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Crl.A.No.902 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

Crl.A.No.902 of 2022

E. Raja	...	Appellant / Complainant
	-Vs-	
G. Vijayan	...	Respondent / Accused

Prayer: Criminal Appeal filed under Section 378(4) of Cr.P.C. praying to call for the records and set aside the judgment dated 20.06.2022 made in S.T.C.No.86 of 2018 passed by the learned Fast Track Judge at Magistrate Level, Tiruvallur and thereby convict the Respondent / Accused and grant adequate compensation to the Appellant.

For Appellant : Mr.T.Ganesan

For Respondent : Mr.S.S.Swaminathan

JUDGMENT

This Appeal is filed against the judgment of the learned Fast Track Judge at Magisterial Level, Thiruvallur, dated 20.06.2022 made in S.T.C No.86 of 2018. By the said judgment, the respondent / accused is acquitted for the offence under Section 138 of the Negotiable Instruments Act, 1881.



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WEB COPY 2. This is a private complaint filed by the complainant under Section 200

Cr.P.C., complaining the offence under Section 138 of Negotiable Instruments Act. The case of the complainant is that the accused had borrowed a sum of Rs.4,00,000/- from the complainant in order to meet his family expenditure. After two years of borrowal and after repeated demand made by the complainant, the accused issued a cheque dated 27.09.2018 for sum of Rs.3,80,000/-. Upon the cheque being presented for collection, it was returned and dishonoured with the endorsement 'Insufficient Funds'. Thereafter, a statutory notice was issued and since the accused had failed to make the payment, the private complaint was filed and the same was taken on file after recording the sworn statement as S.T.C No. 86 of 2018. Upon issue of summons and furnishing of copies and questioning, the accused denied the allegations and stood trial.

3. In order to bring home the allegations, the complainant examined himself as PW-1 and one Somasundaram was examined as PW-2. Exs.P1 to P5 were marked on behalf of the complainant. Upon being questioned about the



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incriminating evidence on record, the accused denied the same as false.

Thereafter, the accused examined himself as DW-1 and Exs.D1-D16 were marked. After considering the case of the parties, the trial Court acquitted the accused. Aggrieved by which, the present appeal is filed.

4.Heard Mr.T.Ganesan learned counsel appearing on behalf of the complainant / appellant.

5.The learned counsel by taking the Court through the evidence on record and to the judgment of trial Court, would submit that the only reason for the trial Court to have acquitted the accused is the pending of the suit. Merely because, the suit is pending, the same would not conclusively prove that there is no debt and the trial Court erred in placing undue weightage on the suit plaint that is marked. On the other hand, the complainant has discharged his onus by duly presenting the cheque and not even a reply notice was issued for the statutory notice. When the complainant has deposed about the borrowal, the presumption under the Negotiable Instruments Act arises in favour of complainant and the entire case of the accused that the check was issued as a



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security in respect of his sons borrowal and his son has discharged the loan. It cannot be believed. The accused as miserably failed to lead any credible evidence, as to the settlement of the loan amount, after selling the land in favour of his wife. No receipt whatsoever is produced by the accused.

6. In this case, it should be noted that even the settlement that is pleaded is pending the suit. When already the parties are settling pending the suit, it is expected of them to take some receipt for the payment and in the absence of receipt, the trial Court ought not to have believed the said version of the accused.

7. I have considered the said submissions made by the learned counsel for the appellant and perused the material records of this case.

8. In this case, admittedly the suit which is now said to be dismissed was pending as on the relevant dates. The plaint is marked as Ex.D1. A reading of the plaint, the complainant has filed the suit. It is averred in the suit that the



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accused entered into an Agreement of Sale on 05.02.2011 for sale of land to an extent of 65 cents and the complainant had paid the entire sale consideration of Rs.2,20,000/- and even thereafter, the accused did not come forward to execute the sale deed. The plaintiff also issued a legal notice on 20.07.2013 and even thereafter, the accused had not executed the sale deed. With the averment, the was filed in December 2014 and the same was pending. Now, in the present complaint, it stated that the accused had borrowed a sum of Rs.4,00,000/- from the complainant for his family expenses, but in the complaint, the date of borrowal is not stated. However, it is stated that after two years on 27.09.2018, the cheque was issued, which would go to show that the borrowal is of the year 2016. It is hard to believe that when the accused has already gone back from the agreement, and after receipt of sale consideration is not coming forward to execute the sale deed and the suit for specific performance is pending, pending the suit for specific performance such a huge sum is again advanced as cash without even getting any other document. All these only buttresses the case of the accused that, there was a borrowal by his son, in the due course, a property document was also given, certain cheques were also given as security etc.



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9. Therefore, no exception can be taken in the trial court holding that, the accused side has rebutted the presumption and in the absence of any further proof of towards the advancement of loan, benefit of doubt should be given to the accused. When the view is a possible view, this Court in an appeal against acquittal cannot upturn the said findings of the trial Court. Accordingly, finding no merits, the Criminal Appeal stands dismissed.

05.11.2025

smv

Neutral citation : Yes/No

To:

The Fast Track Judge at Magistrate Level, Tiruvallur



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