



Crl.A.No.780 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.780 of 2025

D.Prakash

... Appellant

Vs.

K.Bakthavachalam

... Respondent

PRAYER: Criminal Appeal filed under Section 415(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the judgment made in S.T.C.No.2812 of 2022 dated 06.07.2024 on the file of the learned Metropolitan Magistrate, Fast Track Court-2, Egmore, Allikulam, Chennai-3.

For Appellant : Mr.C.Ramkumar

JUDGMENT

This Criminal Appeal has been filed as against the judgment dated 06.07.2024 passed by the learned Metropolitan Magistrate, Fast Track Court-2, Egmore, Allikulam, Chennai, in S.T.C.No.2812 of 2022, thereby acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the NI Act”).



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WEB COPY 2. The appellant is the complainant and he lodged complaint as against the respondent for the offence punishable under Section 138 of the NI Act, alleging that the respondent borrowed a sum of Rs.25,00,000/- on 10.08.2018 and in order to repay the said amount, he issued a cheque for the said sum. The said cheque was presented for collection. However, it was returned dishonoured for the reason “account closed”. After causing statutory notice, the appellant filed the complaint. The trial Court had taken cognizance on the complaint lodged by the appellant in S.T.C.No.2812 of 2022.

3. On the side of the appellant, he had examined himself as P.W.1 and marked documents in Ex.P.1 to Ex.P.4. On the side of the respondent, no one was examined and marked one document as Ex.D.1. On perusal of the oral and documentary evidences, the trial Court acquitted the respondent for the offence punishable under Section 138 of the NI Act. Aggrieved by the same, the appellant filed the present appeal.



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WEB COPY 4. The learned counsel appearing for the appellant submitted that the appellant discharged his initial burden as contemplated under Section 138 of the NI Act. The respondent did not deny his signature found in the cheque and issuance of the cheque. Even then, the trial Court failed to convict the respondent herein. In fact, on receipt of the statutory notice, the respondent did not even send any reply. Therefore, he failed to rebut the presumption arose under Sections 118 & 139 of the NI Act.

5. Heard the learned counsel appearing for the appellant and perused the materials placed before this Court.

6. On perusal of the records, it is revealed that the appellant did not even whisper about on what mode the said huge amount was given to the respondent. Further no documents were executed for the loan allegedly borrowed by the respondent that too for the huge amount. Further, after the period of four years that too, on 17.12.2021, the respondent issued cheque for the loan borrowed by him. That apart, the respondent was questioned under

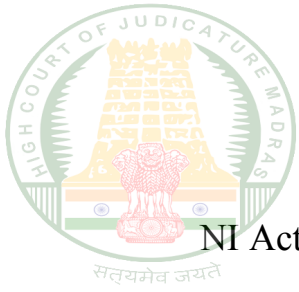


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Section 313 of Cr.P.C., and he made statement that his property was sold out in favour of the petitioner for a sum of Rs.3,54,00,000/-. However, the appellant failed to pay the balance sale consideration. When the respondent insisted for balance sale consideration, the appellant informed that there was due to the corporation for which, he received the cheque from the respondent. Subsequently, the said cheque was misused by the appellant. The respondent sold out the entire property and he did not borrow any amount that too from the appellant. No prudent person would lend such a huge amount that too without any security.

7. Further, the respondent cross-examined the appellant as P.W.1 in detailed manner. In the cross-examination, the respondent deposed that he borrowed the said loan long back for which, after the period of four years, the respondent issued the cheque. He also categorically admitted that, he entered into an agreement for purchase of land owned by the respondent. The sale consideration was fixed at Rs.3,54,00,000/-, in which the appellant paid only Rs.1,54,00,000/- on the date of agreement. Therefore, the respondent categorically rebutted the presumption arose under Sections 138 & 139 of the



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NI Act. Further, the appellant failed to prove his case in the manner known to law, after rebuttal. This Court finds no infirmity or illegality in the order passed by the trial Court and the present appeal fails.

8. Accordingly, the Criminal Appeal stands dismissed.

03.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

To

1. The Metropolitan Magistrate,
Fast Track Court-2, Egmore,
Allikulam, Chennai.



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G.K.ILANTHIRAIYAN, J.
rts

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