BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A(MD)No.431 of 2025

PL.Avichi : Appellant

Vs.

S.Uma Maheswari : Respondent

PRAYER: Appeal filed under Section 419 BNSS to call for the records relating to the judgment of acquittal dated 24.02.2025 in CC.No.97 of 2022 on the file of the Judicial Magistrate (Fast Track) Court, Karaikudi and set aside the same.

For Appellant : Mr.V.R.Shanmuganathan

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JUDGMENT

This appeal is directed as against the judgment of the learned Judicial Magistrate, Karaikudi, in CC.No.97 of 2022, dated 24.02.2025.

2.The appellant has filed a private complaint as against the respondent / accused for the offence u/s.138 of the Negotiable Instruments Act [in short 'NI Act'] that the respondent / accused borrowed a sum of Rs.5,00,000/- on 16.07.2019 agreeing to repay the same with interest @ 12% p.a. from the appellant The respondent / accused has also executed a promissory note in acknowledgment of the same. When the appellant demanded the said amount, the accused issued a cheque on 21.05.2022 for a sum of Rs.6,70,000/- towards principal and interest in discharge of his liability. On presentation, the cheque was dishonoured on 23.05.2022. Therefore, the appellant has issued a legal notice calling upon the respondent to pay the amount. However, there was no response and therefore, the appellant has filed the above complaint.

3.During the trial, the appellant was examined as PW1. The appellant has also marked the promissory note dated 16.07.2019 as Ex.P1, the cheque dated 21.05.2022 as Ex.P2, the endorsement of the bank for the return of cheque dated 23.05.2022 as Ex.P3, legal notice as Ex.P4 and the acknowledgment card as Ex.P5.

4.The respondent / accused has examined herself as DW1, her mother Ponnammal was examined as DW2 and her brother Senthilkumar was examined as DW3. However, they have not marked any documents on either side.

5.In conclusion of the trial, the trial Court has found that there was a transaction between the appellant and the mother of the accused, 10 years back, wherein, the mother has borrowed a sum of Rs.1,50,000/- from the complainant by mortgaging her property, where this accused and her brother DW3 stood as witnesses. The Court also found that the accused has paid a sum of Rs.5000/- towards the interest for the transaction said to have taken place ten year back. For the loan availed by the mother of the accused, the complainant, under threat, has obtained the cheque Ex.P2 from the accused and has lodged this complaint. Holding so, the trial Court dismissed the complaint. Aggrieved over the same, the complainant has filed this appeal.

6.Learned Counsel for the appellant submitted that the respondent / accused has issued the cheque dated 21.05.2022 [Ex.P2]. She has also executed a promissory note [Ex.P1] in favour of the complainant. The signature found in the cheque [Ex.P2] as well as in the promissory note [Ex.P1] has not been denied by the accused. The cheque which was presented for collection was dishonoured for insufficient funds. The complainant has issued a legal notice as required u/s.138 of the NI Act calling upon the accused to make the payment within the stipulated time. The said notice has been marked as Ex.P4 and the accused has also received the same. The acknowledgment has been marked as Ex.P5. Once the signature found in the instrument has not been denied, then the presumption arise u/s.139 of the NI Act. Without considering the available evidence and the presumption, which is available u/s.139 of the NI Act, the trial Court has erroneously dismissed the complaint.

7.He further submitted that when the respondent / accused has admitted the liability that there was a transaction between her mother and the complainant, then the impugned cheque [Ex.P2] should also be issued for the discharge of that liability. The cheque can be issued for any other liability also. Therefore, it cannot be presumed that there is no legally enforceable debt when the accused herself has admitted that her mother borrowed a sum of Rs.1,50,000/- from the complainant in the year 2010. Therefore, he prayed for appropriate orders.

8.This Court considered the submissions made by the appellant's Counsel and perused the materials placed on record.

9.Before dwelling into the merits of the case, since the appeal is filed as against an order 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. 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."

10.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.

(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."

11.The complainant is a Financier and the accused is a servant maid. There was a transaction between the mother of the accused [DW2] and the complainant in the year 2010. It has been established by the accused [DW1], her mother [DW2] and her brother [DW3]. Admittedly, the accused was working as a servant maid in the complainant's house. The complainant in the cross examination of DW2 took a stand that a separate complaint has been prosecuted as against DW2 for the liability of DW2. However, the details of the complaint has not been disclosed during the cross examination. DW3 has also stated that he along with DW2 borrowed a sum of Rs.1,50,000/-, ten years prior to this complaint and they have been paying a sum of Rs.6,000/- towards interest and they were not able to pay the interest during the Covid-19 period. Therefore, the impugned cheque [E.P2] has been obtained forcibly from the accused, who was working as a servant maid in the complainant's house and this complaint has been lodged as if the accused has borrowed a sum of Rs.5,00,000/-.

12.In view of the available evidence, the trial Court found that the accused has rebutted the presumption and thereafter, it is the complainant, who has to establish his case that there is a legally enforceable debt.

13.Though the complainant is a Financier and also filed several complaints, the complainant has not entered this transaction of Rs.5,00,000/- in his account as well as in the income tax returns. That was also admitted by the complainant in his evidence. The cheque was filled up in English and the signature is in Tamil. Admittedly, there was a liability for DW2 & DW3 to the complainant and that was not paid. Even after that, the possibility of lending a huge amount of Rs.5,00,000/- to the accused, a servant maid, who belong to the same family, is also doubtful. Therefore, the trial Court has acquitted the accused that there was no legally enforceable debt and this cheque has been obtained from the accused / servant maid of the complainant for the liability of her mother.

14.Following the ratio laid down by the Hon'ble Supreme Court, this Court does not find any error in the judgment of the trial Court and the same does not warrant any interference.

Accordingly, this criminal appeal stands dismissed.

Internet : Yes **21.04.2025**
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To

1.The Judicial Magistrate,
Fast Track Court,
Karaikudi.

2.The Section Officer,
ER / VR Section,
Madurai Bench of Madras High Court,
Madurai.

B.PUGALENDHI, J.

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