



Crl.A.No.698 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.698 of 2022

R.Veerappan

... Appellant

Vs.

K.Venkatachalam

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to call for the records and setting aside the acquittal judgment dated 16.07.2020 passed in C.A.No.16 of 2020 on the file of the learned I Additional District and Sessions Judge, Salem and confirming the conviction and the sentence imposed by the learned Special Court for Land Grabbing Cases (Magisterial Level) at Salem by its judgment dated 19.12.2019 made in S.T.C.No.90 of 2018 against the respondent/appellant

For Appellant : Mr.S.Panneerselvan

For Respondent : Mr.V.Elangovan



Crl.A.No.698 of 2022

JUDGMENT

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The appellant/complainant filed a private complaint under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.90 of 2018 against the respondent/accused before the learned Special Judge for Land Grabbing Cases (Magisterial Level) at Salem (trial Court). The trial Court by judgment dated 19.12.2019 convicted the respondent/accused and sentenced undergo three months Simple Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month Simple Imprisonment for offence under Section 138 of Negotiable Instruments Act, 1881 and further directed the respondent/accused to pay the cheque amount of Rs.8,00,000/- (Rupees Eight Lakhs only) as compensation to the appellant/complainant. Challenging the same, the respondent/accused preferred an appeal before the learned I Additional District and Sessions Judge, Salem in Crl.A.No.16 of 2020 (lower appellate Court) and the same was allowed by judgment dated 16.07.2020 setting aside the judgment of the trial Court. Aggrieved over the same, the present appeal is filed by the appellant/complainant.



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2.The case of the appellant/complainant is that the appellant and the respondent are known to each other for the past several years and the respondent/accused borrowed a sum of Rs.8,00,000/- from the appellant for urgent business needs on 18.04.2016 and issued a post dated cheque (Ex.P1) bearing No.000007 dated 18.06.2016 drawn on HDFC Bank, Meyyanur, Salem. At the time of borrowing, the respondent assured to return the amount within two months and agreed to pay 18% interest per annum. On the instructions of the respondent, the cheque was presented for collection in his bank viz., Lakshmi Vilas Bank, Swarnapuri, Salem on 18.06.2016 but the cheque was returned unpaid on 21.06.2016 with the bank memo for the reason “Funds Insufficient”. Thereafter, statutory notice (Ex.P3) issued on 27.06.2016, the respondent received the same on 28.06.2016 but neither replied to the notice (Ex.P3) nor paid the cheque amount. Following the statutory procedure, the appellant filed the private complaint before the trial Court in S.T.C.No.90 of 2018. During trial, on the side of the complainant/appellant, the appellant examined himself as PW1 and marked five documents as Exs.P1 to P5. On the side of the defence, the respondent/accused examined himself as DW1 and his friend Damodaran



CrI.A.No.698 of 2022

examined as DW2 and marked five documents as Exs.D1 to D5. On conclusion of trial, the trial Court convicted the respondent/accused but the lower appellate acquitted the respondent setting aside the judgment of the trial Court. Challenging the same, the present appeal is filed.

3.The learned counsel for the appellant/complainant submitted that the appellant and respondent entered into a sale agreement on 31.10.2013 for sale of a property in Puliampatti village and the sale price was fixed as Rs.7.5 lakhs and Rs.7 lakhs was received on 18.04.2016 and the balance amount of Rs.50,000/- to be paid within two weeks. But the respondent has not come forward to execute the sale deed, thereafter, for his urgent business needs, the respondent again approached the appellant and received Rs.8,00,000/- on 18.04.2016 which he failed to pay. A suit for specific performance in O.S.No.596 of 2018 was filed by the appellant herein before the learned Subordinate Judge, Omalur. The learned counsel further submitted that in this case, the respondent not denied issuance of cheque or his signature in the cheque, but merely takes a stand that for Rs.1,00,000/-, the respondent paid monthly interest of Rs.2,000/- and later he paid the



cheque amount. To prove the same, the respondent examined his friend Damodaran DW2. The evidence of Damodaran/DW2 was rejected by the trial Court and lower appellate Court confirming that the amount of Rs.1,00,000/- not repaid, hence, the defence set up by the respondent not accepted. The trial Court rightly invoking Sections 118 and 139 of Negotiable Instruments Act, 1881 convicted the respondent. Even in the written statement filed in the civil suit, there is no mention about the repayment of loan amount of Rs.1,00,000/-, but the lower appellate Court on its own gave an explanation that if at all there was going to be any dispute with regard to repayment of Rs.1,00,000/-, it is for the civil Court to consider the same in O.S.No.596 of 2018. When there is no pleading or framing of issues for this Rs.1,00,000/-, the lower appellate Court on its own giving such finding, is not proper.

4.He further submitted that since the respondent was a close friend to the appellant, the respondent entered into a sale agreement (Ex.D2) in the year 2013, the relationship was cordial and he also promised to execute the sale deed till he received the loan amount of Rs.8,00,000/- in the year 2016,



thereafter, the true colours of the respondent got exposed, the respondent neither executed the sale deed as per sale agreement (Ex.D2) nor repaid the loan amount of Rs.8,00,000/- received on 18.06.2016. The appellant following the statutory procedure filed the complaint and also proved the case by his evidence which the trial Court rightly considered and convicted the appellant. But the lower appellate Court heavily relied on Ex.D2 and given its own interpretation that 95% of the loan as per sale agreement (Ex.D2) has been paid, why for two years or more, the balance amount of Rs.50,000/- not paid and what are the steps taken calling upon the respondent to execute the sale deed and it is highly improbable that a person who had not executed the sale deed as per the agreement is further given a loan of Rs.8,00,000/- is without any supporting material except for the cheque. Since the civil suit filed after filing of 138 case, there is no mention about the civil suit in the 138 case which the lower appellate Court had given too much consideration as though the appellant suppressed and the payment of Rs.8,00,000/- as loan highly improbable. In view of the same, finding of the lower appellate Court is without any sound reasons and proper materials, hence, the judgment of the lower appellate Court to be set



aside and the conviction of the trial Court to be restored.

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5.The learned counsel for the respondent/accused strongly opposed the appellant's submissions and submitted that the trial Court finding was that after receiving the statutory notice (Ex.P3), the respondent had not sent any reply denying his liability, further the trial Court erred in heavily relying on the statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881 and failed to consider that the Hon'ble Apex Court, as well as this Court held that merely for not sending a reply notice, it cannot be straight away construed as admission, and presumption cannot be raised. The denial can be made either by way of cross examination, pointing towards other materials in the case or by getting into the box as a witness and defence can be probablized. In this case, two defence witnesses DW1 and DW2 examined and Exs.D1 to D5 marked. Ex.D1 is the Power of Attorney of one Palanisamy by which the respondent purchased the land and for this land he executed registered sale agreement in No.9154 of 2013 (Ex.D2) with the appellant on 31.10.2013, the registered sale agreement marked as Ex.D2. Ex.D3 is the legal notice issued by the appellant prior to



filing of civil suit. The civil suit itself is a time barred, thereafter, for the purpose of creating cause of action, Ex.D3 issued. Ex.D4 is I.A filed in O.S.No.596 of 2018 by the appellant restraining the respondent not to alienate the property and Ex.D5 is the plaint copy filed in O.S.No.596 of 2018. Though the appellant filed the written statement of the respondent as Ex.P5, he failed to produce the plaint copy. In the plaint, there is no mention about borrowing of loan and issuance of cheque (Ex.P1) in discharge of liability. Likewise, in the complaint, there is no reference to sale agreement entered between the appellant and respondent. Thus, the appellant conveniently suppressed the vital facts both in the civil suit, as well as in 138 proceedings. The trial Court not considered the evidence and merits of the case and convicted the respondent. But the lower appellate Court analysed the evidence of both the appellant and respondent and by its judgment in paragraph Nos.13, 14, 15, 16 & 17, came to the conclusion that though the appellant claimed to have paid 95% of the sale amount (Rs.7.5 lakhs) and entered into a sale agreement recording Rs.7,00,000/- received, but the balance amount of Rs.50,000/- which ought to have been paid within two years not paid and no reason given for the same. This is in the year



2013. Then, in the year 2016, he claims to have given a loan of Rs.8 lakhs to the respondent is without any supporting document. Further, the civil suit filed in the year 2018. Finding that the appellant had been taking prevacating stand at each proceedings and appellant is an unbelievable witness, the lower appellate Court allowed the appeal filed by the respondent. The civil suit in O.S.No.596 of 2018 dismissed by the learned Subordinate Judge, Omalur on 28.11.2022, against which, the appellant herein filed Appeal Suit in A.S.No.17 of 2023 which is pending before the learned Additional District Judge, Salem. Thus, the reason of the lower appellate Court by a well reasoned judgment had set aside the trial Court judgment and allowed the appeal of the respondent.

6.He further submitted that at the stage of considering the appeal against acquittal, the Hon'ble Apex Court and this Court held that in a case of appeal against acquittal, the same not to be disturbed unless there is serious irregularity or any perversity in the findings. In this case, there is no such perversity in the judgment passed by the lower appellate Court, hence, he prayed for dismissal of the appeal confirming the judgment of lower



appellate Court.

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7.This Court considered the rival submissions and perused the materials available on record.

8.Admitted case of the appellant is that the appellant and respondent are friends known to each other for quite sometime. In the year 2013, the appellant entered into an agreement (Ex.D2) with the respondent for sale of a property by paying Rs.7 lakhs which is 95% of agreed sale amount of Rs.7.5 lakhs and the balance Rs.50,000/- ought to have paid by the appellant within two years. The appellant had not taken any steps to pay the balance amount of Rs.50,000/- within two years. In this case, there is no material to show whether at all appellant took any steps calling upon the respondent to execute sale deed and after the limitation period, the appellant filed civil suit (O.S.No.596 of 2018) in the year 2018. In the meanwhile, it is projected as though the appellant in the year 2016 was approached by the respondent for loan of Rs.8,00,000/- for business purpose and this loan not paid within two months with agreed interest and issued the cheque. The



Crl.A.No.698 of 2022

respondent failed to pay the loan amount, the cheque got dishonoured and the complaint filed.

9.It is surprising to see that when already a transaction which was pending for execution of sale deed and sale agreement ought to have complied within two years not complied with, but on the contrary, the appellant gave another loan of Rs.8,00,000/-, is highly doubtful and improbable. The respondent and his friend Damodaran examined as DW1 & DW2 and marked Exs.D1 to D5. Ex.D5 is the plaint copy of the suit in O.S.No.596 of 2018. In the statutory notice (Ex.P3), there is no reference about earlier transaction of sale agreement. The trial Court appears to have gone only by the fact that no reply to the statutory notice and invoking statutory notice convicted the respondent failing to consider that the respondent examined himself as DW1 and marked Exs.D1 to D5. The lower appellate Court in paragraph Nos.13, 14, 15, 16 & 17 independently analysed the evidence and material of the case and rightly came to conclusion it is highly improbable for a person to lend loan of Rs.8 lakhs in 2016 when there was ongoing issue between appellant and respondent from



CrI.A.No.698 of 2022

the year 2013 onwards.

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10.The learned counsel for the respondent produced the judgment dated 28.11.2022 of the learned Subordinate Judge, Omalur in O.S.No.596 of 2018, wherein, in paragraph No.22, the civil Court found that the explanation of the respondent that the cheque of Rs.7,00,000/- has been issued and the sale agreement is only for this loan, recorded. Likewise, the civil Court found that since the respondent had not complied with the sale agreement, the further loan of Rs.8,00,000/- given on 18.04.2016 cannot be taken as proved.

11.Thus, the lower appellate Court as well as civil Court finding confirms the respondent probablized his defence and the appellant not proved the case beyond all reasonable doubt.



Crl.A.No.698 of 2022

12.In view of the above, this Court is not inclined to interfere with the judgment of the lower appellate Court dated 16.07.2020 in Crl.A.No.16 of 2020 setting aside the judgment of conviction of the trial Court dated 19.12.2019 in S.T.C.No.90 of 2018. Accordingly, this Criminal Appeal stands dismissed. The discharge of the respondent from the above case is confirmed.

17.10.2025

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

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To

- 1.The I Additional District and Sessions Judge,
Salem.
- 2.The Special Court for Land Grabbing Cases (Magisterial Level),
Salem.



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Crl.A.No.698 of 2022

M.NIRMAL KUMAR, J.

vv2

Crl.A.No.698 of 2022

17.10.2025