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CRL A No. 311 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL A No. 311 of 2022

Vallarmathi Finance Rep By Mr.Meiyar
S/o. (late) Ponnusamy, 130A, Trichy Main Road,
Perambalur Town, Perambalur.

..Appellant(s)

Vs

Mrs.MARIYAYEE

..Respondent(s)

Prayer: Criminal appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment passed in S.T.C.No.28 of 2017 dated 27.02.2020 on the file of Judicial Magistrate No.I, Perambalur.

For Appellant(s): Ms.C.Sangamithirai

For Respondent(s): Mrs.Usha Raman
for Mr.R.Venkatesulu

JUDGMENT

The Criminal Appeal is filed against the judgment of the learned Judicial Magistrate No.I, Perambalur dated 27.02.2020 made in S.T.C.No.28 of 2017. By the said judgment, the trial court acquitted the respondent/accused for an offence under Section 138 of the Negotiable Instruments Act, 1881.



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2. This is a private complaint filed by the complainant complaining an offence under Section 138 of the Negotiable Instruments Act, 1881. The case of the complainant is that the accused borrowed a sum of Rs.3,00,000/- from the complainant for her family expenses on 30.03.2016 from the concern viz., Vallarmathi Finance run by the complainant. In discharge of the said liability, the accused issued a cheque dated 18.08.2016 for the said sum of Rs.3,00,000/- and upon being presented, the same return dishonoured with an endorsement "account closed" and the complainant therefore issued statutory notice on 27.08.2016, which was received by the accused, however, no payment was made within the period, neither any reply was issued, hence the private complaint is filed.

3. Upon recording of sworn statement, the complaint was taken on file in S.T.C.No. 28 of 2017 by the learned Judicial Magistrate No.I, Perambalur. Upon issue of summons, furnishing copies and questioning, the accused denied the allegations and stood the trial. In order to bring home the charge, the complainant examined himself as PW1. The licence issued in respect of the said Vallarmathi Finance was marked as Ex.P1, the subject matter cheque was marked as Ex.P2, the photocopy of the return memo of the bank was marked as Ex.P3, the legal notice was marked as Ex.P4 and the acknowledgement card is marked as Ex.P5. Upon being questioned about the incriminating evidence on



record the accused denied the same as false. No evidence was let in on behalf of the defence. The trial Court thereafter considered the case of the parties.

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4. The trial Court held that the petitioner/Vallarmathi Finance being a partnership firm and especially when registration of the partnership firm is not proved and nothing is mentioned about the other partners, the complaint is not maintainable. The trial Court further held that when the entire loan was said to have been advanced as cash and when the accused has cross examined the complainant and rebutted the presumption, in the absence of further proof, held that the case of the accused as probable and acquitted the accused. As against which the present appeal is filed.

5. Ms.Sangamithirai, the learned counsel appearing on behalf of the appellant would submit that merely because the cause-title mentions as Vallarmathi Finance represented by Mr.Meiyar, the trial Court by itself concluded that the said finance is a partnership firm, whereas the license categorically shows that it is only a proprietorship concern. It is not even the case of the accused that Vallarmathi Finance is a partnership firm. No cross examination was done in that lines. Therefore, the finding of the trial court is erroneous in law.

6. Secondly, the trial Court ought to have seen that the ingredients of the offence under Section 138 of the Negotiable Instruments Act has been duly



proved. The complainant examined himself and has spoken about the borrowal. The cheque is duly marked. Though statutory notice was issued, not even a reply was issued to the statutory notice. The accused has not let in any evidence in support of their case that only as a security the cheque was issued. Not even the documents relating to the borrowal of the said loan or documents relating to the discharge of the said loan is produced by the accused. In the absence of the same, mere raising of doubt by difference cannot be enough and in the scheme of the law relating to the offence under Section 138 of the Negotiable Instruments Act, the trial Court ought to have seen that the presumption operates in favour of the complainant and ought to have convicted the accused.

7. Per contra, Ms. Usha Raman, the learned counsel appearing on behalf of Mr.R.Venkatesulu, learned counsel for the respondent/the accused by taking this Court through the cross examination of PW1 would submit that the admittedly PW1 is a financier. It is his evidence in cross examination that even before the amount was repaid, he has given back the promissory note. The said statement is absolutely unbelievable. By due cross examination, the accused has proved a probable version that the cheque was given only as a security towards the borrowal from the 3rd party and the same is now being misused.



8. The learned counsel would point out that in this case PW1 was even prosecuted for charging usurious interest and was arrested in that case. Learned counsel would submit that the complainant is in the habit of filling up the cheques, presenting the same and foisting cases against innocent persons and the trial Court has rightly acquitted the accused.

9. I have considered the rival submissions and perused the material records of the case.

10. Admittedly, the complainant is a financier. It is his statement that he has returned the pro-note to the accused even before realizing the money is per se unbelievable. Secondly, the complainant is accepting only a cheque. Being a financier, the least that is expected of him is to get a cheque duly filled in by the accused. In this case, the cheque is a bearer cheque and admittedly the signature is in a different ink and the particulars are filled up by a different person. Therefore, the case of the complainant per se is unbelievable.

11. The case of the accused is that she had left the blank cheque as security and thereafter the said loan was repaid. Therefore, though the findings regarding the partnership firm etc., cannot be sustained, when the accused has made out of a probable case by cross examination, I am of the view that the accused rebutted the presumption to the level of preponderance of probability and in the absence of any further proof from the complainant, the ultimate



conclusion of the trial Court giving the benefit of doubt to the accused, it cannot be said to be an implausible view or a perverse view in an appeal against acquittal and the same cannot be upturned and accordingly finding no merits, the appeal stands dismissed.

10-11-2025

Neutral Citation: No

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D.BHARATHA CHAKRAVARTHY J.

mpl

To

1. The Judicial Magistrate No.I,
Perambalur.
2. The Section Officer,
Criminal Section,
High Court of Madras.

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