



Crl.A.(MD)No.556 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 02.06.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

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S.A.Suresh Kumar,
Managing Director,
Don Publications Private Ltd.,
No.3/100/1, Uthamapandiyankulam,
Tirunelveli District - 627 351.
Rep. by its Power Agent
V.Murugan,
S/o.Velu, Manager,
Don Publications Private Ltd.,
I.C.Roch Complex 2nd Floor,
Palay Bus Stand,
Tirunelveli District - 627 002.

... Appellant

vs.

A.Saravana Perumal

... Respondent

PRAYER : This Criminal Appeal has been filed under Section 419(4) of BNSS, 2023, to call for the records relating to the judgment dated 18.05.2023 in S.T.C.No.229 of 2021 on the file of the Special Court for exclusive trial of Negotiable Instruments Act Cases, Tirunelveli and set aside the same and allow this Criminal Appeal and convict the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881.



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For Appellant : Mr.T.Antony Arulraj

For Respondent : Mr.S.Balaji

JUDGEMENT

The appellant is the complainant, who had filed a case on the allegation of dishonour of the cheques issued by the accused in Cheque Nos.506519 dated 03.07.2019 for a sum of Rs.2,32,679/-, 506520 dated 05.07.2019 for a sum of Rs.2,00,000/-, 506521 dated 07.07.2019 for a sum of Rs.2,00,000/- and 506522 dated 06.07.2019 for a sum of Rs. 2,00,000/- for discharging the dues to be paid by him towards the purchase of books on credit basis.

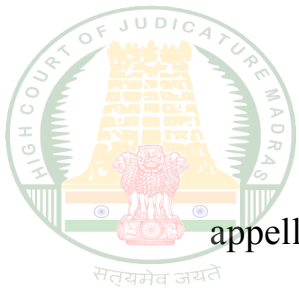
2. The learned counsel appearing for the appellant submitted that the Special Court has acquitted the accused on the wrong presumption that the cheques have not been presented to the Bank for collection and it is observed that the complainant himself has admitted the said fact in his evidence. It is further submitted that the Cheques have actually been presented before the State Bank of India, Junction Branch, Tirunelveli and the return Memos have also been marked as documents but the Court below had overlooked the above facts and has proceeded to acquit the accused.



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3. On perusal of the Judgement, it is seen that the Court below is convinced about the fact that the appellant and the respondent were involved in business transaction in connection with the sale of books meant for academic purposes. However, the Court appears to have given significance to the oral evidence of PW1, where, he has stated that he has not dropped the cheques for encashment in the State Bank of India, Junction Branch, Tirunelveli.

4. It is alleged by the appellant that he had presented the cheques to the Bank of respondent, from which Bank, the cheques have been drawn. However, the cheques have been returned with an endorsement 'funds insufficient'. It is to be noted that the Cheques deposited for collection does not bear the date, signature of the Bank Manager or Bank Seal and that forms part of the oral evidence of PW1 as well. From the evidence of PW1, it can be understood that PW1 is aware of the fact that whenever cheques are issued, they have to be collected by depositing them in his own Bank, through his banker, and if the drawer does not have sufficient money in his account, then only, the cheques would be returned with the endorsement 'funds insufficient'. Despite knowing the same, the complainant has not chosen to deposit the cheques for collection through his own Bank. Even if it is presumed that the

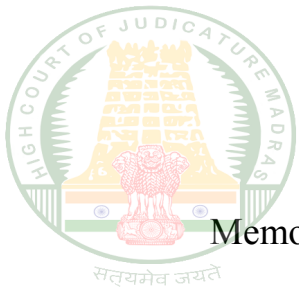


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appellant has presented the cheques to the Bank of the respondent for encashment and it is returned for the reason 'funds insufficient', such cheques should contain date, signature of the Bank Manager or Bank Seal. It is strange that the Cheques produced by the appellant does not bear the above details. Further, the complainant has not chosen to examine the banker as one of the witnesses in order to establish his *prima facie* submission that the cheques have been returned for want of funds and to prove the return Memos. The learned trial Judge has rightly dealt with the evidence in a holistic manner and had acquitted the accused on the finding that the appellant has not proved his case.

5. At this juncture, the learned counsel for the appellant submitted that when the return Memos have been marked, the respondent did not make any objection.

6. Marking of document is different from proof of document and the genuineness of the document has to be proved only in the manner known to law. Just because, the document has been admitted or received, the appellant cannot presume that the document so received or marked has been proved. For the reasons best known to the appellant, he has not chosen to examine the person, who alleged to have issued the return



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Memo in order to prove its genuineness. In the absence of the same, the appellant cannot expect the Court to appreciate differently and arrive at a conclusion that the return Memos have been proved. Hence, I do not find any grounds to maintain the appeal.

7. Accordingly, this Criminal Appeal is rejected.

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To

1.The Special Court for exclusive trial of
Negotiable Instruments Act Cases,
Tirunelveli.



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R.N.MANJULA, J.

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