



CrI.A.No.1228 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2025

CORAM:

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

CrI.A.No.1228 of 2025

Shabana Ayub

... Appellant

Vs.

Banu

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of BNS, praying to set aside the judgment of acquittal dated 05.07.2024 passed by the learned Judicial Magistrate-I, Madurantakam in CC.No.114 of 2022 and thereby convict the respondent herein.

For Appellant : Mr.G.Mageshkumar

JUDGMENT

This criminal appeal has been preferred against the judgment of acquittal dated 05.07.2024 passed by the learned Judicial Magistrate-I, Madurantakam in CC.No.114 of 2022, thereby dismissing the complaint and acquitting the respondent for the offence punishable under Section 138 of NI Act.

2. The appellant lodged complaint against the respondent for



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the offence punishable under Section 138 of NI Act alleging that the respondent borrowed a sum of Rs.30,00,000/- in the month of March 2021 for the purpose of her business expenses. In order to repay the said loan amount, the respondent issued a cheque for a sum of Rs.30,00,000/- and the same was presented for collection. However, it was returned dishonoured for the reason 'bank certificate ambiguous / incomplete / required proper date'. After causing statutory notice, the complaint was lodged.

3. In order to prove the complaint, the appellant had examined herself as PW1 and marked Ex.P1 to Ex.P4. On the side of the respondent, she had examined DW1 and marked Ex.D1 to Ex.D3. On perusal of oral and documentary evidences, the trial court acquitted the respondent and dismissed the complaint. Aggrieved by the same, the present criminal appeal has been filed by the complainant.

4. The learned counsel for the appellant would submit that the respondent categorically admitted the signature found in the cheque and also the issuance of the same. Therefore, the appellant had discharged her initial burden as contemplated under Section 138 of NI Act. Though the



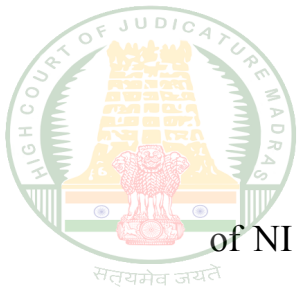
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respondent failed to rebut the presumption, the trial court mechanically acquitted the respondent. In fact, the respondent had categorically admitted that the cheque was issued by her while availing loan to purchase car by the appellant herein.

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

6. On perusal of records, it is revealed that the appellant had lent a sum of Rs.30,00,000/- by way of cash in the month of March 2021 to the respondent as loan for her business purposes. Though the appellant and the respondent were well acquainted with each other, no prudent person would lend such huge amount of Rs.30,00,000/- by way of cash and without any security document. Though the respondent did not issue any reply notice, the respondent was examined as DW1. She categorically deposed that she never borrowed any loan from the appellant and she did not issue the alleged cheque for any legally enforceable debt. She further deposed that the said cheque was issued as security while appellant availed loan to purchase a car. Thereafter, the cheque was misused by the appellant and proceedings under Section 138



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of NI Act was initiated. Therefore, the respondent categorically rebutted the presumption under Sections 118 and 139 of NI Act. Even then, the appellant failed to prove that the cheque was issued for legally enforceable debt. When the respondent rebutted the presumption by preponderance of probabilities, the entire burden shifts on the shoulder of the complainant to prove that the cheque was issued for legally enforceable debt. Therefore, as stated supra, at the time of lending such huge amount of Rs.30,00,000/-, the appellant did not insist for any security document. Further, the appellant did not even whisper about the date of the alleged borrowal. No prudent person would lose memory about the date of lending, that too a huge amount as loan. As such, the trial court rightly acquitted the respondent and this Court finds no infirmity or illegality in the impugned judgment.

7. In view of the discussion, this criminal appeal is dismissed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To
The learned Judicial Magistrate-I, Madurantakam

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