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Criminal Appeal No.687 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.06.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No.687 of 2021

Sekar

.. **Appellant**

Vs.

Sivabalu

.. **Respondent**

Prayer: Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure, to set aside the Judgment of acquittal passed by the Additional Sessions Judge, Villupuram at Kallakurichi dated 11.02.2021 made in C.A.No.61 of 2019 reversing the Judgment of conviction and sentence passed by the Judicial Magistrate, (Fast Tract), Kallakurichi dated 26.07.2019 made in C.C.No.71 of 2019 and allow the above Criminal Appeal.

For the Appellant : Mr.M.J.Srinivas

For the Respondent : Mr.A.K.Rajaraman



Criminal Appeal No.687 of 2021

WEB COPY

J U D G M E N T

This appeal is directed against the Judgment of the Additional Sessions Judge, Villupuram at Kallakurichi, dated 11.02.2021, made in Criminal Appeal No.61 of 2019. By the said Judgment, the learned Additional Sessions Judge allowed the appeal and upturned the finding of conviction for an offence under Section 138 of the Negotiable Instruments Act, into one of acquittal and set aside the sentence imposed against the respondent-accused. Against the same, the present appeal is filed by the Appellant.

2.Heard the learned counsel appearing on behalf of the appellant/complainant and the learned counsel appearing on behalf of the respondent/accused.

3.The learned counsel appearing on behalf of the appellant, while taking this court through the records, submitted that, firstly, when the accused issued a demand notice as per Section 138 of the Negotiable Instruments Act, the respondent-accused issued a reply stating that the cheque was misplaced or



Criminal Appeal No.687 of 2021

stolen. Even as per the said defence, no complaint whatsoever was lodged by the respondent accused. In any event, it is hard to believe that the individual would have kept the signed cheques to be stolen by third parties. More than that, the subsequent evidence in the trial proves that all the other subsequent leaflets in the cheque book were presented for collection to the bank, and therefore the very version that the entire cheque book was lost was proved to be false. The other defence of the accused, which was taken in the said legal notice is that the accused suffered an accident and was unwell and even was mentally affected and was taking treatment for his mental health. Absolutely no iota of evidence was presented on behalf of the accused regarding the same; therefore, when statements made in reply to the complainant's demand are either absolutely false or they turn out to be totally unsubstantiated, then, when the complainant has otherwise proved the ingredients by marking the cheque, the return memo, and the demand notice, and when the presumption under the Negotiable Instruments Act, 1881, comes to the aid of the complainant, the Appellate Court committed a grievous error in overturning the findings of the Trial Court. More so, when the Trial Court has appraised the evidence and come to the conclusion that the



Criminal Appeal No.687 of 2021

defence made by the respondent/accused is unbelievable and returned the finding of guilt.

4.The learned counsel would also further submit that the manner in which the complainant was cross-examined would itself adumbrate that the respondent side has admitted the fact of borrowing. Once the same is admitted, and when the signature on the cheque is not denied, the respondent-accused has done absolutely nothing to rebut the presumption to the level of a preponderance of probability; therefore, the findings of the First Appellate Court are absolutely perverse and not sustainable at all. Therefore, he would pray that this Court should reverse the findings made in the above judgment and restore the judgment of the Trial Court.

5.*Per contra*, the learned counsel appearing on behalf of the respondent-accused would submit that when the complainant was cross-examined with reference to the date of advancement of the loan, he himself admitted that he has advanced the loan two months after the accident of the accused and in the same



Criminal Appeal No.687 of 2021

WEB COPY

breath, he has also admitted that the accused was taking treatment in the Ganga Hospital for a period of six months from the date of accident. Therefore, the Lower Appellate Court appraised the said evidence and came to the conclusion that the version of the complainant is unbelievable. It is true that the accused did not let in any independent evidence with reference to his treatment and his condition. Those questions were also put to the complainant. The entire case of the complainant remained unsubstantiated. Therefore, the Appellate Court had extracted the relevant portion of the evidence in the Judgment and have given its detailed reasons for acquitting the respondent. Therefore, there is nothing for this Court to interfere in the matter.

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

7. *P.W.1-Sekar* in his cross-examination has answered that the accused had suffered an accident two months before the date of advancement of loan and he has further stated that after the accident, he was hospitalized for a period of six



Criminal Appeal No.687 of 2021

WEB COPY

months in Coimbatore Ganga Hospital. He has also further stated that the loan was advanced at his home and therefore, the Lower Appellate Court has appraised this piece of evidence and has come to the conclusion that by cross-examination the accused has rebutted the presumption. When no other documentary proof was produced for the advancement of a sum of Rs.4 lakhs, and when the Trial Court has concluded that this portion of the evidence throws doubt over the very transaction itself, this Court, in an appeal against acquittal, is unable to come to the aid of the appellant in upturning the finding as to one of conviction.

8.It is also true that the defence taken by the accused was either not proved or was proved to be false. Merely because the defence case was weak or turned out to be false, would not aid the complainant. The complainant must prove the case on his own and cannot rely solely on the falsity of the defence case. In that view of the matter, when it has been held by the Lower Appellate Court that the complainant has not proved the pre-existing liability, especially when the date of advancing the loan, etc., being wobbly and the benefit of doubt



Criminal Appeal No.687 of 2021

is given to the respondent-accused, I am unable to upturn the said finding into one of guilt.

9. Accordingly, finding no merits, the appeal is dismissed and the Judgment of acquittal passed by the learned III Additional Sessions Judge, Villupuram at Kallakurichi dated 11.02.2021 made in C.A.No.61 of 2019 stands confirmed.

17.06.2025

Neutral Citation : Yes/No

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To

1. The Additional Sessions Judge, Villupuram at Kallakurichi.
2. The Judicial Magistrate, (Fast Tract), Kallakurichi.
3. The Section Officer
VR Section, High Court of Madras.



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Criminal Appeal No.687 of 2021

D.BHARATHA CHAKRAVARTHY, J.

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Criminal Appeal No.687 of 2021

17.06.2025

Page 8 of 8