



Crl.A.No.465 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2025

CORAM:

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

Crl.A.No.465 of 2025

A.Ashok

... Appellant

Vs.

A John

... Respondent

PRAYER: Criminal Appeal filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the judgment dated 03.10.2024 in S.T.C.No.3938 of 2022 on the file of the learned XXVII Metropolitan Magistrate Court (Fast Track Court for trial of cases under Section 138 Negotiable Instruments Act), Saidapet, Chennai and find the accused guilty u/s 138 of Negotiable Instruments Act pass maximum sentence and imprisonment.

For Appellant : Mr.V.T.Narendiran

JUDGMENT

This Criminal Appeal has been filed as against the order dated 03.10.2024 passed by the learned XXVII Metropolitan Magistrate Court (Fast Track Court for trial of cases under Section 138 Negotiable Instruments Act), Saidapet, Chennai, in S.T.C.No.3938 of 2022, thereby



Crl.A.No.465 of 2025

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 is the complainant and the respondent is the accused. The appellant lodged complaint for the offences punishable under Section 138 of the NI Act, alleging that the appellant and the respondent are known to each other for the past 30 years. The respondent had borrowed a sum of Rs.21,60,000/- for his real estate business and company development. In order to repay the said amount, the respondent issued cheque for a sum of Rs.21,60,000/- dated 11.11.2019. It was presented for collection and the same was returned dishonoured for the reason “funds insufficient”. After causing statutory notice, the appellant filed complaint and the same has been taken cognizance in S.T.C.No.3938 of 2022 by the trial Court. After full fledged trial, 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.



Crl.A.No.465 of 2025

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3. The learned counsel appearing for the appellant submitted that the respondent himself was examined as D.W.1 and he categorically admitted that he had borrowed a sum of Rs.21,60,000/- and it was not rebutted by him. Further the respondent admitted that the appellant and the respondent have acquaintance for the past 30 years and also the borrowal of the loan. He further submitted that this Court granted leave to file this appeal only after hearing the respondent herein.

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

5. On perusal of the records, it is revealed that the specific case of the appellant is that he has acquaintance with the respondent for the past 30 years. While being so, the respondent used to borrow the loan and the respondent is liable to pay a sum of Rs.21,60,000/-. In order to repay the said amount, the respondent issued cheque amount for a sum of rs.21,60,000/- and the same was presented for collection. It was returned dishonoured for the reason that “funds insufficient”.



Crl.A.No.465 of 2025

WEB COPY

6. The appellant was examined as P.W.1. On perusal of the evidence of P.W.1, it is revealed that he did not even whisper about the date on which the respondent borrowed such a huge amount. Though both had acquittance for the past several years, the appellant failed to prove the liability of the respondent herein. Further in the cross-examination of P.W.1, he deposed that he had lent a sum of Rs.4,00,000/- in the year 2006. However, he did not even whisper amount the remaining amount which was allegedly borrowed respondent and on which date the amount was borrowed by the respondent. Even assuming that in the year 2006 the respondent borrowed a sum of Rs.4,00,000/-, the cheque was issued only in the year 2019. Therefore, entire case of the appellant was not proved since the alleged cheque was barred by limitation. Further, on perusal of the entire records, the appellant failed to prove that the cheque was issued for legally enforceable debt.

7. Furthermore, mere granting leave to file an appeal as against the order of acquittal, does not mean that the appellant proved his case. This Court finds no ground to interfere with the order of acquittal passed by the trial Court and the appeal is deserved to be dismissed.



Crl.A.No.465 of 2025

WEB COPY

8. Accordingly, the Criminal Appeal stands dismissed.

02.06.2025

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

To

1. The XXVII Metropolitan Magistrate Court
Fast Track Court for trial of
cases under Section 138 NI Act,
Saidapet, Chennai.



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Crl.A.No.465 of 2025

G.K.ILANTHIRAIYAN, J.

rts

Crl.A.No.465 of 2025

02.06.2025