IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.04.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.186 of 2022

S.Shankar ... Appellant/Complainant

Versus

S.Parveen Banu ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the judgment passed in C.C.No.61 of 2018 dated 11.09.2020 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur.

Appellant	:	Mr.M.Rajkumar
For Respondent	:	Ms.S.Jaimithra Legal Aid Counsel

JUDGMENT

The appellant/complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.61 of

2018. The trial Court by judgment dated 11.09.2020, dismissed the complaint discharging the respondent, against which, the present appeal is filed.

2.The learned counsel for the appellant submitted that the appellant and respondent are neighbours, known to each other and they had a good relationship. For the urgent needs, the respondent requested for hand loan and the appellant had given hand loan of Rs.25,00,000/- during January, 2016 and the respondent promised to repay the loan amount within two years. In discharge of the said liability, the respondent gave a cheque bearing No.140221 dated 04.12.2017 during November, 2017. Thereafter the cheque was presented on 19.12.2017, which was returned for the reason 'Funds Insufficient'. Following the same, statutory notice/Ex.P3 issued on 26.12.2017. The respondent received the notice and the acknowledgement card dated 02.01.2018 marked as Ex.P4.

3.The appellant to prove his financial capability has filed Income Tax returns/Ex.P5. The copy of the sale deed document dated 25.04.2018 marked as Ex.P6 and the other cheques, which were given during the transaction, marked as Exs.P6A and P7. The Mortgage Deed of the properties by which, the appellant generated the amount were marked as Exs.P8 to P10 and the sale agreement between the appellant and the respondent were marked as Exs.P11 and P12. In this case, the respondent examined herself as DW1 and marked Exs.D1 and D2. The respondent agreed about the issuance of the cheque and also not denied the signature in the cheque. The only defence taken by the respondent is that the respondent agreed to purchase the property from one Saradha, mother-in-law of the appellant, this sale could not fructify and at that time the cheque was given as security, which was blindly accepted by the trial Court. When the appellant not denied the signature and issuance of cheque, the trial Court ought to have convicted the respondent. Hence, prayed for setting aside the judgment of acquittal.

4.The learned Legal Aid Counsel appearing for the respondent submitted that in this case the complaint is with flaw. Right from the beginning, the appellant/complainant has been making false statements. He states that the appellant and respondent are neighbours and due to this relationship he gave a loan of Rs.25,00,000/-. Even the admitted position as per the complaint and the statutory notice, which carries the address of the complainant in Periyar Nagar, Thiruninravur and the respondent address at Avadi, which is a far of place and they were never living as neighbours. Likewise the appellant states that the loan was taken in the month of January, 2016 and agreed to repay after two years, but for what reason the post-dated cheque, dated 19.12.2017 was given during November, 2017, there is no explanation.

5.In this case, according to the respondent, the respondent entered into a sale agreement with Saradha to purchase a property. For collecting documents of the property and also to visit the property and verify the same, security cheques were given. Later the respondent found that the title of the property is with some dispute, she had not purchased the property. Hence, she handed over the document and withdrew the agreement for sale. The appellant having the signed security cheque, which was given earlier, has received the same from his mother-in-law Saradha and thereafter filled up the cheque and presented the cheque as though it has been issued with liability. In the notice as well as in the complaint there is no details given with regard to the particulars of issuance of the cheque. Further in the complaint and notice there is only reference to one cheque. During cross examination, the appellant admits that 4 cheques were received from the respondent. Hence, the appellant not come with clean hands and he has got no resources to give such huge amount of Rs.25,00,000/- as loan and that too for asking without any security, is highly doubtful. The trial Court had rightly considered these aspects and rendered a well reasoned judgment, which needs no interference.

6.In support of his contention, the respondent relied upon the decision of the Hon'ble Apex Court in ***Sri Dattatraya vs. Sharanappa*** in Criminal Appeal No.3257 of 2024 @ SLP (Criminal) No.13179 of 2023, wherein it is held that when the complainant is unable to put forth the details of loan advanced and his contradictory statements, the effect of giving rise to the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 would not arise. Further in the case of ***Basalingappa vs. Mudibasappa*** reported in ***(2019) 5 SCC 418***, it is held that for non mentioning of the details about the transaction as to on which date, the loan was given, when it was to be returned and non disclosure of vital facts with regard to the loan, date and discharge, in such event, the date mentioned in the cheque to be taken as issuance of cheque as per Section 118(3) of the Negotiable Instruments Act (N.I. Act). In this case, the cheque is said to have issued during November, 2017 but it is dated 19.12.2017. Hence, the presumption under Section 118 of N.I. Act is also not in favour of the appellant.

7.Considering the submission made and on perusal of the materials, it is seen that the case projected by the appellant/complainant is that the respondent had taken loan of Rs.25,00,000/- during January, 2016 on an undertaking that she would repay the loan amount within two years and cheque dated 04.12.2017 was issued during November, 2017 for Rs.25,00,000/-, thereafter the cheque was presented on 19.12.2017 and the same returned on 20.12.2017. Thereafter, following the statutory conditions, complaint filed. The appellant/complainant examined himself as PW1 and marked Exs.P1 to P12. On the side of the defence, the respondent got into the box, examined herself as DW1 and marked Exs.D1 and D2. The loan was taken in the year 2016, same to be repaid within two years but why the cheque dated 04.12.2017 handed over during November, 2017, there is no reason given in the notice, complaint and in evidence. Likewise, the specific case is that both the appellant and respondent are neighbours, due to which, the loan was given but the admitted position of the appellant is that he is residing in Thiruninravur and the respondent is residing in Avadi. It is a far of places. Hence, the foundational fact of knowing each other and based on which loan of Rs.25,00,000/- given becomes highly doubtful.

8.Further, in this case the notice and complaint are bereft of facts. The appellant/complainant is unable to give any details. Though in the notice and complaint he states that he handed over Rs.25,00,000/- in one stroke, during cross examination the appellant gives a different version that in the year 2012 he gave Rs.50,000/-, in the year 2013, he gave Rs.1,50,000/- and in the year 2014, he gave some amount, in total, he gave Rs.25,00,000/-. Why he gave in part for so many years from 2012 to 2014, no reason has been given. He states that apart from the cheque, the respondent had not given any cheques, which got returned. But the appellant marked 4 more cheques of the respondent as exhibits. The appellant is unable to give any proper reason to prove that cheque was given in discharge of any liability. On the other hand the respondent had got into the box and probabilised her defence by producing Exs.D1 and D2. The trial Court considered all these aspects and rightly acquitted the respondent by a well reasoned judgment, which needs no interference.

9.In the result, the Criminal Appeal is dismissed.

10.This Court appreciates Ms.S.Jaimithra, learned Legal Aid Counsel for the respondent for her strenuous efforts in doing research and putting forth the case of the respondent effectively. The Legal Services Authority to pay the remuneration to the Legal Aid Counsel as per Rules.

24.04.2025

Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
rsi

M.NIRMAL KUMAR, J.

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To

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

2.The Public Prosecutor,
High Court, Madras.

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