IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2025

CORAM

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

Crl.A.No.125 of 2023

A.Kamal ... Appellant

Vs.

S.N.Rajan ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment of acquittal of the accused made in S.T.C.No.390 of 2020 on the file of the Judicial Magistrate, Sholinghur, dated 28.10.2022, by allowing the above appeal.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.A.R.Suresh

JUDGMENT

This Criminal Appeal has been filed as against the judgment dated 28.10.2022 passed by the learned Judicial Magistrate, Sholinghur, in S.T.C.No.390 of 2020, thereby acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act").

2. The appellant 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.18,00,000/- on 01.08.2020 and in order to repay the said amount, he issued a cheque. The said cheque was presented for collection. However, it was returned dishonoured for the reason "insufficient fund". 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.390 of 2020.

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.5. On the side of the respondent, no one was examined and no documents were marked. 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, dismissing the complaint lodged by the appellant. Aggrieved by the same, the appellant filed the present appeal.

4. The learned counsel appearing for the appellant submitted that

the respondent admitted the signature found in the cheque and therefore, the appellant discharged his initial burden as contemplated under Section 138 of the NI Act. Though the respondent failed to rebut the presumption, the trial Court mechanically acquitted the respondent. In the notice, the appellant had wrongly stated that the date of borrowal as 09.08.2020, which is only a typographical error and it was corrected in the complaint as 01.08.2020. The appellant used to lend money to the respondent on receipt of pronote and cheque. Likewise, the respondent borrowed a sum of Rs.18,00,000/- on 01.08.2020 and thereafter issued cheque in order to repay the said amount.

5. Per contra, the learned counsel appearing for the respondent submitted that on the date of alleged borrowal of loan, there was a lock down due to Covid-19. Therefore, it was not possible to borrow the loan, that too in the residence of the appellant herein, since both of then reside in different districts. In fact, the respondent borrowed a sum of Rs.10,00,000/- after issuance of four cheques and pronote. Thereafter, the said amount was repaid and even then the appellant failed to return the same. Further, after receipt of the statutory notice, the respondent issued reply notice. Even after the receipt of the reply notice, the appellant failed to sent any rejoinder. Therefore, the

respondent categorically rebutted the presumption and the trial Court rightly acquitted the respondent.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. The appellant had lend a sum of Rs.18,00,000/- as hand loan to the respondent on 09.08.2020 as per the notice. As per the complaint and the evidence before the trial Court, the alleged loan was borrowed by the respondent on 01.08.2020. Admittedly, at the time of borrowal of loan, the appellant did not receive any document for security purpose. During the cross-examination, the appellant categorically admitted that he used to lend money to the respondent to the tune of Rs.10,00,000/- and Rs.5,00,000/-, on receipt of the security document such as cheque and pronote. While being so, when the appellant lent a sum of Rs.18,00,000/-, he definitely would have received security documents. However, the appellant did not receive any document as security. No prudent person would lend such a huge amount without any security document that too by way of cash.

8. As rightly pointed out by the learned counsel appearing for the respondent, the appellant duly received the reply notice and failed to send any rejoinder denying the same. Admittedly, on the date of borrowal there was a lock down due to Covid-19. Therefore, the respondent categorically rebutted the presumption under Section 118 & 139 of NI Act. Even then the appellant failed to prove that the cheque was issued for legally enforceable debt. Therefore, the trial Court rightly acquitted the respondent and this Court finds no infirmity or illegality in the order passed by the trial Court and the present appeal fails.

9. Accordingly, the Criminal Appeal stands dismissed.

22.08.2025

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

G.K.ILANTHIRAIYAN, J.

rts

To

1. The Judicial Magistrate,
Sholinghur.

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