



Crl.A.(MD)No.236 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.236 of 2025

C.P.Sathish

... Appellant

versus

G.Thiruselvam

... Respondent

Criminal Appeal filed under Section 378(4) of Cr.P.C. / under Section 419 of BNSS 2023, to call for the records and set aside the Judgment of acquittal passed by the learned Judicial Magistrate No.I, Fast Track Court at Magistrate Level, Madurai, in S.T.C.No.284 of 2015 dated 28.11.2024 and convict the accused for the offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.R.Senthil Kumar

JUDGMENT

The appellant herein lodged a complaint before the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai in S.T.C.No.284 of 2015 as against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. After the trial, the



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trial Court, by its Judgment dated 28.11.2024, rejected the complaint and acquitted the respondent from the charge. As against the Judgment of acquittal, the complainant has preferred this appeal under Section 378(4) Cr.P.C.

2. The learned counsel appearing for the appellant submits that the issuance of cheque (Ex.P1) was admitted by the respondent and his signature found in the cheque (Ex.P1) was also admitted by the respondent. According to the learned counsel, the cheque issued by the respondent was presented for collection on 20.03.2013 and the same was returned by the respondent's Banker on 22.03.2013 with an endorsement as “insufficient funds” and therefore, the appellant issued a legal notice as required under Section 138 of the Negotiable Instruments Act. Even after the receipt of the legal notice dated 04.04.2013, the accused has not paid the amount. Therefore, an offence under Section 138 of the Negotiable Instruments Act has been made out. Since the offence has been proved by the complainant, a presumption is made out as against the respondent, as per Section 139 of the Negotiable Instruments Act. However, the trial Court has erroneously rejected the complaint of the appellant that the cheque has been given as

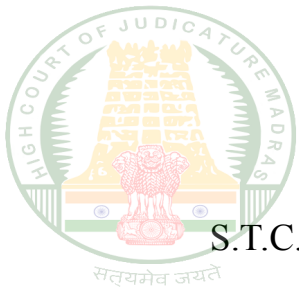


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collateral security for a chit transaction. The trial Court has failed to consider that apart from the chit transaction, the respondent has also borrowed money on 06.11.2012. Therefore, according to the learned counsel, this transaction is a separate transaction, wherein, the accused has borrowed money for the medical treatment to his wife. Without considering the same, the trial Court has rejected the complaint that there is no legally enforceable debt.

3. The learned counsel for the appellant further submits that the respondent has borrowed this amount for the medical expenses of his wife on 06.11.2012 and only after several reminders by the complainant, the cheque was issued by the respondent on 12.03.2013 as post-dated cheque, i.e. on 20.03.2013. The issuance of cheque has been admitted by the respondent and the signature found in the cheque has not been disputed by the respondent. Therefore, it has to be treated that the cheque has been given to discharge the private loan which has been borrowed on 06.11.2012.

4. This Court considered the submissions made by the learned counsel for the appellant and also perused the Judgment of the trial Court passed in

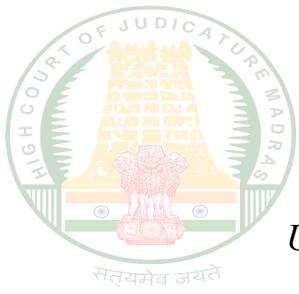


5. Since this appeal is filed as against the Judgment of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in ***V.Sejappa v. State [(2016) 12 SCC 150]***, wherein, the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730]***. The guidelines issued in the said decision are extracted hereunder:

“23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified.



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Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

6. In yet another decision in the case of ***Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]***, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

“(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.



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(3) *Various expressions, such as, 'substantial and compelling reasons', good and sufficient grounds', 'very strong circumstances', distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

(4) *An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.*

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."*

7. The appellant has filed a complaint before the trial Court for the offence under Section 138 of the Negotiable Instrument Act that on 06.11.2012, the respondent borrowed a sum of Rs.4,50,000/- in cash from

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him and to discharge the same, the respondent issued a post-dated cheque dated 20.03.2013, on 12.03.2013. The cheque was presented for collection on 20.03.2013 and the same was returned by the respondent's Banker on 22.03.2013 with an endorsement as 'insufficient funds'. Therefore, the complainant has issued a legal notice dated 04.04.2013 calling upon the respondent to pay the cheque amount. However, the respondent failed to pay the amount even after the lapse of 15 days' time. Therefore, the above complaint in S.T.C.No.284 of 2015 was filed by the appellant.

8. The case of the respondent is that the complainant is running a chit company in the name and style of 'Raja Rajan Chit Funds' and the he was a member in the chit company. The complainant has secured several cheques from the respondent as security and one of the cheques has been misused by the complainant. This was also probabilized from the evidence of P.W.1 that the cheque prior to Ex.P1 and subsequent cheque to Ex.P1 were encashed for subscription by Raja Rajan chit funds. The complainant has admitted in his evidence that the respondent has maintained a chit fund account and some of the amount were collected through cheques. The respondent has also examined his Bank Manager as D.W.1 and marked the Bank Statement



as Ex.D6.



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9. Apart from the chit transaction, there was a money transaction between the complainant and the respondent during the year 2011 and the complainant had given money to the respondent after obtaining a mortgage deed from the respondent. The mortgage deed executed by the respondent in favour of the complainant dated 05.01.2011 was marked as Ex.D4 and the amount given by the complainant was repaid by the respondent on 16.04.2012 and the repayment receipt was marked as Ex.D5.

10. But, this loan amount was parted with by the complainant only through cheques. However, for this loan transaction said to have been made on 06.11.2012, the cheque was obtained by the complainant only on 12.03.2013, i.e. after five months. Therefore, the trial Court found that the respondent has made out a case that there is no legally enforceable debt towards the complainant and by applying the principles laid down by the Hon'ble Supreme Court in ***Rangappa vs. Srimohan* (CrI.A.No.1020 of 2010 dated 07.05.2010)**, held that the presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused and therefore,



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the complainant has to prove the case that there was a legally enforceable debt, for which, the accused has issued the cheque Ex.P1.

11. The trial Court, after considering the evidence of the complainant, came to a conclusion that there was no record for the loan transaction dated 06.11.2012; the complainant has not obtained any mortgage deed for this transaction, when the earlier loan was parted with by the complainant only by obtaining a mortgage deed; this loan amount was given through cheques and the cheque prior to Ex.P1 and subsequent cheque to Ex.P1 were encashed for subscription by Raja Rajan chit funds and has rightly held that there was no legally enforceable debt and the cheque Ex.P1 was given by the respondent only as security for the chit transaction in Raja Rajan chit funds. Therefore, this Court is not inclined to entertain this appeal. Accordingly, this Criminal Appeal is dismissed.

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To



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B.PUGALENDHI, J.

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1. The Judicial Magistrate No.I,
Fast Track Court at Magistrate Level,
Madurai.

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