



Crl.A.No.862 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 10.07.2025

CORAM

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

Crl.A.No.862 of 2025

A.Rajagopal Appellant

Vs

K.Radhakrishnan Respondent

Prayer: Criminal Appeal filed under Section 378 Cr.P.C. to set aside the judgment dated 23.02.2024 made in C.C.No.816 of 2018 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level – II, Coimbatore and convict the respondent and impose punishment in accordance with law.

For Appellant : Mr.A.E.Ravichandran

JUDGMENT

This appeal has been preferred as against the judgment dated 23.02.2024 made in C.C.No.816 of 2018 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level – II, Coimbatore thereby acquitting the respondent for the offence punishable under Section 138 NI Act.

2. The appellant is the complainant who filed a complaint against the



respondent for the offence punishable under Section 138 NI Act alleging that

the respondent had borrowed Rs.30,00,000/- in the month of June, 2016.

Subsequently, on 20.07.2016 he borrowed an another sum of Rs.15,00,000/-. In order to repay the part amount the respondent had issued cheque for a sum of Rs.15,00,000/- on 25.01.2018 which was presented for collection. However it was returned dishonoured for the reason “Kindly contact Drawer”. After issuance of the statutory notice, the appellant filed complaint and the same has been taken cognizance by the trial Court.

3. On the side of the appellant he had examined P.W.1 and marked Exs.P1 to P5. On the side of the respondent he had examined D.W.1 and marked Exs.D1 to D7. On perusal of oral and documentary evidence, the trial Court found the respondent not guilty and acquitted him. Aggrieved by the same, the present Appeal has been filed.

4. The learned counsel for the appellant submitted that the trial Court acquitted the respondent only on the ground that the respondent categorically rebutted the presumption on the basis of Ex.D6 – the receipt issued by the Inspector of Police, Singanallur Police Station, Coimbatore for stolen of cheque leaves on the complaint dated 19.02.2018. He also pointed out that the said



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complaint was lodged with the allegation that the cheque book was stolen in

which three leaves have been signed for a sum of Rs.15,00,000/-. The respondent has set up a case in order to escape the clutches of law for the offence punishable under Section 138 of NI Act. Further, the respondent had also lodged a complaint as against the appellant and the same has been registered in Cr.No.17/2018 for the offence punishable under Section 120B, 409, 468, 471 & 420 IPC with false allegations. He further submitted that the appellant is a Treasurer and the respondent is the President of apartment association called “Green Paradise Society”. The respondent never denied the signature and issuance of cheque. Even then the trial Court mechanically acquitted the respondent for the offence punishable under Section 138 of NI Act.

5. On perusal of the records it is revealed that even before the issuance of cheque on 25.01.2018, the respondent lodged a complaint on 15.02.2018 on the file of the Inspector of Police, Singanallur Police Station, Coimbatore alleging that the empty cheque including the cheque leaves signed by him for a sum of Rs.15,00,000/- was missing along with his small bag. On receipt of the said complaint, the respondent had issued C.S.R. and that apart the respondent had also lodged complaint and the same has been registered in Cr.No.17/2018 on



various allegations as against the appellant including misappropriation. Even according to the appellant, the respondent had borrowed a sum of Rs.30,00,000/- in the month of June, 2016 and subsequently on 20.07.2016, he borrowed another sum of Rs.15,00,000/-. No prudent person would lend such a huge amount of Rs.40,00,000/- that too without obtaining any security. On the date of the alleged borrowal, the appellant did not even insist for post dated cheque or any other document as security. Only on 25.01.2018 the respondent allegedly issued the cheque for a sum of Rs.15,00,000/-. In the meanwhile the respondent lodged the complaint.

6. The respondent was examined as P.W.1. He categorically deposed that with regard to disputed cheques, that he used to go to his office of Green Paradise Society and while being so on 26.01.2018 he carried his own signed cheques in his bag and went to his office. Thereafter, he found that the cheques which he carried out in his bag were missing and lodged complaint. Though the cheque was dated 25.01.2018 it was presented only on 23.02.2018 by the appellant. Therefore, the respondent categorically rebutted the presumption under Section 139 of NI Act. Even then the appellant failed to prove that the cheque was issued for legally enforceable debt. Hence, the trial Court rightly acquitted the respondent and this Court finds no illegality or irregularity in the



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order passed by the trial Court.

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7. Accordingly, this Criminal Appeal is dismissed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To
Judicial Magistrate, Fast Track Court at Magisterial Level – II, Coimbatore



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G.K.ILANTHIRAIYAN, J.

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