ought to be interfered with.



Crl.A.No.802 of 2013

7. Ms.S.Vasavi Sridevi, the learned Legal Aid Counsel for the respondent, *per contra*, submitted that the reasons assigned by the trial Court for acquittal are justified; that the appellant had admitted in his evidence that he is only earning Rs.10,000/- (Rupees Ten Thousand only) per month; that his case in the complaint and the proof affidavit was that he had arranged funds from the other sources to lend to the respondent, whereas, in his cross-examination, he had stated that he had saved the money and kept the money in his house; and considering all these inconsistent statements, the trial Court was right in acquitting the respondent/accused.

(b) The learned counsel further submitted that the trial Court was also right in believing the defence witnesses as regards the fact that the appellant and the respondent were not friends; and that the respondent had a transaction only with the appellant's brother.

(c) The learned counsel further submitted that in any case, the appellant was not able to show any perversity in the Judgment and sought for dismissal of the appeal.



Crl.A.No.802 of 2013

WEB COPY

8. It is seen from the records that the appellant had stated in his complaint that on the request of the respondent, he had arranged funds of Rs.4,00,000/- (Rupees Four Lakhs only) on 26.02.2010. In his proof affidavit, he had stated that he had paid the sum of Rs.4,00,000/- in the presence of witnesses. The witnesses who had allegedly signed the promissory note were not examined by the appellant. In his cross-examination, he had initially stated that he had the money in his Savings Account and thereafter, he changed it by saying that he had kept the money in his residence. The trial Court found that the appellant had made inconsistent statements at different stages with regard to his capacity to lend a sum of Rs.4,00,000/-. This Court finds no infirmity in the said finding.

9. That apart, the appellant had also admitted that his monthly salary was Rs.10,000/-; and that his income was less than the taxable limit and he had not filed any returns. Therefore, the trial Court found that the version of the appellant that he had the capacity to lend Rs.4,00,000/- (Rupees Four Lakhs only) was highly improbable and opposed to common sense. This Court finds no infirmity in the said finding.

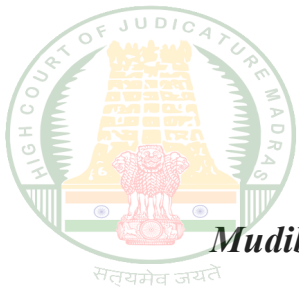


Crl.A.No.802 of 2013

WEB COPY

10. It is also seen that the appellant had not explained as to why he had not filed the promissory note at the time of filing the complaint. The witnesses to the promissory note have also not been examined. The respondent had specifically denied his signature in the promissory note. He had only admitted his signature in the cheque. In such circumstances, this Court is of the view that the appellant ought to have taken steps to have the two signatures compared by an expert.

11. It is the respondent's case that he had no transaction with the appellant and had only received a sum of Rs.10,000/- from the appellant's brother; and that a blank cheque was given to the appellant's brother as security, which was misused by the appellant. The respondent had examined himself and D.W.2 to prove the same. Even if the evidence of D.W.2 is to be discarded, this Court is of the view that the facts and circumstances of the case and the other evidence on record suggest that the version of the respondent appears to be more probable and in any case, he had rebutted the statutory presumption. The Hon'ble Supreme Court in *Basalingappa Vs.*



Crl.A.No.802 of 2013

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Mudibasappa reported in (2019) 5 SCC 418 held that the accused can rebut the statutory presumption either by adducing independent evidence or by relying upon the materials produced by the complainant and by drawing inferences from the circumstances of his case. The relevant paragraph reads as follows:

“25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

25.1 Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.”

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence.



Crl.A.No.802 of 2013

WEB COPY

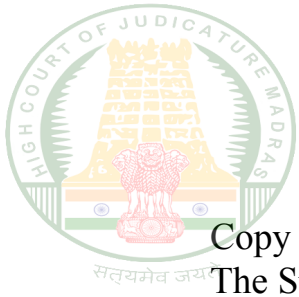
In this case, from the evidence adduced on either side, it is clear that the respondent had rebutted the statutory presumption.

12. It is well settled that unless the Judgment of the trial Court is perverse, the Appellate Court in an appeal against acquittal would not interfere with the Judgment. For all the reasons stated above, the Judgment of acquittal passed by the Special Judicial Magistrate, Anti-Land Grabbing Court, Tirupur, on 31.10.2013 is confirmed. Accordingly, the Criminal Appeal is dismissed.

13. This Court records the appreciation for the learned legal aid counsels appearing on either side. The High Court Legal Services Committee, Chennai, shall pay the scheduled fees to both the learned counsels who appeared for the appellant and the respondent as per the rule.

16.07.2025

Neutral citation : yes/no
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Crl.A.No.802 of 2013

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Anti-Land Grabbing Court,
Tirupur.

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Crl.A.No.802 of 2013

SUNDER MOHAN,J.

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Crl.A.No.802 of 2013

16.07.2025