



Crl.A.No.634 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 18-03-2025

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 634 of 2017

K. Anbalagan

.. Appellant

Versus

Venkataraman

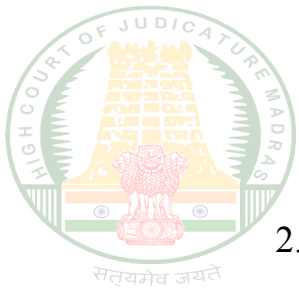
.. Respondent

Criminal Appeal is filed under Section 378 of Cr.P.C against the Judgment dated 04.04.2016 passed in Criminal Appeal No.263 of 2011 on the file of the learned I Additional District Judge, Vellore.

For Appellant	:	Mr. S. Namasivayam
For Respondents	:	Mr. S. Paneerselvam

J U D G M E N T

This Criminal Appeal is filed against by the Complainant against the Judgment of acquittal dated 04.04.2016 passed in Criminal Appeal No.263 of 2011 on the file of the learned I Additional District Judge, Vellore, overturning the Judgment of conviction recorded in the Judgment dated 22.11.2011 passed in Calendar Case No. 781 of 2005 on the file of the Judicial Magistrate No.IV, Vellore.



2. For the purpose of disposal of this Appeal, the factual events that

are unfolded in this case are briefly set out hereunder.

2.1. The Complainant is the brother in law of the Accused, who had married the sister of the Accused. The Complainant is running a photo frame shop in Vellore. Apart from the photo frame shop, he is also involved in real estate business. On 01.05.2003, the Accused, met the Complainant in his photo frame shop and requested to help him to meet his urgent business commitment. On 01.05.2003 the Complainant alleged to have paid Rs.2,00,000/- which he was having in his shop. That apart, he has also entrusted to the Accused 30 sovereigns of gold jewels of his wife, worth Rs.95,000/- kept in his shop. On receipt of the cash as well as jewels, the Accused assured the Complainant to repay the same within six months. However, even after six months, the Accused did not repay the amount of Rs.2 lakhs or returned the jewels. After repeated demands, the Accused informed the Complainant that he did not redeem the jewels he pledged and therefore, the Accused himself calculated the value of 30 sovereigns of jewels at Rs.95,000/- and issued the cheque for Rs.2,95,000/- on 27.04.2005 in favour of the Complainant drawn on Big Kancheepuram Co-operative Town Bank Limited, Kancheepuram. When the Complainant presented the cheque for collection with his bankers namely Bank of Baroda, Vellore on 27.04.2005, it was dishonoured on 28.04.2005 and



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returned with a memo that there was no sufficient funds to honour the cheque in the bank account of the Accused. Therefore, on 18.05.2005 the Complainant issued a lawyer notice calling upon the Accused to repay the cheque amount for which the Accused issued a reply notice on 01.06.2005 repudiating the averments in the notice. Thereafter, the Complainant has filed the complaint under Section 138 of The Negotiable Instruments Act.

2.2 The sworn statement of the Complainant was recorded by the learned Judicial Magistrate-IV, Vellore and on perusal of the documents accompanying the private complaint, the learned Judicial Magistrate-IV Vellore concluded that a *prima facie* case under 138 of the Negotiable Instruments Act is made out. Therefore, the private complaint was taken on file as C.C.No.781 of 2005 and summons were issued to the Accused under Section 204 Cr.P.C along with copy of the complaint. On receipt of the summons, the Accused appeared before the learned Judicial Magistrate-IV, Vellore. The Accused was questioned by the learned Judicial Magistrate-IV Vellore regarding the offence. The Accused denied having committed any offence. Therefore, trial was ordered.

2.3. During trial, the Complainant examined himself as P.W-1 and marked Ex.P-1 to Ex.P-10. One Karthikeyan, a friend of the Complainant was examined as P.W-2 who witnessed the handing over of the amount of

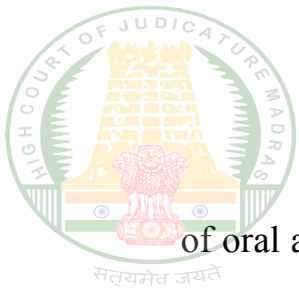


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Rs.2,00,000/- and 30 sovereigns of gold jewels to the Accused by the Complainant at his shop. The Manager of Bank of Baroda, Vellore Branch was Examined as PW4. One Sivasankaran was examined as P.W-5. The cheque bearing No.J046023 drawn in Big Kancheepuram Town Co-operative Bank by the Accused in favour of the Complainant was marked as Ex.P-1. Ex.P-2 is the pay in slip. Ex.P-3 is the return memo from the Big Kancheepuram Co-operative Bank. Ex.P-4 is the collection charge for Rs.500/-. Ex.P-5 is the lawyers notice issued on behalf of the Complainant. Ex.P-6 is the acknowledgement for receipt of the lawyers notice. Ex.P-7 is the reply notice issued on behalf of the Accused. Ex.P-8 is the invitation of the house warming ceremony of the Complainant. Ex.P-9 are the photos and negatives taken on the event of house warming ceremony of the Complainant. Ex.P-10 is the Statement of account maintained with Big Town Kancheepuram Co-operative Bank in the name of the Accused. On behalf of the Accused, One Chinnathurai, the Assistant of the Office of the District Collector, Kancheepuram was examined as D.W-1. One Balaji was examined as D.W-2 who is the Manager of Bank of Baroda Branch. One Thahira, Head Clerk of Judicial Magistrate-IV was examined as D.W-3.

2.4. After hearing the arguments of the learned Counsel for the Complainant and the learned Counsel for the Accused and upon appreciation



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of oral and documentary evidence, the learned Judicial Magistrate-IV, Vellore, convicted the Accused for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo three months simple imprisonment and to pay compensation of Rs,4,00,000/- to the Complainant.

2.5 Aggrieved by the judgment of conviction recorded by the learned Judicial Magistrate-IV, Vellore in C.C. No. 781 of 2005, the Accused preferred the Appeal before the learned Principal District and Sessions Judge, Vellore in Crl.A. No. 263 of 2011. After hearing the argument of the learned Counsel for the Appellant and the learned Counsel for the Respondent/Complainant, the learned I Additional District and Sessions Judge, Vellore by judgment dated 04.04.2016 in C.A. No. 263 of 2011 allowed the Appeal and set aside the judgment of conviction recorded by the learned Judicial Magistrate-IV Vellore in C.C.No.781 of 2005.

2.6 Aggrieved by the judgment of acquittal recorded by the learned I Additional District and Sessions Judge, Vellore in C.A. No. 263 of 2011 dated 04.04.2016, the Complainant has filed this Appeal, seeking to set aside the Judgment of acquittal passed by the Appellate Court.

3. The learned Counsel for the Appellant submitted that the Respondent herein is none other than his brother in law. The Complainant had



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extended loan of Rs.2,00,000/- in cash and entrusted 30 sovereigns of gold jewels, which is equivalent to Rs.95,000/- on the request of the Accused to meet his urgent business commitments. The Accused has not disputed the signature in the cheque. He had not cross-examined the Complainant as PW-1. Based on the evidence of the Complainant, the learned Judicial Magistrate-IV, Vellore had rightly convicted the Accused and sentenced him to undergo three months of simple imprisonment and awarded Rs.4,00,000/- as compensation under Section 357 of Cr.P.C. However, the judgment of conviction was set aside by the Appellate Court, without any acceptable reasons.

4. Per contra, the learned Counsel for the Respondent submitted that the learned Judicial Magistrate-IV Vellore had not properly assessed the evidence but recorded the Judgment of conviction based on presumptions by stating that the signature in the cheque under Ex.P-1 was not denied by the Accused/respondent herein. The learned Judicial Magistrate-IV failed to consider the materials available in the evidence of the prosecution witness P.W-1 to P.W-3. Whereas the learned I Additional District and Sessions Judge, Vellore on the same set of evidence considered the entire materials including the materials available in the cross examination of P.W-1 and P.W-2 and the evidence available through D.W-1 to D.W-3. The most important



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aspect in this case is that the Complainant did not have the wherewithal to extend loan of Rs.2,00,000/-. The Accused is running a cinema theatre in Kancheepuram and he does not need any financial help from the Complainant. The Accused is a resident of Kancheepuram. He is residing temporarily in Vellore for the education of his children. It is alleged by the Complainant that on 01.05.2003 all Organisations had to close on May Day which is celebrated in recognition of the rights of the labourers. If any shop or establishment is kept open on 01st May of any year, it is treated as offence under the Labour Act and penalty will be imposed by the respective labour Inspectors. This was ignored by the learned Judicial Magistrate-IV Vellore. It is the defense of the Accused that there was a family dispute among the members of the family after the death of the father of the Accused. The Accused is managing and administrating his cinema theatre and maintaining his accounts in Kancheepuram Central Co-operative Bank. The cheque leaves are always maintained in his house which includes signed blank cheque. One of the cheques signed by the Accused was surreptitiously removed by the wife of the Complainant/sister of the Accused. The sister of the Accused was demanding a share in the property left by their father but it was refused by the Accused. In this regard, litigations are pending between the family members and they are not in talking terms, which was also elicited in cross examination.



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Therefore the circumstances leading to the claim of the Complainant that the Accused came to his photo frame shop and sought urgent help to protect his name and fame and reputation in his business is untrue. The entire case has been falsely portrayed against the Accused. The learned Judicial Magistrate-IV mechanically convicted the Accused based on presumptions. However, the learned I Additional District and sessions Judge considered the entire cross examination of the prosecution witnesses and dismissed the complaint and acquitted the Accused. The judgment of the learned I Additional District and Sessions Judge is a well reasoned judgment and it does not warrant any interference by this Court. Therefore, the learned Counsel for the Respondent sought dismissal of the Appeal.

Point for consideration

Whether the judgment of acquittal recorded by the learned I Additional District and Sessions Judge in C.A.No.263 of 2011 dated 04.04.2016 is to be set aside and the judgment of the learned Judicial Magistrate-IV in C.C.No.781 of 2005 dated 22.11.2011 is to be restored?

5. Heard Thiru. S.Namasivayam the learned Counsel for the Appellant as well as Thiru. S. Paneerselvam, learned Counsel for the



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Respondent. Perused the records and judgment in C.C. No. 781 of 2005 on the file of the learned Judicial Magistrate-IV, Vellore as well as the judgment of the learned I Additional District and Sessions Judge, Vellore in Crl. A. No. 263 of 2011 dated 04.04.2016.

6. On consideration of the rival submissions, it is found that on 01.05.2003, the Accused is stated to have visited the photo frame shop of the Complainant, who is none other than his brother in law. The Accused is also alleged to have sought financial assistance from the Complainant to protect his business reputation. According to the Complainant, the Accused sought a sum of Rs.3,00,000/- whereas the Complainant had only Rs.2,00,000/- in cash in his photo frame shop on 01.05.2003. Therefore, apart from cash of Rs.2 lakhs, the appellant-Complainant had entrusted 30 sovereigns of gold jewels belonging to his wife which was kept in his photo frame shop.

7. In the cross examination, the Complainant had admitted that the Accused is running a cinema theatre in Kancheepuram which belong to his father. From the records it is found that the account from which the cheque was alleged to have been issued to the Complainant is maintained in the name of the cinema theatre viz., Balaji theatre at Kancheepuram. The fact that there



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was dispute among the members of the family of the Accused after the death of the father of the Accused over the claim of share in the properties and therefore, the Accused is not in talking terms with the sister of the Accused/wife of the Complainant is very much available on record. In the cross examination the wife of the Complainant admitted that the allegation that they are not in talking terms is not correct. It was stated that the Accused attended the house warming ceremony for which the invitation card was marked as Ex.P-8 and photograph showing the Accused and the Complainant and the Complainant wife as Ex.P-9 series. Thus, it is stated that the Accused attended the house warming ceremony of the Complainant. P.W-1 also admitted that his wife died and on the death of the wife of the Complainant, the Accused attended the funeral. In the cross examination, the Complainant as P.W-1 had clearly admitted that he had not furnished any document as proof of the claim that he had handed over Rs.2,00,000/- in cash and 30 sovereigns of gold jewellery to the Accused on 01.05.2003. Also he had clearly admitted that he had not furnished the statement of accounts from his Bank account maintained with Bank of Baroda, Vellore Branch. The claim by the Accused that the Complainant does not have the wherewithal to handover such huge amount at short notice is presumed to be acceptable. In such a circumstances the Complainant ought to have furnished his Bank account as proof of the



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claim that he was resourceful enough at all time to extent such a loan at short notice. In the absence of production of statement of accounts of his Bank Account with Bank of Baroda, the claim of the Complainant cannot be accepted.

8. As pointed out, the learned I Additional District and Sessions Judge, Vellore, the date on which the Accused is alleged to have visited the photo frame shop of the Complainant is found unbelievable. It is a gospel truth that 1st May of every year is celebrated as “May day” on which date, all shops and establishments will remain closed. If any shop is opened up on such date, it will be considered as an offence and penalty will be imposed by the respective labour Inspectors. Therefore, the foundation and origin of the case itself is so weak and fragile that it cannot be believed. The learned I Additional District and Sessions Judge, Vellore also refused to believe this statement of the Complainant. Also, as pointed in the judgment of the learned I Additional District and Sessions Judge, Vellore for 30 sovereigns of gold jewellery, the Complainant claims only Rs.95,000/-. In the year 2003, a sovereign of gold worth was around Rs.8,000/-. Hence, for 30 sovereigns of gold jewellery the costs will be around Rs.2,40,000/- whereas the Complainant claims only Rs.95,000/- in lieu of 30 sovereigns of gold jewels entrusted to the Accused.



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This is strange, unbelievable and it cannot be accepted.

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9. The claim of the Accused is that he and others were living as joint family in Kancheepuram. Subsequent to the death of the father of the Accused, there was dispute over properties as his father left intestate. Even there are litigations pending between the family members. Under those circumstances, from the house of the joint family at Kancheepuram, cheque leaf was surreptitiously removed by the wife of the Complainant/sister of the Accused and it was used for filing the instant complaint. This was also clearly stated by the Accused in the reply notice under Ex.P-7. Also in the same reply statement, he has reserved his right to institute criminal case against he Complainant and his wife. P.W-2/karthikeyan was also confronted about this family dispute. He was unable to answer the suggestion that shows P.W-2 is a tutored witness. When the origin and foundation of the case built by the Complainant itself is doubtful, then, P.W-2 cannot lend any support to the version of P.W-1. Considering the fact that there exist a dispute between the Accused (brother) and sister of the Accused the instant complaint filed by brother in law is one of the attempts to intimidate the Accused. It is admitted that after the death of the father, the Accused and his sister are not in talking terms. Even when they were not in talking terms the Accused said to have



attended the house warming ceremony of the Complainant. Merely because the Accused participated in the house warming ceremony of the Complainant will not be a ground to say that there was no dispute at all between the Accused and the Complainant. This is part of the culture existing in our society where the brother will not give up his duty to attend the function of his sister, notwithstanding any surviving dispute.

10. On perusal of the documents in this case, particularly from the cross examination of the Complainant as P.W-1, he was unable to state clearly the class in which the son of the Accused was studying and the School where he was studying at Vellore. This piece of evidence made it clear that the Accused is residing in Vellore in a rented house for the purpose of education of his son. This also shows that the Accused and the Complainant are not in good terms.

11. The specific case of the Complainant was that the Accused came to the photo frame shop for receiving financial assistance. In the reply notice under Ex.P-7, it is clearly stated that the Complainant is instigating the sister of the Accused to claim a share in the properties left behind by her father. Further, the cheque, which is the subject matter of the complaint, is in the



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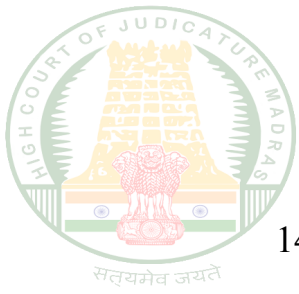
name of the Balaji Theatre. The Accounts thereof are maintained with the Kancheepuram Co-operative Bank. The Balaji Theatre, Kancheepuram belongs to the family to the Accused which was run by his father. After the death of the father, the business was taken over by the Accused. In the reply notice it was also specifically stated that the Complainant is not having sufficient amount to help the Accused at such a short notice. Here again, to disprove such claim the Complainant ought to have furnished Bank details maintained by him with the Bank of Baroda Vellore Branch, but he had not done so. Therefore, the Court has to necessarily draw adverse inference against the Complainant that he does not have resources to extend such huge amount as loan to the Accused. The presumption under Section 139 of The Negotiable Instruments Act is a rebuttable presumption, which was successfully rebutted by the Accused in this case. In such event, the Accused cannot be convicted. At the earliest point of time, before filing of the complaint, the Accused in his reply notice had challenged the resourcefulness of his brother-in-law to extend such loan. By preponderance of probabilities, the Accused had created a cloud in the claim of the Complainant.

12. As per the reported ruling in the case of *Rangappa vs Sri Mohan* reported in *2010(11) SCC 441*, it was held that the Accused need not enter the



witness box. The Accused by letting in oral or documentary evidence can create doubt in the mind of the Court on the claim of the Complainant regarding the presumption available under Sections 139 of Negotiable Instruments Act by the preponderance of probabilities. Only if the Complainant is able to establish the presumptions under Section 138 of Negotiable Instruments Act, the burden shifts on the Accused. From the documents under Ex.P-1 to Ex.P-5, the Complainant cannot be considered to have raised a presumption under Section 138 of the Negotiable Instruments Act.

13. Under those circumstances, the appreciation of evidence by the learned I Additional District and Sessions Judge is found proper. The reasoning of the learned I Additional District and Sessions Judge in paragraph No.15 to 19 is found on strong reasoning. The learned Appellate Judge had clearly arrived at a conclusion that the claim of the Complainant is not proved through cogent evidence. On consideration of the judgment of the learned Judicial Magistrate-IV, Vellore in C.C.No.781 of 2005 and the judgment of the learned I Additional District and Sessions Judge, Vellore, the Judgment of the Appellate Court is based on strong reasoning.



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14. In the light of the above discussion, the point for consideration is answered against the Appellant and in favour of the Respondent. The judgment of acquittal recorded by the learned I Additional District and Sessions Judge, Vellore in C.A.No.263 of 2011, dated 04.04.2016 is found proper which does not warrant any interference by this Court.

In the result, **this Criminal Appeal is dismissed** as having no merits. the Judgment dated 04.04.2016 passed in Criminal Appeal No.263 of 2011 on the file of the learned I Additional District Judge, Vellore is confirmed.

18.03.2025

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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To

1. The I Additional District Judge
Vellore
2. The Judicial Magistrate No. IV
Vellore.
3. The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Judgment made in
Crl.A. No. 634 of 2017

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