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Crl.A.No.570 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2025

CORAM

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

Crl.A.No.578 of 2025

Sampath

.....

Appellant

Vs

Kamalakkan

.....

Respondent

Prayer: Criminal Appeal filed under Section 419 BNSS to call for the records and setting aside the judgment dated 10.02.2025 passed in C.C.No.104 of 2022 on the file of the Judicial Magistrate No.II Madurantagam.

For Appellant : Mr.A.Murugavel

JUDGMENT

This appeal has been preferred as against the order dated 10.02.2025 passed in C.C.No.104 of 2022 on the file of the Judicial Magistrate No.II Madurantagam, thereby acquitting the respondent for the offence punishable under Section 138 NI Act.

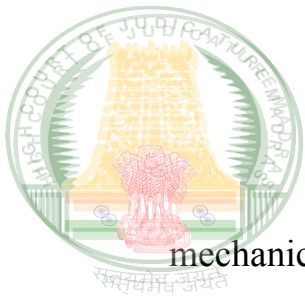
2. The appellant is the complainant and the respondent is an accused. A



complaint has been lodged by the appellant for the offence under Section 138 of NI Act alleging that the respondent borrowed a sum of Rs.2,00,00,000/- from the appellant during the first week of January, 2021. After several demands and requests for repayment of said amount, the respondent had issued a cheque for a sum of Rs.2,00,00,000/-. When it was presented for collection, it was returned dishonoured for the reason “Insufficient Funds ”. After causing statutory notice, the appellant filed a complaint.

3. The appellant was examined as P.W.1 and Exs.P1 to P5 were marked. The respondent was examined as D.W.1 and no documents were marked. The court had examined C.W.1 and marked Ex.X1. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and acquitted the respondent.

4. The learned counsel for the appellant would submit that though the appellant categorically discharged his initial burden to prove the charge for the offence punishable under Section 138 NI Act, the respondent failed to rebut the presumption. In fact, during the cross-examination of D.W.1, he categorically admitted the borrowal of the loan amount and had also issued the cheque. Even then the trial Court, without considering the facts and circumstances,



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mechanically acquitted the respondent for the offence under Section 138 NI

Act.
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5. On perusal of the records revealed that the appellant had lent a sum of Rs.2,00,00,000/- by way of cash in a single stroke. Further, the appellant is an Advocate and his wife was elected as Panchayat President, Madurantakam. On receipt of the statutory notice, the respondent issued a reply notice dated 22.07.2022 which was marked as Ex.P1. A perusal of the reply notice revealed that the respondent denied the entire borrowal and the issuance of the cheque for a sum of Rs.2,00,00,000/-.

6. The respondent was examined as D.W.1 and court exhibit was examined as C.W.1. On perusal of the depositions of D.W.1 and C.W.1, it revealed that the respondent had categorically rebutted the presumption. Further, P.W.1 has averred in the complaint that the respondent borrowed a sum of Rs.2,00,00,000/- on a single day. However, in his deposition he had stated that the amount was disbursed in two days.

7. In order verify the financial capacity of the appellant, to lend such a huge amount of Rs.2,00,00,000/-, that too by way of cash, the Court has marked Ex.X1- Nomination and Declaration of assets of Mrs.Kavitha (wife of the



complainant). The wife of the appellant, while contesting to the post of Village Panchayat President, has declared the assets and liabilities of her family and according to which the cash on hand of the appellant was only Rs.20,000/- and she has no movable and immovable assets. That apart, the appellant has not given the bank details though he hold a bank account in South Indian Bank, Acharapakkam and the declaration form also did not disclose the account details of the appellant. Further, the appellant is not a Income Tax Assessee.

8. On basis of the above facts, the trial Court rightly has drawn adverse inference against the appellant that he could not have lent such a huge amount of Rs.2,00,00,000/- that too by a single transaction. Hence, the appellant failed to prove the case and the trial Court has rightly acquitted the respondent. This Court finds no illegality or infirmity in the order passed by the trial Court and is inclined to dismiss this appeal.

9. Accordingly, this Criminal Appeal is dismissed.

10.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order



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To
The Judicial Magistrate No.II Madurantagam



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G.K.ILANTHIRAIYAN, J.

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