



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-11-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL A No. 965 of 2022

N.Arvindaksan

Appellant(s)

Vs

M/s.Agriyaa Properties,
Rep.by K.Vahap,
S/o.J.Kareem Shahib.

Respondent(s)

PRAYER: This Petition is filed under Section 378 of CrI.Procedure Code, to call for the entire records pending on the file of the learned Judicial Magistrate (Fast Track Court), Magisterial Level, Ambattur in C.C.No.706 of 2018 and set aside the Judgment dated 31.03.2021 passed by the learned Judicial Magistrate, FTC, Magisterial Level, Ambattur and convict the respondent / accused.

For Appellant(s): Mr.K.Subramanian
Senior Counsel
assisted by
Mr.S.Punniyakotti

For Respondent(s): Mr.A.J.Srikanth-Legal Aid Counsel
Mr.G.V.Sridharan

ORDER

This appeal is filed against the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, dated 31.03.2021, made in C.C.No.706 of 2018. By that judgment, the trial court acquitted the



accused of an offence under Section 138 of the Negotiable Instruments Act, 1881.

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2. This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure. The complainant states that on 16.12.2016 and 12.12.2016, he borrowed Rs.30,00,000/-, which was transferred from his brother Mr. N. Krishnan's bank account via RTGS. The accused promised to repay this amount within 18 months but failed to do so. After repeated requests, the accused issued two cheques dated 15.07.2018 for Rs.10,00,000/- each. When presented, the cheques were dishonoured with the endorsement "Funds Insufficient." The complainant then issued a legal notice dated 16.08.2018. No payment was made within the statutory period, and only a reply notice was received from the respondent/accused. Consequently, the complaint was filed. After recording a sworn statement, the case was taken on file.

3. Upon the appearance of the accused, furnishing of the copies, and questioning, the accused denied the imputations and stood trial. To establish the charge, the complainant examined himself as P.W.1, and the subject matter cheques were marked as Ex.P1 and Ex.P2. The written memos were marked as Ex.P3 and Ex.P4. The legal notice and the online postal receipt were marked as Ex.P5 and Ex.P6. The reply notice issued by the respondent/accused was



marked as Ex.P7. When questioned about the material evidence and incriminating circumstances on record under Section 313 of the Code of Criminal Procedure, the accused denied them as false. Thereafter, the accused examined himself as D.W.1.

4. The trial Court considered the case of the parties. The respondent/accused had, through cross-examination and his own testimony, proved that on various dates he had repaid a sum of Rs.13,65,000/-. This was taken into account. The complainant's claim that this payment was for interest at a rate of 30% was rejected by the trial Court. Additionally, considering the accused's assertion that he had also paid Rs.10,00,000/- in cash, the trial Court held that the accused rebutted the presumption and raised serious doubts about the complainant's case. Consequently, the trial Court gave the benefit of doubt to the accused and acquitted him. Aggrieved by this, the present appeal is filed.

5. The learned Senior Counsel appearing on behalf of the appellant/complainant would, by relying upon the judgment of the Hon'ble Supreme Court of India in ***Kalamani Tex and another Vs. P. Balasubramanian***¹ contend that the rebuttal of presumption should be to the level of preponderance of probability. When the accused has pleaded discharge, he has not produced any documentary evidence in respect thereof. Further, the

¹ (2021) 5 SCC 283



entire loan was given through banking transactions. The accused issued a reply notice in which the stand of payment of Rs.10,00,000/- was not taken. For all the above, the learned Senior Counsel would submit that this is a fit case for this Court to interfere in the matter.

6. Per contra, the learned Counsel appearing on behalf of the respondent/accused submits that the complainant suppressed the repayment of Rs.13,65,000/- in total in the complaint, sworn statement, and statutory notice. Therefore, the appellant/complainant should not be believed at all. Further, when the accused's plea is that Rs.10,00,000/- was paid in cash and three cheques were given as security—one cheque not being represented and destroyed in the presence of the accused—the trial Court was correct in believing the accused's version. Since the accused is not liable to the tune of Rs. 20,00,000/-, the trial Court rightly acquitted the accused. The complainant's claim of 30% interest, with no other documentary evidence, further supports the accused's case. Concerning the reply notice, an omission at the time of issuing the reply cannot be held against the accused. Alternatively, the cheques left as security, which contained only a signature and were not issued for any liability at the time of giving the cheque, cannot be filled in or used by the appellant/complainant.

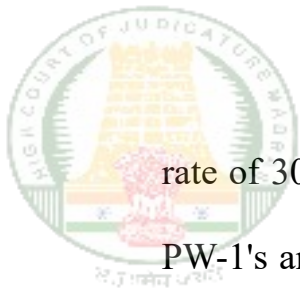


7. I have reviewed the rival submissions from both sides and examined the material records of this case.

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8. In this case, it is the plea of the complainant that a sum of Rs.30,00,000/- was advanced as a loan. The particulars of the RTGS transaction and the dates are mentioned in paragraph no.5 of the complaint. The proof affidavit also mentions the said particulars. Thereafter, the complainant has deposed to that effect, and both the subject matter cheques were also presented, along with the written memos and the statutory notice filed. The signatures on the cheques are admitted by the accused as his. Therefore, I am of the view that the complainant has discharged his initial onus, and a presumption under Section 139 of the Negotiable Instruments Act arises in favor of the complainant. The question that remains is whether the accused has rebutted the presumption and further created doubt in the case of the complainant.

9. By due cross examination of the complainant and the examination of the accused himself as D.W.1, the accused has established that when the complaint was simply as if a sum of Rs.30,00,000/- was advanced as loan and in repayment of the sum, the cheques are issued, after advancing Rs.30,00,000/- as loan, the complainant has received from the accused a sum of Rs.13,65,000/-. With reference to the complainant's contention that it is by way of interest at the



rate of 30%, the same is unbelievable. There is no evidence to support it. From PW-1's answers during cross-examination, it can be concluded that it cannot be for a 30% interest.

10. On the contrary, the accused has pleaded in the reply notice that the entire borrowal of Rs. 30,00,000/- was for interest at the rate of 12% p.a., which is credible. Secondly, the accused, during cross-examination, questioned the complainant whether he had paid a sum of Rs. 10,00,000/- in cash on 12.12.2017. Firstly, there is no proof whatsoever that the said amount was paid in cash. Secondly, it is evident that when questioned, the complainant denied having received such a payment. Even the accused was cross-examined regarding the failure to produce any proof of payment of Rs. 10,00,000/-. In this case, it is clear that the entire loan amount was advanced through bank transactions. The payment of Rs. 13,25,000/- was made by cheque and NEFT transfers. Since these transactions occurred between the parties, the sudden claim that in December 2017, a sum of Rs. 10,00,000/- was paid in cash is unnatural. Even according to the accused, he provided three cheques as security. His claim that he did not obtain any receipt is unbelievable. No message or email has been sent to support this claim. No other proof of cash possession or withdrawal from any bank has been presented. It is well established from various judgments of the Hon'ble Supreme Court of India that if the accused



pleads discharge, it is his duty to produce a discharge receipt or related proof. In the present case, this has not been done. Therefore, the trial court erred in accepting the accused's version that a sum of Rs. 10,00,000/- was paid in cash.

11. More importantly, when the accused himself issued the reply notice, he did not mention the payment of Rs.10,00,000/- as cash. The entire receipt of the loan of Rs.30,00,000/-, as claimed by the complainant, is admitted. The details, including the dates on which the amount was received, are all clearly stated in the reply notice. Similarly, the details, including the various dates of repayment by cheque and NEFT mode, are all detailed in the reply notice. When such a detailed reply notice is issued, it is hard to believe that omitting the mention of cash payment was accidental. Therefore, I believe that after a careful overall evaluation of the evidence, the case of the accused as outlined in the reply notice is truthful and credible. Even according to the same, I cannot conclude that there is no liability or that the liability is less than Rs . 20,00,000/- for which the cheque is issued.

12. It is true that the complainant's claim that Rs . 30,00,000/- is due in total and that 30% interest is payable has been disproved by the accused. The court is accepting only the accused's version in the reply notice. According to it, the accused has repaid Rs. 13,65,000/-. The entire loan of Rs. 30,00,000/- was



repayable only with interest at 12% per annum. When this is taken into account, as of the date of the cheque's presentation, the liability exceeds Rs. 20,00,000/-.

Therefore, it is concluded that the cheques were issued only for the legally enforceable liability.

13. Further, with reference to the argument that the cheques were issued as security, in this case, the complainant's case is that the accused only filled in the other particulars in the cheque and issued it, even agreeing with the accused's version that it is only for security. Still, when the accused borrows money and leaves the cheque as security with the complainant, no objection can be made to the complainant presenting the cheque towards the legally enforceable liability. Therefore, this Court cannot uphold the judgment of the trial Court acquitting the accused in full, even though there is liability. In view of this, I hold that the finding of acquittal should be overturned.

14. As far as the sentence is concerned, the following are taken into account:

- (a) the accused has truly and genuinely issued a reply notice at the earliest point in time;
- (b) after availing the loan, the accused has also repaid the part amount;
- (c) the complainant is at fault for failing to properly account for the said



payment of a sum of Rs. 13,25,000/-;

(d) his claim that 30% is the interest is nothing but absolute greed;

(e) the accused has been facing these proceedings from the year 2018.

15. All of the above is taken into account. In view thereof, this appeal is allowed on the following terms:

(i) the judgment of the trial Court dated 31.03.2021 made in C.C.No.706 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur stands set aside;

(ii) the respondent / accused is found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881;

(iii) the respondent / accused is imposed with a fine of Rs. 20,05,000/-;

(iv) the same shall be paid within a period of three months from the date of receipt of the copy of the order;

(v) upon payment of fine, a sum of Rs. 20,00,000/- shall be paid out to the complainant as compensation;

(vi) failing compliance, the accused shall undergo simple imprisonment for a period of 3 months.

(vii) there shall be no order as to costs.

28-11-2025

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Neutral Citation: Yes/No



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D.BHARATHA CHAKRAVARTHY J.
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To

1.The Judicial Magistrate (Fast Track Court), Magisterial Level,
Ambattur.

2.The Section Officer,
Criminal Section, High Court of Madras.

3.The Records Section,
High Court of Madras.

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