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Crl.A.No.1481 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.1481 of 2024

M/s. Balaji Finance Corporation
Rep. by its power agent P.Srinivasalu
No.21, Kasi Chetty Street
Sowcarpet, Chennai- 600 079

... Appellant

Vs.

R.Pratap Gupta

... Respondent

Prayer: Criminal Appeal filed under Section 419 of BNSS to set aside the judgment passed in STC No.1695 of 2022 by the IV Fast Track Metropolitan Magistrate, George Town, Chennai dated 28.06.2024 by which, acquitting the accused.

For Appellant : Ms.C.Deepa Nandhini

For Respondent : Mr.B.Venugopal



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JUDGMENT

This Criminal Appeal has been filed by the petitioner/complainant to set aside the judgment of acquittal passed in STC No.1695 of 2022 by the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai, dated 28.06.2024.

2. The appellant is the complainant and the respondent is the accused. The case of the complainant is that the respondent borrowed money from the complainant in a sum of Rs.3 lakhs, Rs.2 lakhs and Rs.1 lakh on 26.11.2013, 24.06.2015 and 28.12.2016 respectively, i.e., totally, he borrowed a sum of Rs.6 lakhs and for re-payment of the same, he issued three cheques for a sum of Rs.3 lakhs each, in total Rs.9 lakhs, bearing cheque Nos.844117, 917144 and 955046, dated 03.02.2021 drawn on Punjab National Bank, Triplicane, Branch, Chennai. Thereafter, when the complainant presented all the three cheques in his Bank viz., Lakshmi Villas Bank, G.N.Street Branch, Chennai,



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the same were returned as "Funds Insufficient", vide Return Memo, dated

04.02.2021. Hence, on 15.02.2021, the complainant issued a legal notice to the respondent through a registered post and the same was also served on the respondent on 18.02.2021. Subsequently, the respondent sent a reply denying the allegations made in the statutory notice and failed to pay the cheque amount. Hence, the complainant filed a complaint against the respondent under Sections 138 and 142 of the Negotiable Instruments Act in STC No.1695 of 2022 on the file of the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai. In order to substantiate his complaint, on the side of the complainant, one witness was examined as P.W.1 and 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the defence, the respondent was examined as D.W.1 and three documents were marked as Exs.D1 to D3. The learned Magistrate, after enquiry, dismissed the complaint, vide judgment dated 28.06.2024 and acquitted the respondent on the ground that the respondent rebutted the presumption by preponderance of probabilities.



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Hence, challenging the same, the complainant has filed the present appeal.

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3. The learned counsel for the appellant/complainant submitted that the respondent admitted the signatures found in the cheques and also the execution of the cheques. When once the execution is admitted, there is a legal presumption under Section 139 of the Negotiable Instruments Act that the cheque was issued for discharge of legally enforceable debt. The appellant/Company also substantiated the complaint by way of examining P.W.1 and marking of 9 documents as Ex.P.1 to Ex.P.9. The respondent/accused never denied the issuance of cheques, nor denied the signatures, either in his reply notice or at any time during trial by oral and documentary evidence and also had not taken the defence of time-barred debt. Only at the time of filing written arguments before the Court below, for the first time, the respondent took the defence that it was a time-barred debt. However, the learned Magistrate accepted the same and dismissed the complaint filed by the appellant-Company, holding that the respondent/accused rebutted the



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presumption, but the complainant has not proved the legally enforceable debt

of the respondent/accused. The learned Magistrate failed to consider that the presumption envisaged under Section 139 of the Negotiable Instruments Act, which is not rebutted by the respondent/accused. Therefore, the judgment of acquittal passed by the trial Court is liable to be set aside.

4. The learned counsel for the respondent/accused submitted that it is the bounden duty of the complainant to establish their case that the cheques were issued for discharge of legally enforceable debt, whereas the appellant/complainant miserably failed to substantiate their complaint in the manner known to law. The appellant had not produced any documents to prove that the cheques were issued to discharge the legally enforceable debt. After completion of trial and at the time of pronouncing the judgment, he brought certain additional documents without producing the same in the manner known to law and therefore, the learned Magistrate rightly rejected the same. Though the respondent/accused admitted the execution of cheques and the signatures



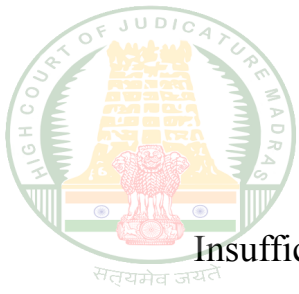
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found in the cheques, however he rebutted the presumption by preponderance

of probabilities during cross examination of P.W.1. Hence, the learned Magistrate rightly dismissed the complaint and acquitted the respondent/accused. Therefore, there are no merits in this appeal and the same may be dismissed.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the appellant is the complainant and the respondent is the accused. The case of the complainant is that the respondent borrowed money from the complainant a sum of Rs.3 lakhs, Rs.2 lakhs and Rs.1 lakh on 26.11.2013, 24.06.2015 and 28.12.2016 respectively, and in total, Rs.6 lakhs was borrowed by the respondent/accused. Towards re-payment of the borrowal of the amount, the respondent issued three cheques bearing cheque Nos.844117, 917144 and 955046, all dated 03.02.2021 for a sum of Rs.3 lakhs each, in total Rs.9 lakhs. When the complainant/Company presented all the three cheques in their Bank, the same were returned for the reason "Funds



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Insufficient", vide Return Memo, dated 04.02.2021. Hence, the complainant

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issued a statutory notice to the respondent and on receipt of the same, the respondent sent a reply denying the liability. Hence, the complainant filed the complaint in S.T.C. No.1695 of 2022 before the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai, against the respondent. But the same was dismissed by the learned Magistrate on the ground that the complainant has not proved that the cheques were issued to discharge the legally enforceable debt. Hence, challenging the same, the present appeal is filed by the complainant/Company.

7. On a perusal of the complaint, it shows that the appellant never stated in their complaint that subsequent to the borrowal of the last loan amount and till the date of issuance of the cheques, i.e. between 28.12.2016 to 03.02.2021, the respondent/accused neither paid any interest, nor a portion of the principal amount. Further, the appellant/Company has clearly stated in their complaint that the respondent borrowed a sum of Rs.6 lakhs on various dates and towards



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re-payment of the same, he issued three cheques, totalling a sum of Rs.9

lakhs, which shows that the cheques were issued after 3 years from the date of borrowal. It is the bounden duty of the complainant to substantiate that the cheque was issued for discharge of legally enforceable debt. But the appellant neither stated, nor produced any document to show that subsequent to the borrowal of the last loan amount and till the date of issuance of the cheques, the respondent/accused paid any interest or a portion of the principal amount or acknowledgement of liability within the period of limitation.

8. Though the learned counsel for the appellant contended that the respondent had not taken the defence of time barred debt at the initial stage of the criminal proceedings, either at the time of sending reply or during cross-examination, a perusal of the cross examination of P.W.1 made by the learned counsel for the respondent, shows that P.W.1 admitted that after the borrowal of the loan amounts i.e. 26.11.2013, 24.06.2015 and 28.12.2016 to till the date of issuance of the cheques on 03.02.2021, the respondent never made any



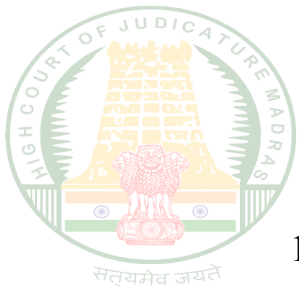
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payment to the appellant. He also admitted that the appellant-Company had not

sent any demand notice before issuance of the cheques. Though the execution of the cheques and signatures are not disputed by the accused, the complainant has to prove that the cheque was issued for discharge of legally enforceable debt.

9. No doubt, when once the execution of the cheques is admitted, there is a legal presumption under Sections 139 and 118 of the Negotiable Instruments Act that the cheques were issued to discharge the legally enforceable debt. However, the said presumption is a rebuttable presumption and the accused can always rebut the presumption by preponderance of probabilities.

10. In this case, during cross examination, the respondent/accused established that the debt of the respondent is a time-barred debt. Therefore, this Court finds that the respondent has rebutted the presumption that the cheques were not issued for discharge of any legally enforceable debt. Therefore, there is no merit in the appeal.



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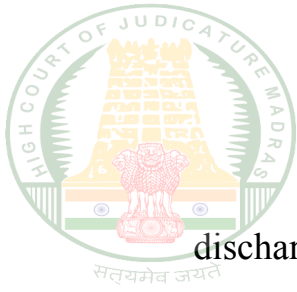
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11. Further, while interfering with the judgement of acquittal, the appellate Court has to find a compelling reason to interfere with the findings of the trial Court. In the appeal against the acquittal, the accused has got double presumption.

12. The appellant-Company has not established that the findings of the trial Court are perverse and the appreciation of evidence by the trial Court is not in consonance with the materials available on record.

13. When two views are possible, the view which is favourable to the accused should be considered. The appellate Court cannot interfere with the view taken by the trial Court, unless the appellate Court finds that the findings of the trial Court is perverse in appreciation of evidence.

14. In this case, a reading of the complaint filed by the appellant, proof affidavit filed by the appellant for chief examination and the cross examination of P.W.1 made by the learned counsel for the respondent, all clearly shows that the cheques were issued only for re-payment of time-barred debt and not for



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discharge of any legally enforceable debt.

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15. Therefore, this Court does not find any perversity and compelling reasons to interfere with the findings of the trial Court. Accordingly, this Criminal Appeal is dismissed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

The Metropolitan Magistrate,
Fast Track Court at Magisterial Level-IV,
George Town, Chennai



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P.VELMURUGAN. J.

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