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Crl.A.(MD)No.211 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.211 of 2025

Karthikeyan

... Appellant

versus

Subbulakshmi

... Respondent

Criminal Appeal filed under Section 419 of BNSS to call for the records pertaining to the Judgment of acquittal passed in S.T.C.No.362 of 2022 dated 06.12.2023 on the file of the learned Judicial Magistrate No.I, Pudukkottai and set aside the same.

For Appellant : Mr.A.Balaji

JUDGMENT

This Criminal Appeal is directed against the Judgment of acquittal passed in S.T.C.No.362 of 2022 on the file of the learned Judicial Magistrate No.I, Pudukkottai, dated 06.12.2023.

2. The appellant has lodged a private complaint as against the respondent for the offence under Section 138 of the Negotiable Instruments



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Act, before the learned Judicial Magistrate No.I, Pudukkottai and the same was taken on file in S.T.C.No.362 of 2022.

3. The case of the complainant/appellant is that the respondent has borrowed a sum of Rs.9,50,000/- as loan on 22.03.2022 and for discharge of the same, she has issued a cheque (Ex.P1) dated 22.06.2022. When he presented the said cheque for collection on 23.06.2022, it was returned on 24.06.2022 with an endorsement as “kindly contact drawer/drawee bank and please present again”. Therefore, the complainant/appellant contacted the respondent. At that time, she informed him to present the cheque after 15 days. Thereafter, the complainant/appellant presented the cheque before the Bank on 07.07.2022. But, it was returned with the same endorsement on 08.07.2022. Therefore, the complainant/appellant issued a legal notice, as required under Section 138(b) of the Negotiable Instruments Act, to the respondent on 13.07.2022 and the same was received by the respondent on 14.07.2022. The respondent, instead of paying the cheque amount, has sent a reply to the notice on 20.07.2022 with false averments. Therefore, the complainant has instituted the above complaint as against the respondent for the offence under Section 138 of the Negotiable Instruments Act.



4. Before the trial Court, the complainant examined himself as P.W.1

and marked five documents, namely, Exs.P1 to P5. On the side of the respondent, four witnesses were examined as D.W.1 to D.W.4. The respondent examined herself as D.W.5 and marked the reply notice and the acknowledgment card as Exs.D1 and D2.

5. After considering the oral and documentary evidence, the trial Court, by its Judgment dated 06.12.2023, rejected the complaint and acquitted the respondent from the charge. As against the Judgment of acquittal, the complainant has preferred this Criminal Appeal.

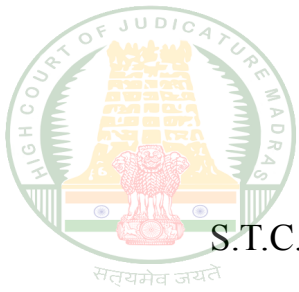
6. The learned counsel appearing for the appellant submits that the issuance of cheque (Ex.P1) was admitted by the respondent and her signature found in the cheque (Ex.P1) was also admitted by the respondent. According to the learned counsel, the cheque issued by the respondent was presented for collection twice, i.e. on 23.06.2022 and 07.07.2022, but, it was returned. 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 13.07.2022, the respondent has not turned up to pay



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. But, the respondent has not rebutted the presumption by preponderance of probability. However, the trial Court has rejected the complaint holding that the complainant has failed to prove that the cheque has been issued by the respondent to discharge the legally enforceable debt.

7. The learned counsel appearing for the appellant further submits that one Sundaram Chettiyar was examined as D.W.3. During the examination, D.W.3 deposed that the respondent has borrowed some money from him and she has not repaid that amount, for which, he lodged a complaint before the District Crime Branch, Pudukkottai. Based on the said evidence, it cannot be presumed that the cheque given by the respondent to the said Sundaram Chettiyar was misused by the complainant/appellant.

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



9. This is an appeal against acquittal. When the evidence presented in a case allows for two reasonable interpretations, one supporting conviction and the other supporting acquittal, this Court is obligated to adopt the interpretation that favours the accused's innocence. The Hon'ble Supreme Court has consistently upheld this principle in various judgments and one such judgment is ***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

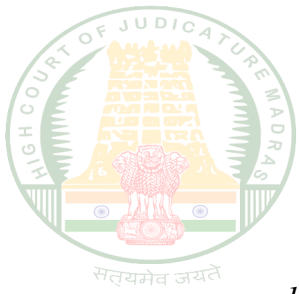


trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial 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.



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(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."*



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11. The appellant has filed a complaint before the trial Court for the offence under Section 138 of the Negotiable Instrument Act that on 22.03.2022, the respondent borrowed a sum of Rs.9,50,000/- in cash from him and to discharge the same, the respondent issued a cheque (Ex.P1) dated 22.06.2022. When the complainant presented the said cheque for collection on 23.06.2022, it was returned on 24.06.2022 with an endorsement as “kindly contact drawer/drawee bank and please present again”. Therefore, the complainant/appellant contacted the respondent. At that time, she informed him to present the cheque after 15 days. Thereafter, the complainant/appellant presented the cheque before the Bank on 07.07.2022. But, it was returned with the same endorsement on 08.07.2022. Therefore, the complainant/appellant has issued a legal notice on 13.07.2022 calling upon the respondent to pay the cheque amount. Instead of paying the amount, the respondent has issued a reply to the notice, on 20.07.2022. Therefore, the complaint in S.T.C.No.362 of 2022 was filed by the appellant.

12. Before the trial Court, the case of the respondent was that the complainant and herself worked under D.W.3, Sundaram Chettiyar, who lent



money for Women's self-help groups. When she was working as a Collection Agent, the said Sundaram Chettiyar opened a Bank Account in her name and also obtained her signature in the cheques. Since she stopped going to work, the complainant, in order to wreck vengeance, filed a complaint through the said Sundaram Chettiyar. The respondent has also taken a stand that the complainant is not having any source of income to lend a sum of Rs.9,50,000/- as loan amount and when the complainant himself admitted that he is doing money lending money, it cannot be accepted that without any interest, he lent a sum of Rs.9,50,000/- as loan and when he asked to repay the said amount, she gave the cheque for discharge of legally enforceable debt.

13. During the trial, D.W.3-Sundaram Chettiyar deposed that he lent money to the respondent for Women's self-help group, but, she did not repay the amount, therefore, he lodged a complaint before the District Crime Branch, Pudukkottai. From the above evidence, it was proved that there is a money dispute between the respondent and the said Sundaram Chettiyar.



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14. Further, during the cross examination of P.W.1/complainant, he admitted that he lent money to the respondent on various dates. But, in the affidavit, he stated that he lent a sum of Rs.9,50,000/- to the respondent on 22.03.2022. Moreover, except the cheque (Ex.P1), no other documents have been produced by the complainant.

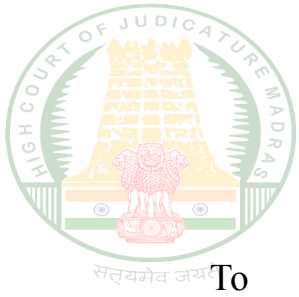
15. Therefore, the trial Court, by considering the evidence of P.W.1 and also by applying the ratio laid down by this Court as well as by the Supreme Court, acquitted the respondent. The trial Court has also noted down the evidence of D.W.3 and found that there was a money dispute between D.W.3 and the respondent and not with this complainant.

16. In view of the above and in the light of the judgments referred supra, this Court is not inclined to interfere with the findings of the trial Court. Accordingly, this Criminal Appeal is dismissed.

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NCC : Yes / No.
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1. The Judicial Magistrate Court No.I,
Pudukkottai.



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B.PUGALENDHI, J.

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