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Crl.A.No.879 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.07.2025

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

Crl.A.No.879 of 2025

R.Balaji

...Appellant

E.Anbarasu

... Respondent

Prayer: Criminal Appeal filed under Section 419 of BNSS, praying to call for the records and set aside the judgment and order dated 07.01.2025 passed in CC.No.7 of 2019 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Thiruvannamalai by acquitting the respondent/accused under Section 138 r/w 142 of NI Act and consequently punish the respondents.

For Appellant : Mr.V.Karthikeyan
for Mr.S.Sarajraj

JUDGMENT

This criminal appeal has been preferred against the judgment dated 07.01.2025 passed in CC.No.7 of 2019 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Thiruvannamalai thereby acquitting the respondent for the offence punishable under



Section 138 of NI Act.

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2. The respondent is the accused in the complaint lodged by the appellant for the offences punishable under Section 138 of NI Act alleging that the respondent borrowed a sum of Rs.17,00,000/- on 05.07.2018 and in order to repay the same, he issued a cheque. The said cheque was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the complaint was lodged.

3. On the side of the appellant, he had examined PW1 and PW2 and marked Ex.P1 to Ex.P8. On the side of the respondent, DW1 to DW3 were examined and Ex.D1 to Ex.D6 were marked. On perusal of the oral and documentary evidences, the trial court found the respondent not guilty for the offences punishable under Section 138 of NI Act. Aggrieved by the order of acquittal, the present criminal appeal has been filed by the complainant.

4. The learned counsel for the appellant would submit that the



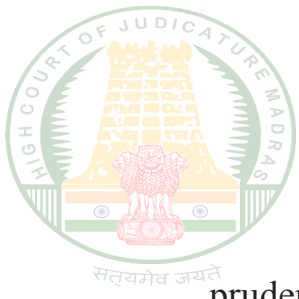
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trial court completely confused about the borrowal of amount. In the year 2016, the respondent had borrowed a sum of Rs.10,00,000/- and in the year 2018, he further borrowed Rs.17,00,000/-. While borrowing the first amount, he had executed unregistered sale agreement for the same. After repayment of the entire amount, the same was cancelled. Subsequently, on issuance of post dated cheque, the respondent borrowed a sum of Rs.17,00,000/-. Further, on receipt of the statutory notice, the respondent did not even send any reply notice to rebut the initial presumption.

5. Heard, the learned counsel for the appellant and perused, all the materials placed before this Court.

6. On perusal of records, it is revealed that in the year 2016, the respondent borrowed a sum of Rs.10,00,000/- and it was duly returned with interest. At the time of borrowal, there was executed an unregistered agreement for sale. In fact, in the year 2018, the appellant lodged complaint before the police personnel and he was issued CSR. Thereafter, the respondent settled the amount. When it being so, no



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prudent person would lend once again such huge amount to the tune of Rs.17,00,000/- in favour of the person who already committed default in repayment of loan amount. Therefore, on perusal of cross examination, it is revealed that the respondent categorically rebutted the presumption arising under Sections 118 and 139 of NI Act. That apart, in support of the defence, the respondent also examined DW1 to DW3. Even then, the appellant failed to prove that the cheque was issued for legally enforceable debt. On the other hand, the respondent categorically rebutted the presumption by preponderance of defence . Hence, the trial court rightly acquitted the respondent and this Court finds no infirmity or illegality in the impugned order.

7. In view of the above discussion, this criminal appeal stands dismissed.

14.07.2025

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



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G.K.ILANTHIRAIYAN, J.
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