



Crl.A.No.707 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.707 of 2022

Karnan

... Appellant

Vs.

N.G.Mohan
Proprietor K V MATS,
No.38 P.M Nagar,
Velu Nagar Bus Stop,
Seelanaickenpatti,
Salem-635201.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to allow this criminal appeal, set aside the order dated 07.10.2020 dismissing the complaint in S.T.C.No.30 of 2016 on the file of learned Judicial Magistrate – II, Salem and convict the accused.

For Appellant : Mr.Sanjay Davidson for Mr.J.Franklin

For Respondent : Ms.Nethra.A, Legal Aid Counsel



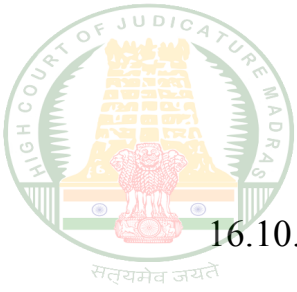
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JUDGMENT

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The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in STC.No.30 of 2016 before the learned Judicial Magistrate No.II, Salem against the respondent. The Trial Court, by judgment, dated 07.10.2020 dismissed the complaint acquitting the respondent, against which, the present criminal appeal is filed.

2.The learned counsel for the appellant submitted that the respondent for his urgent family requirement and business borrowed hand loan of Rs.1,00,000/- from the appellant on 07.09.2014 and promised to repay the amount within one month. To discharge the liability, the respondent issued post dated cheque No.362505 (Ex.P1), dated 08.10.2014 drawn on Indian Overseas Bank, Seelanaickenpatti Branch, Salem in favour of the appellant. On the request of respondent, when the appellant presented the cheque (Ex.P1) on 09.10.2014 with his bank namely Canara Bank, Erumapalayam Branch, Salem, the same was returned for the reason “Funds Insufficient” which was intimated to the appellant on 13.10.2014, thereafter, statutory notice (Ex.P3) issued on



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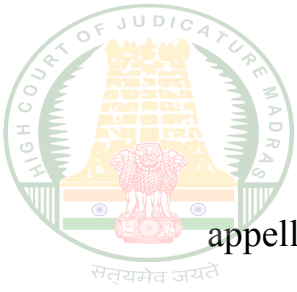
16.10.2014. The respondent received the statutory notice (Ex.P3) and sent a reply (Ex.P5) on 26.10.2014 stating that the respondent came in contact with the appellant through one Sambu @ Shanmugam, who was running a Saloon. For business and family requirement, the respondent approached the appellant through Sambu @ Shanmugam for loan of Rs.30,000/-, at that time, signed blank cheque, promissory note and Rs.20/- stamp paper collected from the respondent. Since the appellant was an Advocate, believing his words the respondent handed over these documents on 15.02.2014, but no loan as promised was given by the appellant, the appellant not returned the signed blank cheque, promissory note and Rs.20/- stamp paper. To return the documents, the appellant demanded Rs.5,000/- from the respondent, which the respondent refused, keeping this in mind, a false complaint filed. During trial, the appellant examined himself as PW1, marked Exs.P1 to P5. The respondent examined two witnesses as DW1, DW2 and Exs.D1 to D4.

3.He further submitted that the respondent not denied issuance of cheque (Ex.P1) and its signature. His only defence is that on the date of issuance of loan i.e., on 07.09.2014, the respondent was staying in Sri Raja Lodge, Coimbatore, not in Salem, to prove this fact, the respondent



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marked Exs.D1 to D4. The trial Court failed to look into the fact that the respondent in his reply notice takes a defence that a blank signed cheque, promissory note, Rs.20/- stamp papers issued and filled up by the appellant despite no loan was given by the appellant. The respondent took a new stand during trial stating that on 07.09.2014 & 08.09.2014, the respondent was staying in Sri Raja Lodge, Coimbatore and he never met the appellant on 07.09.2014 and received any loan amount. To prove this fact, the respondent examined himself as DW1 and the Manager of Sri Raja Lodge, Coimbatore as DW2. DW2 in his evidence admitted that during the relevant period, he was not employed as Manager in the said lodge, it was one Kannan and two others Managers worked. DW2 produced the bill No.577, as per the bill on 08.09.2017, the respondent stayed in the lodge. For a specific question whether the respondent was staying in the lodge on 07.09.2014, he denies the same, hence the evidence of the respondent got demolished by the evidence of DW2. On the other hand, the trial Court primarily relying upon the evidence of the respondent that the respondent was not at all present in Salem and he was in Coimbatore on 07.09.2014 and 08.09.2014 and the appellant could not have given any loan and dismissing the complaint, is not proper. In support of his submissions, the learned counsel for the



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appellant produced evidence of witnesses and documents. Hence, he prays for setting aside the judgment of trial Court.

4.The learned counsel for the respondent submitted that in this case, the respondent not denied issuance of cheque (Ex.P1) and its signature. According to the respondent, the appellant being an Advocate filled up the blank signed cheque, promissory notes and filed false complaint against the respondent. The respondent used to visit Saloon run by Sambu @ Shanmugam. The respondent was running a mat shop next to Saloon Shop of Sambu @ Shanmugam, through whom, the respondent came to know the appellant. The appellant promised that he would arrange loan, obtained blank signed cheque (Ex.P1), promissory note and Rs.20/- stamp paper, later failed to arrange loan for the respondent. When the respondent sought return of signed cheque (Ex.P1), promissory note, Rs.20/- stamp papers, the appellant demanded Rs.5,000/- for taking efforts to arrange loan and informed that if Rs.5,000/- not paid within short period, he would compromise only for Rs.10,000/-. Finding that the appellant being an Advocate using his position forcing and threatening, the respondent refused to pay the amount, sent reply (Ex.P5) to statutory notice (Ex.P3) giving details.



WEB COURT

5. She further submitted that the respondent in his reply notice (Ex.P5) clearly stated that during the month of February 2014, the respondent came to know the appellant through one Sambu @ Shanmugam, Saloon owner. The respondent used to visit Saloon shop of Sambu @ Shanmugam, at that time, he gave signed blank cheque (Ex.P1), promissory note, Rs.20/- stamp paper to Sambu @ Shanmugam for arranging loan. The said Sambu @ Shanmugam stated that he knew the appellant, through him, he would make arrangement for loan and the appellant handed over blank negotiable instruments to Sambu @ Shanmugam. The appellant neither arranged any loan, nor returned the negotiable instruments but filled up the signed blank cheque (Ex.P1), projected the case as though the respondent failed to discharge his liability. The trial Court on the evidence of DW1/respondent, DW2/Manager of Sri Raja Lodge, Exs.D1 to D4 finding that the respondent was not available on the date of issuance of loan amount *i.e.*, on 07.09.2014, dismissed the complaint and acquitted the respondent. Hence, she prayed for dismissal of the revision.

6. Considering the rival submissions and on perusal of the materials, it is seen that the respondent admitted in his reply notice



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(Ex.P5) that the respondent was running a mat shop next to the saloon run by Sambu @ Shanmugam. The appellant used to visit Sambu @ Shanmugam and requested for loan of Rs.30,000/- during the month of February 2014. At that time, the respondent handed over the signed blank cheque, promissory note and Rs.20/- stamp paper to Sambu @ Shanmugam, in turn Sambu @ Shanmugam handed over the same to the appellant for arranging loan. Thereafter, the appellant neither arranged any loan nor returned the signed blank cheque, promissory note and Rs.20/- stamp paper but filled up the cheque (Ex.P1) projected a false case against him. During trial, the respondent examined himself as DW1 and Manager of Sri Raja Lodge, Coimbatore as DW2, through DW2, Exs.D1 to D4 marked to prove the fact that on 07.09.2014, the respondent not available in Salem and not taken loan of Rs.1,00,000/- from the appellant.

7.It is seen that the respondent takes a stand in the reply notice that he handed over signed blank cheque, promissory note, Rs.20/- stamp paper to Sambu @ Shanmugam. During trial, he takes a stand that he was in Coimbatore on 07.09.2014 and 08.09.2014, not in Salem. Had the respondent examined Sambu @ Shanmugam to prove the fact that he



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handed over the signed blank cheque, promissory note, Rs.20/- stamp papers which landed to the hands of the appellant, then it might be taken as plausible explanation and probabilization of defence. In this case, the respondent had taken prevaricated stand and the trial Court completely relied upon the evidence of DW2 who confirmed that on 07.09.2014 the respondent was not in Sri Raja lodge.

8.It is to be seen that duration between Salem and Coimbatore is only three hours travel, it does not need one person to be completely away for 24 hours if he visits either Salem or Coimbatore on a particular day. The Trial Court relying upon the evidence of DW2 and Exs.D1 to D4 which is contrary to Ex.P5, the admitted position of the respondent and dismissing the appeal is improper, perverse, not sustainable.

9.In view of the same, the judgment, dated 07.10.2020 in STC.No.30 of 2016 passed by the learned Judicial Magistrate No.II, Salem is set aside and the case in STC.No.30 of 2016 is remanded back to the trial Court.



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10.The trial Court is directed to issue notice, ensure the presence of the appellant and respondent by taking all steps. From the stage of arguments, the case to be heard afresh. The trial Court to decide the case on its own merits and complete the process within a period of three months from the date of appearance of the parties.

11.In the result, this Criminal Revision Case is allowed.

12.This Court appreciates Ms.Nethra.A, Legal Aid Counsel for the respondent for her strenuous efforts in arguing the case.

15.04.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

The Judicial Magistrate No.II,
Salem.



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M.NIRMAL KUMAR, J.

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