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Crl.A.No.844 of 2013

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 16.07.2025

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.A.No.844 of 2013

K. Rajendran

... Petitioner

Versus

A. Arumugam

... Respondent

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C to call for the entire records of the Trial Court and set aside the order of acquittal passed by the learned Metropolitan Magistrate III Fast Track Court at Saidapet, made in C.c.No.12546 of 2008 dated 09.10.2013 and thereby pleased to convict the accused u/s 138 of Negotiable Instrument Act with maximum imprisonment and also pleased to award compensation as prayed in the complaint and pass orders.

For Appellant: G.Jayachandran( No appearance)

For Respondent: Mr.P.Joseph( No appearance)



Crl.A.No.844 of 2013

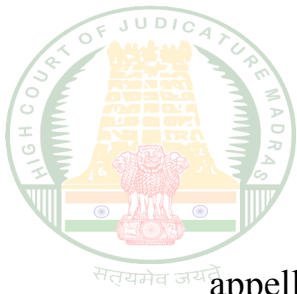
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## ORDER

The appeal challenges the Judgment of acquittal passed by the learned Metropolitan Magistrate III Fast Track Court at Saidapet, Chennai -15. There was no representation for the appellant when the matter was called on 03.01.2014,02.08.2024,25.06.2025,30.06.2025. Even today there is no representation for both the appellant and the respondent.

2. Therefore, this Court proposes to decide the case on merits with the available records.

3. It is the case of the appellant/complainant that the respondent/accused had received a total sum of Rs.3,81,865/- in the year 2008 in several installments; that he had issued four cheques towards the discharge of the said liability; that two cheques each for a sum of Rs.1,00,000/- were honoured; that the remaining two cheques, one of Rs.1,00,000/- dated 30.06.2008 and the other Rs.81,565/- dated 30.07.2008 were dishonored for the reason “ funds insufficient”; that the



Crl.A.No.844 of 2013

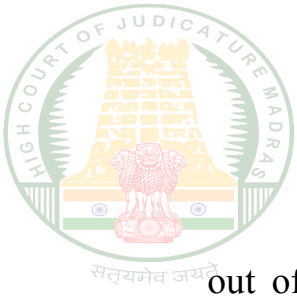
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appellant therefore had issued a statutory notice and inspite of the statutory notice, the respondent did not make payment and thus committed the offence of 138 of the Negotiable Instruments Act,1881.

4. Before the Trial Court appellant examined himself as P.W.1 and marked Exs.P1 to P8, the respondent examined DW.1 to DW.3 and marked Ex.D.1. The Trial Court found that the respondent had rebutted the statutory provisions of acquitting the appellant for the offences under Section 138 of the Negotiable Instruments Act,1881.

5. In the grounds of the appeal, the appellant had stated that the Judgment of the Trial Court is perverse in as much as the Trial Court had erroneously disbelieved P.W.1 and documents filed in support of the appellant's case; that the defence witnesses are totally unreliable; and that the Trial Court ought not to have believed their version to hold that the respondent had rebutted the statutory presumption.

6. It is the case of the appellant that he had lent a total sum of Rs.3,81,865/- which were given in several installments to the respondent



Crl.A.No.844 of 2013

WEB COPY

out of which a sum of Rs.2,00,000/- was repaid and the two cheques issued for the sum of Rs.1,81,865/- were dishonoured. However, in Ex.P.7 which was marked by the accused in the cross examination of P.W.1, it is stated that the appellant had given the entire loan of Rs.3,81,865/- on the same day. The complainant was unable to explain this discrepancy in the accounts maintained by him. Further the appellant had suppressed the said statement. It was the respondent who had marked it in the cross-examination of the appellant. Ex.P.8 is the copy of the plaint filed by the complaint before the Sub Court, Tambaram, which was also marked only by the defence in the cross examination.

7. The appellant admitted in his cross examination that he has not disclosed the fact that he has lent a sum of Rs,3,81,865/- to the respondent on the same day. The respondent has examined the witnesses to the pro-note marked by the appellant. The appellant had not chosen to examine them. Both of them had stated that a sum of Rs.1,00,000/- was repaid in cash to the brother of the complainant.



Crl.A.No.844 of 2013

WEB COPY

8. The Trial Court had believed both the witnessess and held that the accused/respondent had rebutted the statutory presumption and that thereafter the appellant had not adduced any of the evidence to discharge the burden to prove the debt.

9. This Court finds that the view taken by the Trial Court is plausible. All other reasons assigned by the Trial Court for acquittal also are in accordance with law and there is no perversity in the Judgment of the Trial Court warranting interference in the appeal against acquittal. Hence, this Court finds no merits in the appeal against acquittal. Accordingly this appeal stands dismissed.

16.07.2025

*smn*

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Metropolitan Magistrate,  
III Fast Track Court at Saidapet

5/6



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Crl.A.No.844 of 2013

**SUNDER MOHAN, J.**

*smn*

Crl.A.No.844 of 2013

16.07.2025