

Crl A(MD)No.193 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Raju

... Appellant / Complainant

Vs.

Satheesh Kumar

... Respondent/ Accused

PRAYER: Appeal filed under Section 419 of BNSS to call for the records relating to the acquittal judgment passed by the Judicial Magistrate No.I, Kuzhithurai in STC No.1095/2018 dated 30.08.2024 and may convict the accused / respondent for the offence committed by him under Section 138 of the Negotiable Instruments Act and also direct the accused to pay compensation of Rs.1,60,000/- to appellant under Section 357 of CrPC.

For Appellant : Mr.A.Balakrishnan



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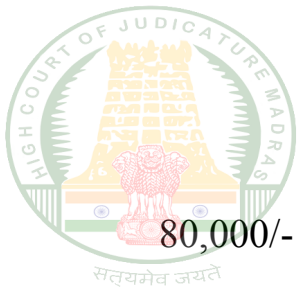
JUDGMENT

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The appellant / complainant has filed a private complaint as against the respondent / accused before the Judicial Magistrate Court No.I, Kuzhithurai, for the offence under Section 138 of the Negotiable Instruments Act. The complaint was tried in STC No.1095 of 2018 and it was dismissed by judgment dated 30.08.2024. Challenging the same, this criminal appeal is filed.

2.For sake of convenience the parties are referred herein, as per their ranks before the trial Court.

3.The learned Counsel for the appellant / complainant submits that the accused had borrowed a sum of Rs.1,60,000/- from the complainant on 12.06.2017 with an assurance of returning it within six months. When he demanded back the money, on 30.07.2018 the accused had given him two cheques of Indian Overseas Bank, Marthandam bearing No.854284 dated 30.07.2018 and No.854287 dated 28.08.2018, each carrying Rs.



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80,000/- with instruction to encash it on 29.08.2018. The cheques were

presented on 29.08.2018 by the complainant at State Bank of India, Marthandam, but they were returned as insufficient funds. Therefore, he had sent a legal notice dated 10.09.2018 to the accused. Though the accused had received the notice on 11.09.2018 he had neither repaid the money nor sent any reply. Therefore he has instituted proceedings under 138 of the Negotiable Instruments Act. Before the trial Court the complainant was examined as PW.1 and Ex.P1 to Ex.P7 were marked on the side of the complainant. In conclusion of the trial, the trial Court has rejected the complaint.

4.He further submits that the trial Court has failed to consider Ex.P5 legal notice and there is no reply from the accused for the same. Once signature is admitted Section 139 of the NI Act would be attracted and it has to be presumed that the cheque was issued to discharge the liability. However the trial Court has failed to consider the same and shifted the burden on the complainant. The complainant is not having any connection with the said Krishnakumar and he has not been examined.



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Therefore, the trial Court has erred in rejecting the complaint of the complainant.

5.This Court considered the submissions made on behalf of the complainant and perused the materials placed on record.

6.The trial Court has rejected the complaint of the complainant on the following grounds:

(i) The complainant is said to have parted with a sum of Rs.1,60,000/- on 12.06.2017 without getting any document from the accused as security. Only after 15 months, the complainant is said to have received two cheques bearing No.854284 dated 30.07.2018 and No.854287 dated 28.08.2018, each carrying Rs.80,000/-.

(ii) The accused has taken a defence that these alleged cheques have been issued as blank cheques to one Krishnakumar, which have been misused by him through the complainant and the accused is not having any transaction with this complainant.



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(iii) The said Krishnakumar has also instituted a complaint under

Section 138 of NI Act as against this accused in STC.No.1122 of 2018 and he has also taken a specific stand that the respondent / accused has issued cheque on 30.07.2018.

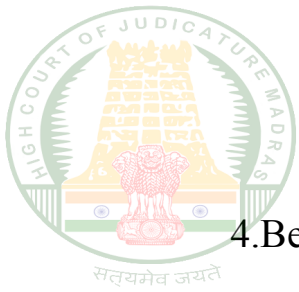
(iv) The Advocate for this complainant and the said Krishnakumar is one and the same and in both the cases the date of borrowal is 30.07.2018.

(v) If the two cheques were given on the same day, the number of the cheques would be consecutive, whereas the numbers of the cheque in this case are not consecutive. Therefore, the alleged date of issuance of the cheques are doubtful .

(vi) The complainant had not demanded any interest for more than 13 months for the money lent by him is doubtful.

(vii) The cheques were obtained on 30.07.2018 for the amount said to be lent on 12.09.2017, after a period of 13 months, which is unbelievable.

(ix) Though the cheques carry different dates, it creates suspicion that they were instructed to be presented on 30.08.2018.



4. 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



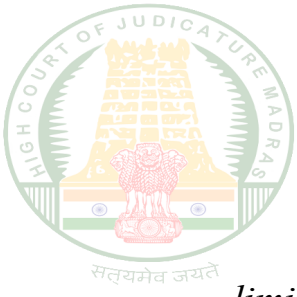
appellate court with the judgment of acquittal is not justified.

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."

5. 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.



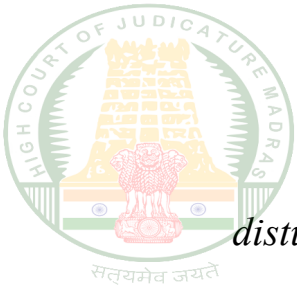
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(2) *The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(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*



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disturb the finding of acquittal recorded by the trial Court.”

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6.The presumption under Section 138 of NI Act is a rebuttable one. If it is rebutted by the accused, the burden shifts on the complainant. The accused can rebut the presumption by preponderance of probabilities. In this case the accused has rebutted the presumption that the cheques in question were not issued for legally enforceable debt and the trial Court has discussed in detail as stated above and rejected the complaint.

7.In view of the above discussion this Court is not inclined to entertain this appeal on the grounds raised by the appellant herein. Accordingly this criminal appeal is dismissed.

19.03.2025

DSK

To

The Judicial Magistrate No.I,
Kuzhithurai.



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B.PUGALENDHI, J.,

DSK

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