



Crl.A.No.587 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 03.07.2025

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

Crl.A.No.587 of 2023

Sangareswari Subbaraman Appellant

Vs

Kavitha Respondent

Prayer: Criminal Appeal filed under Section 372 of Criminal Procedure Code, praying to allow the appeal by setting aside the Judgment in STC No.218 of 2018 dated 30.11.2018 on the file of the learned Judicial Magistrate (Land Grabbing) Court, Salem and punish the accused according to law contemplated u/s.138 & 142 of Negotiable Instrument Act.

For Appellant : Mr.G.Mohana Krishnan

JUDGMENT

This Criminal Appeal has been preferred against the Judgment dated 30.11.2018 passed in STC No.218 of 2018 on the file of the Judicial Magistrate (Land Grabbing) Court, Salem, thereby dismissing the complaint filed by the appellant and acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.



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2. The appellant, who is the complainant, lodged a complaint against the respondent for the offence punishable under Section 138 of Negotiable Instruments Act, alleging that the respondent had borrowed a sum of Rs.2,50,000/- for her business purpose and assured to repay the same with interest at the rate of 12% per annum. The respondent also executed a promissory note on the same day. Thereafter, the respondent issued a cheque for the said amount and the same was presented for collection. However, the said cheque was returned with the endorsement “Drawer's Signature Differs”. After causing a statutory notice to the respondent, the appellant filed a complaint before the Trial Court.

3. On the side of the appellant, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked. On the side of the respondent, no witnesses were examined and no documents were marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the respondent not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted her.



Crl.A.No.587 of 2023

Aggrieved by the same, the present Criminal Appeal has been filed by the appellant.

5. The learned counsel appearing for the appellant would submit that the respondent had executed a promissory note on the date of borrowal of Rs.2,50,000/-. Further, the respondent did not deny the issuance of the cheque and the signature found therein. On receipt of the statutory notice, though the respondent had issued a reply notice, nothing was rebutted. Therefore, the appellant had discharged the initial burden of proof as contemplated under Section 138 of the Negotiable Instruments Act. However, the respondent failed to rebut the presumption and the Trial Court mechanically acquitted the respondent.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. A perusal of the records reveals that on the date of execution of the promissory note, i.e. on 01.03.2016, the appellant was not in India, he was in abroad. Therefore, the said promissory note, which was marked as Ex.P6, could not have been executed by the



respondent in favour of the appellant. Further, the cheque, which was marked as Ex.P1, was returned with the endorsement “Drawer's Signature Differs”.

8. The specific defence raised by the respondent in cross examination was that she had neither signed nor issued any cheque in favour of the appellant. The respondent never borrowed any amount from the appellant. Further, the respondent and her husband were living separately due to matrimonial disputes and her husband had forged her signature in the cheque and presented the same through the appellant herein with an intention to initiate the proceedings under Section 138 of the Negotiable Instruments Act. Therefore, the respondent categorically rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Therefore, the appellant failed to prove his case that the cheque was issued for any legally enforceable debt. Therefore, the Trial Court rightly acquitted the respondent.

9. In view of the above, this Court finds no infirmity or illegality in the Judgment dated 30.11.2018 passed in STC No.218 of 2018 on the file of the Judicial Magistrate (Land Grabbing) Court, Salem. Accordingly, this Criminal Appeal stands dismissed.



Crl.A.No.587 of 2023

03.07.2025

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Index : Yes/No

Neutral citation : Yes/No

Speaking/non-speaking order

Lpp

To

The Judicial Magistrate (Land Grabbing) Court,
Salem.



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6

G.K.ILANTHIRAIYAN, J.

Lpp

Crl.A.No.587 of 2023

03.07.2025

6/6