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CrI.A.No.664 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2026
PRONOUNCED ON : 10.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.664 of 2022

C.Umapathi

... Appellant

Vs.

S.Senthilkumar

... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal passed by the learned Judicial Magistrate-Fast Track Court, Thiruthuraipoondi in S.T.C.No.31 of 2016 dated 29.03.2021.

For Appellant : Mr.T.A.Shagul Hameed

For Respondent : Mr.K.Maraimalai

JUDGMENT

The appellant as complainant filed a case under Section 138 of Negotiable Instrument Act against the respondent in S.T.C.No.31 of 2016 before the learned Judicial Magistrate, Fast Track Court, Thiruthuraipoondi.

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The Trial Court by judgment dated 29.03.2021 dismissed the complaint.

Against which, the present appeal is filed.

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2.The gist of the case is that both the complainant and the respondent are residents of Thalaignayiru village, Vedaranyam Taluk. Both are known to each other. On 11.02.2015, the respondent/accused borrowed a sum of Rs.5,00,000/- in cash from the appellant and executed a promissory note agreeing to pay Rs.1/- as interest for every Rs.100/-. When the appellant was demanding repayment of the principal and interest, the respondent agreed and issued a cheque dated 11.12.2015 bearing No.501163 drawn on Bank of Baroda for a sum of Rs.5,50,000/- i.e., principal of Rs.5,00,000/- and interest of Rs.50,000/-. The cheque was presented by the appellant in his bank, State Bank of India on 22.02.2016. The same was returned for the reason 'funds insufficient' with a memo dated 22.02.2016. Thereafter, statutory notice was issued on 29.02.2016. The respondent refused to receive the notice and notice was returned on 02.03.2016. Thereafter, following the procedure, complaint lodged. The complainant examined herself as PW1 and marked Ex.P1 to Ex.P4. The respondent not examined any witness but marked two documents, Ex.D1 and Ex.D2. On conclusion of trial, the Trial Court

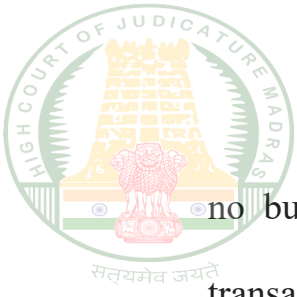


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dismissed the complaint and acquitted the respondent. Against which, the present appeal filed.

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3.The contention of the learned counsel for the appellant is that the respondent not denied the cheque or the signature in the cheque but gives an explanation that the cheque was given for a transaction between the appellant's husband and the respondent for the earlier loan and the loan was repaid, this cheque misused by filling up at a later point of time. The Trial Court accepted the explanation failing to find that the respondent had not got into the box, examined himself or let in any evidence, he had marked only two documents, Ex.D1 and Ex.D2. Ex.D1 is a receipt dated 27.07.2013 for Rs.1,60,000/- which was signed by the appellant and her husband. Likewise, the Court placed heavy reliance on Ex.D2, which is a deposition of the appellant in C.C.No.108 of 2017, which is a case of cheating and misappropriation, in which the appellant was examined as PW8. He further submitted that the respondent refused to receive the statutory notice Ex.P3 and protracted the trial for almost 5 years. The respondent admitted the signature and the cheque. Thus, the statutory presumption under Sections 118 and 139 of NI Act comes into play. Thereafter, there is



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no burden on the part of the complainant to prove the entire details of transaction. The marking of Ex.D1 by the Trial Court is a grave error when the complainant denies the signature in Ex.D1. Hence, the document ought not to have been permitted to be marked. Likewise, EX.D2 is to be decided on the merits of that particular case and it cannot be taken as evidence in the present case. The appellant raised objection and further submitted that as per Sections 33, 40, and 51 of the Indian Evidence Act, where there is an embargo in considering the evidence of a witness in another case, the same not followed. But the Trial Court mechanically considered the evidence and based on Ex.D1 and Ex.D2 given a finding that the respondent had probalised the defence and gave a finding appellant failed to prove the case and dismissed the complaint is not proper.

4.The learned counsel for the respondent submitted that in this case, the specific defence of the respondent is that he does not know the appellant and had no transaction with her. A signed blank cheque was received by the appellant's husband, who is employed in CISF, a Central Para Military Force, who used to come only on leave. In the year 2013, there was a transaction of Rs.3,00,000/-, which amount repaid and Ex.D1 is one of the



receipt given by appellant's husband and the appellant also signed the same.

While marking Ex.D1, there was no objection.

Likewise, Ex.D2 is the deposition of appellant, who was examined as PW8 in C.C.No.108 of 2017. The appellant raising objection citing the Evidence Act is not sustainable. Section 145 of the Evidence Act is clear that any prior statement can be used for contradiction or corroboration in any trial and in this case, the respondent contradicted the appellant by confronting Ex.D1 and Ex.D2. The appellant in her evidence admitted that there is a variation in the ink and writings in the cheque as to the signature. Further, she initially admits that she is only a housewife having no income and later improvises her statement stating, she is also having agricultural income. The appellant's wherewithal questioned but the appellant failed to produce any material or document to show that she had sufficient income, to lend a sum of Rs.5,00,000/- in cash to the respondent. The appellant is not aware about the respondent's family, his business and what was his earnings. In such circumstances, giving a huge amount of Rs.5,00,000/- as loan is unbelievable. Further, the specific case of the appellant is that on 11.02.2015, the respondent borrowed a sum of Rs.5,00,000/- in cash and on that date and executed a demand promissory note. When the same was



questioned, appellant answered demand promissory note is available with her but failed to produce the same. Added to it, the cheque was given ten months after the alleged loan, then how interest worked out to Rs.50,000/- is irracionale. He further submitted that the appellant admits she is not aware of transaction between her husband with the respondent. The appellant not seriously disputed the earlier loan of Rs.3,00,000/- in the year 2010-2012 and she feigns ignorance, whether it was repaid or not. When earlier loan according to appellant is pending, in such circumstances, giving further loan of Rs.5,00,000/- in the year 2015 is unbelievable. Further, when the complainant was recalled and further cross examined, she gives a total contradictory statement to the evidence she deposed in C.C.No.108 of 2017, marked as Ex.D2. These contradictions highlighted. The appellant suppressed the fact of respondent attempting suicide and her examination as witness in that case. Further, appellant's specific stand is that on 11.02.2015, she went to Chennai and after 25 days she came back, hence she was not aware about the respondent attempting suicide. But in Ex.D2, she admits that on 11.12.2015, she went to the shop of the respondent and demanded repayment of the loan amount and there was a wordy quarrel between the appellant and the respondent, following the same, respondent consumed



poison. Thus, vital contradictions in her evidence, the Trial Court rightly considered and referring to the contradictions finding appellant had not come with clean hands and suppressed vital facts and hence, dismissed the complaint. The judgment of the Trial Court is a well reasoned one, which needs no interference.

5.Considering the submissions made and on perusal of the materials, it is seen that the appellant initially projected a case as though the respondent took a loan of Rs.5,00,000/- on 11.02.2015, executed a demand promissory note and agreed to pay interest. Thereafter, on 11.12.2015 cheque was issued for Rs.5,50,000/- with interest of Rs.50,000/-. In her evidence, appellant was unable to show how she had Rs.5,00,000/- in cash and how she gained confidence to lend such a huge amount to the respondent, when she does not know any details about the respondent and his family background and business. Further, she admits that in the year 2010-2011 Rs.3,00,000/- was given as loan to the respondent and the said loan has not been repaid in full. This being so, giving further loan of Rs.5,00,000/- is highly doubtful. The respondent to prove the fact of repayment of Rs.1,60,000/- on 27.07.2013 marked Rs.D1. The specific case of the appellant is that on 11.12.2015, she



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went to Chennai and 25 days thereafter she came back to her native. In this case, the cheque is dated 11.12.2015. Further, she admits that on 11.12.2015, she went to the shop of the respondent, demanded repayment of the loan amount, there was a word quarrel and she came back, thereafter respondent consumed poison, attempted suicide and the appellant called for enquiry by Thalaigayiru Police. This fact is confirmed in Ex.D2. She also admits that earlier loan transaction between the appellant's husband and the respondent had been sorted out and closed. Thus the evidence of the appellant is with contradictions and her wherewithal questioned, the appellant failed to produce the demand promissory note or any material to show that she had sufficient source to pay the amount of Rs.5,00,000/- in cash as loan. The respondent though not examined himself but probalized his defence by cross examination and marking Ex.D1 and Ex.D2. The Trial Court finding that the evidence of the complainant is with contradictions as to Ex.D2 and as per Section 145 of the Evidence Act, Ex.D2 can be considered for the purpose of contradictions and corroborations and by a well reasoned judgment, dismissed the complaint. In view of the above, this Court finds no reason to interfere with the findings of the Trial Court.



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6.In the result, the Criminal Appeal stands dismissed.

10.04.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

The Judicial Magistrate,
Fast Track Court,
Thiruthuraipoondi.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment made in

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