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CrI.A.No.232 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.232 of 2022

R.V.Subramanian

... Appellant

Vs.

M.Balasubramaniam

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the judgment dated 27.08.2019 in C.A.No.189 of 2018 on the file of the learned I Additional District & Sessions Judges, Tiruvallur, confirming the judgment dated 11.03.2014 in C.C.No.283 of 2008 on the file of the learned Judicial Magistrate, Tiruttani.

For Appellant : Mr.R.Selvakumar

For Respondent : Ms.J.Madhumitha,
Legal Aid Counsel



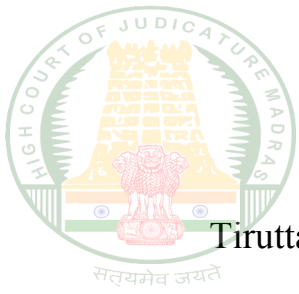
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JUDGMENT

The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.283 of 2008 before the learned Judicial Magistrate, Tiruttani (Trial Court) and the same was dismissed *vide* judgment, dated 11.03.2014 acquitting the respondent. Aggrieved over the same, the appellant preferred an appeal before the learned I Additional District and Sessions Judge, Tiruvallur in Crl.A.No.189 of 2018 which was dismissed *vide* judgment, dated 27.08.2019 confirming the judgment of the Trial Court. Challenging the same, the present Criminal Appeal is filed by the appellant/complainant.

2.The case of the appellant is that the appellant gave a loan of Rs.5,00,000/- to Mr.Sathyanarayanan, the father of the respondent and that the respondent on behalf of this father to repay the interest of the said loan, issued two cheques, dated 25.04.2009 and 29.04.2008 (Exs.P1 & P2) for a sum of Rs.1,20,000/- each in favour of the appellant. When the said cheques presented for encashment on 18.06.2008 with State Bank of India,



Tiruttani Branch, the Bank returned the cheques for the reason “funds insufficient” by return memo (Ex.P6), dated 19.06.2008. Thereafter, a statutory notice (Ex.P7) issued on 26.06.2008 to the respondent, to which, the respondent sent a reply (Ex.P9) denying the liability. In turn, the appellant sent a rejoinder (Ex.P10) and thereafter filed a complaint for offence under Section 138 of Negotiable Instruments Act, 1881.

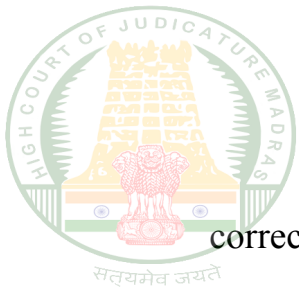
3.During trial, the appellant examined himself as PW1 and the Manager of State Bank of India examined as PW2 and marked 10 documents as Exs.P1 to P10. On the side of the defence, the respondent examined himself as DW1. On conclusion of trial, the Trial Court dismissed the complaint, acquitted the respondent from the case and the same was confirmed by the Lower Appellate Court.

4.The learned counsel for the appellant submitted that the respondent admitted the issuance of the cheques and its signature, hence Sections 118 and 139 of Negotiable Instruments Act, 1881 comes into play and statutory presumption is against the respondent proved. He further submitted that the



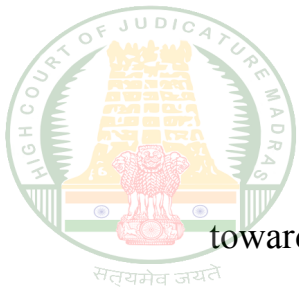
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respondent not dislodged the statutory presumption and not probabilized his defence and admits that his father had transaction with the appellant and his father issued two cheques for the principle amount of Rs.5,00,000/- and for interest of Rs.1,90,000/-. The respondent's father took loan from the appellant for his business and family needs, hence the respondent issued two cheques (Exs.P1 & P2), dated 25.04.2008 and 29.04.2008 and now claims it as security cheque. The respondent not proved how the liability of the cheque discharged. The Trial Court as well as the Lower Appellate Court not considered the evidence in proper perspective. Finding of the Trial Court that the case against the respondent's father in C.C.No.284 of 2008 which was later compromised, withdrawn, would confirm the respondent's father discharged the liability and the cheque issued by the respondent is a security cheque not enforceable, is not proper. The learned counsel further submitted that there is a revalidation of the cheque by changing the dates with endorsements, which now respondent conveniently denies the same. The respondent not denied the revalidation of the cheques and not thought fit to send the cheques for handwriting expert. On the other hand, the Courts below found that it is for the appellant to prove the



corrections and authentication made by the respondent. The respondent not denied the issuance of the cheque and now takes a technical plea without proper reason and grounds. Hence, finding of the Courts below are not proper prayed for setting aside the judgments of acquittal.

5.The learned counsel for the respondent submitted that in this case, the appellant neither in the notice nor in the complaint stated anything about the correction and revalidation of the dates in the cheques. In the reply notice (Ex.P9), the respondent gave details of his father's loan transaction, payment of loan with interest, the appellant sent a joint notice to the respondent and to his father and admitted the borrowing of Rs.5,00,000/- on 01.10.2006. Since the appellant insisted to sign five printed promissory notes, the same were filled for Rs.1,00,000/- each and further, insisted to give five blank cheques as security for the amount borrowed. The learned counsel further submitted that the respondent's father had only three cheques and the respondent signed the balance two blank cheques and given to the appellant. The loan borrowed in the year 2006 was discharged by the respondent's father on 10.05.2008 by giving cheques for Rs.5,00,000/-



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towards principle and Rs.1,90,000/- towards interest. When the respondent demanded for return of promissory notes and cheques, the appellant handed over only two promissory notes and retained the balance promissory notes and cheques stating that they kept the same in the locker and return back in few days. At that stage, the respondent had left since the liability discharged by his father. To shock and surprise, the two cheques which were available with the appellant, revalidated as though it was given on 25.04.2008 and 29.04.2008. But the original date of the cheques are 15.07.2007 and 16.08.2007. The appellant not disclosed the revalidation of the cheques, dated 25.04.2008 and 29.04.2008. This revalidation is a material alteration without any authority and authentication by the respondent. But for the material alteration, the cheque would have lost its validity and would have become a stale cheque.

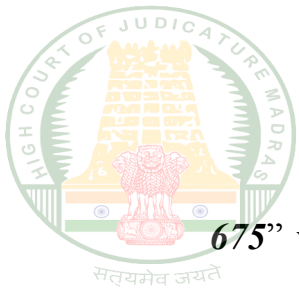
6.She further submitted that this material altercation has been done for the reason to revalidate the cheques to project that the cheques presented within the life time of six months on 18.06.2008. Despite the respondent denied the revaluation and his authentication signature, the appellant failed



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to prove that the signature of authentication is that of the respondent. Thus, the foundational facts of the case gets demolished. The loan projected by the appellant and the issuance of the cheque is beyond the period of limitation. Added to it, the appellant not stated anything about the case filed against the respondent's father in C.C.No.284 of 2008 which was later withdrawn since the issue resolved between the appellant and the father of the respondent. Finding that the appellant proceeding against the respondent based on the security cheques which were given earlier for respondent father's loan, which later discharged by father of the respondent and the appellant has not come with clean hands, the Trial Court rightly acquitted the respondent. Added to it, the respondent examined himself as DW1 and disclosed all these facts and probabilized his defence. Hence, the judgments of acquittal of both the Courts below not to be interfered with and prays for dismissal of the revision.

7.To substantiate her arguments, the learned counsel for the respondent relied on the decision of this Court in the case of “**Pattabiram Yarn Co., v. Sangeetha Exports and others** reported in (2015) 1 LW (Cri)



675” wherein it had held that the alteration of the dates in the cheque not stated neither in the notice nor in the complaint and once the same has been disputed, the burden shifts on the complainant to prove the fact by sending the cheque for examination of the experts. In the present case, it has not done so. Further, she relied upon the case of “*Kumar Exports v. Sharma Carpets* reported in (2009) 2 SCC 513” wherein the Hon'ble Apex Court held that to rebut the statutory presumption, the accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him and if the evidence adduced by the accused, is so compelling, the burden shifts on the complainant to rely upon the presumption of the fact as per Section 114 of Indian Evidence Act to seek presumption in his favour under Sections 118 & 139 of Negotiable Instruments Act.

8.Considering the rival submissions and on perusal of the materials, it is seen that the case projected by the appellant is that the respondent's father



took a loan of Rs.5,00,000/-, at that time, he executed five promissory notes for Rs.1,00,000/- each and he was to execute five cheques. The respondent's father had three cheques and the remaining two cheques of the respondent as security was given to the appellant which were dated 15.07.2007 and 16.08.2007. Later the dates found in these two cheques of the respondent struck off and revalidated as 25.04.2008 and 29.04.2008. These facts neither finds place in the statutory notice (Ex.P7) nor in the complaint. In the reply notice (Ex.P9), the respondent gave the details of the same and also the loan borrowed by his father for a sum of Rs.5,00,000/- and repayment by his father with interest of Rs.1,90,000/- in total Rs.6,90,000/-. Hence, the security cheques (Exs.P1 & P2) becomes stale which is fortified by the reason that the appellant admits that he filed a complaint under 138 of Negotiable Instruments Act, 1881 against the respondent's father in C.C.No.284 of 2008 and later the complaint was withdrawn. Thus, the appellant has not come with clean hands and not stated about the respondent's father discharging the loan, revalidation of the cheques and its authentication. Added to it, the respondent got into the box as DW1, rebutted the presumption and also probablized his defence.



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Thereafter, the appellant failed to take any steps to prove the case.

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9. In view of the above, this Court is not inclined to interfere with the judgments of acquittal of both the Courts below. Hence, the judgment, dated 11.03.2014 in C.C.No.283 of 2008 passed by the learned Judicial Magistrate, Tiruttani and the judgment, dated 27.08.2019 in Crl.A.No.189 of 2018 passed by the learned I Additional District and Sessions Judge, Tiruvallur are affirmed. Accordingly, this Criminal Appeal stands dismissed.

10. This Court appreciates Ms.J.Madhumitha, 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.

13.03.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The I Additional District and Sessions Judge,
Thiruvallur.
- 2.The Judicial Magistrate,
Tiruttani.
- 3.The Legal Services Authority,
Madras High Court.



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M.NIRMAL KUMAR, J.

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