



Crl.A.No.603 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 12.06.2025

CORAM

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

Crl.A.No.603 of 2025

Azhagesan

..... Appellant

Vs

Christy Jebagani

..... Respondent

Prayer: Criminal Appeal filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order of acquittal dated 20.01.2025, made in STC No.32 of 2019, passed by the learned Judicial Magistrate No.I, Nagapattinam, in full additional charge of Fast Track Judicial Magistrate Court, Nagapattinam and convict the accused for the offence committed under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.N.Bhuvaneswaran

JUDGMENT

This Criminal Appeal has been filed challenging the order dated 20.01.2025 passed in STC No.32 of 2019 by the Judicial Magistrate No.I, Nagapattinam, thereby acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.



2. The appellant/complainant lodged a complaint against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that the respondent/accused, while working as a teacher, acquainted with him. The respondent had borrowed a sum of Rs.7,00,000/- from the appellant as a loan for constructing her house and for discharging her other debts. At the time of availing the loan, the respondent also executed a promissory note in favour of the appellant. Subsequently, when the appellant demanded to return of the loan, the respondent issued a cheque for the loan amount and took back the promissory note. However, when the cheque was presented for collection, it was returned dishonoured with the endorsement “Insufficient Fund”. After causing a statutory notice, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act.

3. On the side of the appellant, P.W.1 to P.W.3 were examined and Exs.P1 to P4 were marked. On the side of the respondent, no witnesses were examined and no documents were marked. On perusal of the oral and documentary evidence, the Trial Court found the



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respondent not guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly acquitted her.

4. The learned counsel appearing for the appellant would submit that the appellant duly discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. The respondent failed to rebut the presumption by any material or oral evidence. Even then the Trial Court acquitted the respondent without any reason. The Trial Court erroneously held that the cheque in question was issued by the respondent on behalf of her husband to discharge a loan allegedly borrowed by him. However, the respondent neither adduced any evidence not produced any documents to substantiate such a defence.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

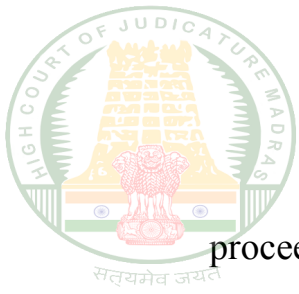
6. According to the appellant, he had lent a sum of Rs.7,00,000/- as a loan to the respondent and she also executed a promissory note in his favour. When the appellant demanded



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repayment, the respondent issued a cheque, and in turn, the appellant returned the promissory note to her. No prudent person would return a promissory note merely upon receipt of a cheque, especially before its realization. A promissory note is returned only after the cheque is honoured. Whereas in the present case, the appellant returned the promissory note immediately after the issuance of the cheque.

7. A perusal of the cross examination of P.W.1 reveals that the appellant was drawing a monthly salary of only Rs.10,000/-. The appellant failed to show any other source of income to lend a huge sum of Rs.7,00,000/-. The case of the respondent is that she never borrowed any loan from the appellant and never executed any promissory note. The appellant fabricated a promissory note to make it appear as if the respondent had executed the same, and after obtaining the cheque, returned the alleged promissory note to her. Further, the respondent's husband was acquainted with one Dr.Rajendran, who was running a hospital along with a medical shop. The respondent's husband borrowed a sum of Rs.4,00,000/- from him and issued a cheque belonging to the respondent as surety. The said Dr.Rajendran, instead of initiating the



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proceedings as against the respondent's husband, filed a complaint through the appellant herein, who was working as a lab technician in his hospital. Therefore, there is absolutely no legally enforceable debt or liability on the part of the respondent to the appellant. Hence, the Trial Court rightly acquitted the respondent.

8. In view of the above, this Court finds no infirmity or illegality in the order dated 20.01.2025 passed in STC No.32 of 2019 by the Judicial Magistrate No.I, Nagapattinam.

9. Accordingly, this Criminal Appeal stands dismissed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The Fast Track Judicial Magistrate,
Nagapattinam.

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