

Crl A(MD)No.231 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

Crl A(MD)No.231 of 2025

Kanthasamy

... Appellant / Complainant

Vs.

Vijayan

... Respondent/ Accused

PRAYER: Appeal filed under Section 419(4) of BNSS to call for the records and set aside the judgment of acquittal passed by the Judicial Magistrate No.1, Kumbakonam, Thanjavur District in STC.No.2108 of 2019, dated 27.03.2024 and allow the above criminal appeal.

For Appellant : Mr.B.Jameel Arasu

JUDGMENT

The appellant / complainant filed a private complaint as against the respondent / accused before the Judicial Magistrate No.1, Kumbakonam, Thanjavur District in STC.No.2108 of 2019, for the offence under



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Section 138 of the Negotiable Instruments Act and it was dismissed by judgment dated 27.03.2024. 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 case of the complainant is that the complainant and accused are known to each other for several years. The accused is doing building contract work at Thanjavur. On 24.03.2016, the complainant advanced a sum of Rs.5,00,000/- to the accused to meet his family expenses and for business improvements. On the same day, the accused gave two cheques dated 31.03.2016 bearing No.040784, for a sum of Rs.3,00,000/- and another cheque bearing No.040785 for a sum of Rs.2,00,000/- and instructed to deposit the same cheques on or after 31.03.2016. Accordingly, the complainant presented the cheque in the Tamil Nadu Mercantile Bank at Kumbakonam on 31.03.2016 and 07.04.2015 respectively. Both the cheques were dishonoured as insufficient funds. In spite of repeated oral demands, the accused had not made payments.



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Therefore on 19.04.2016 the complainant issued legal notice to the accused. The accused replied making false allegations and the complainant issued rejoinder dated 07.05.2016. 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.P11 were marked on the side of the complainant and the accused was examined as DW1 and Ex.D1 to Ex.D5 were marked on his side. In conclusion, the trial Court has rejected the complaint.

4.The learned Counsel for the appellant submits that the accused has admitted the signature in the cheques. However, he has stated that he has no acquittance with the complainant and this complaint has been foisted taking advantage of the cheques, he issued to one Bharathidasan. But in the reply to the legal notice, there is no reference about the said cheques. The trial court has accepted this contention of the accused without any evidence that he was working in Tanjavur at the time of issuance of the cheques at Kumbakonam. Therefore, according to the learned Counsel for the appellant, the accused had admitted the signatures



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found in the cheques and the cheques on presentation have been returned as insufficient funds, however, the trial Court has failed to appreciate the presumption under the Negotiable Instruments Act and the settled position of law.

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

6.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."*

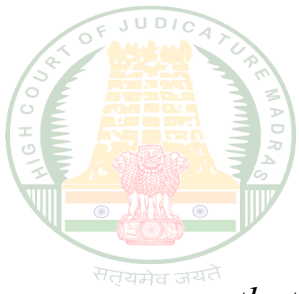


7. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

“(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.”

8.The case of the complainant is that he knew the accused for several years and the accused is a building contractor. He is said to have borrowed a sum of Rs.5 lakh as loan on 24.03.2016 from the complainant to meet out his family expenses and business expenses. On the said day, the accused is said to have issued a cheque dated 31.03.2016 bearing No. 040784 for a sum of Rs.3 lakh and another cheque No.040785 for Rs.2 lakh. These cheques were presented for collection, but they were returned as insufficient funds. Therefore, the complaint was filed.



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9. Admittedly the accused has not denied the signatures found in the instruments. However he has taken a stand that he is not having acquittance with the complainant. According to him, the unfilled cheques were given to one Bharathidhasan as a collateral security, for the amount he borrowed from the said Bharathidhasan and he has also executed pronote but he had not returned the same even after repayment of the loan amount. Therefore, the accused has issued legal notice dated 14.12.2016 (Ex.D1) to the said Bharathidhasan and he sent reply dated 04.03.2016 (Ex.D2).

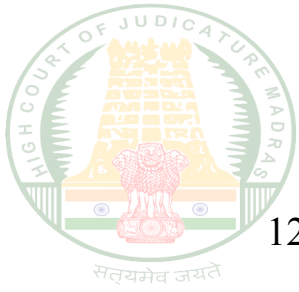
10. In this case, the cheques were presented for collection on 31.03.2016 and on 07.04.2016, they were returned as insufficient funds. Therefore, the complaint was filed in STC No.2018 of 2019. The main contention of the accused is that the cheques given as collateral security for the loan availed by him from one Bharathidhasan have been misused through this complainant. The defence taken by the accused has been accepted by the trial court that the accused was employed in Tamil University, Thanjavur and he was in duty at Tamil University on 24.03.2016 at the time of alleged transaction of money with the



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complainant. The complainant without even knowing the accused's profession has filed the complaint as if he is a building contractor and he borrowed a sum of Rs.5 lakh from him. In the cross examination, the complainant has admitted that he is not even aware of the address of the accused. The trial court has come to the conclusion that except the cheques, no other document has been obtained from an unknown person for lending a sum of Rs.5 lakh.

11. The Hon'ble Supreme Court in ***Rangappa vs. Srimohan***, reported in ***2010 (11) SCC page 441***, held that in the event if the accused is able to rebut the presumption, then, it is the responsibility of the complainant to prove his case. Thus 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.



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12.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.

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Index: Yes / No

NCC: Yes / No

DSK

To

The Judicial Magistrate No.1,
Kumbakonam, Thanjavur.



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B.PUGALENDHI, J.,

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