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Crl.A.No.460 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-02-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

Crl.A.No.460 of 2021

Kamalesh Kumar Surana
Rep by Its P.A. Holder
Praful Kumara Surana
No. 26, Ayya Mudali Street
Socarpet Street
Chennai-600 079

..Appellant(s)

Vs

Solomon John
S/o. John
851, 37 VOC Nagar
Near Vegetable Market
Tondiarpet, Chennai

..Respondent(s)

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records in Criminal Appeal No.470 of 2018, on the file of learned III Additional Sessions Judge, City Civil Court, Chennai, reversing the judgment in C.C.No.915 of 2013 on the file of the III Metropolitan Magistrate, George Town, Chennai and set aside the same and consequently restore the judgment of the Trial Court dated 01.08.2018 and impose punishment against the respondent for the offence committed under Section 138 of N.I. Act.

For Appellant(s): Mr.V.Ramamurthy

For Respondent(s): Ms.V.Alamelu
Legal Aid Counsel

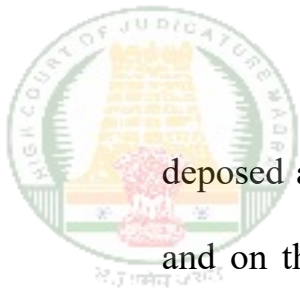


JUDGMENT

This Criminal Appeal is filed by the appellant / complainant against the reversal judgment passed in C.A.No.470 of 2018 by the III Additional Sessions Court, vide judgment dated 25.02.2020.

2.It is the contention of the learned counsel for the appellant that as a complainant he filed a private complaint under Section 138 of N.I. Act before the trial Court in C.C.No.915 of 2013. During the trial, he had examined himself as P.W.1, and marked six (6) documents. On the side of the respondent, the respondent examined one Elangovan, Manager of Tondiarpet Post Office, as D.W.1 and he himself as D.W.2. and marked Ex.D1 to Ex.D3. On conclusion of the trial, the trial Court had convicted the respondent and sentenced him to one (1) year Simple Imprisonment and directed him to pay the cheque amount of Rs.1,70,000/- as compensation. Against which the respondent preferred an appeal before the Sessions Court in C.A.No.470 of 2018, which was allowed and reversed the conviction by acquitting the respondent, against which the present appeal.

3.It is submitted further that during trial he had marked six (6) documents viz. Ex.P1 - Power of Attorney, Ex.P2-Promissory Note, Ex.P3-Cheque dated 12.11.2012 for Rs.1,70,000/-, Ex.P4- the Bank Return Memo, Ex.P5-Statutory Notice and Ex.P6- Returned Postal Cover. In his evidence, he had clearly



deposed about the respondent availing the loan of Rs.1,25,000/- on 30.08.2011 and on the same day he executed Promissory Note / Ex.P2, and after several reminders, on 12.11.2012, he issued the subject cheque for a sum of Rs.1,70,000/- which includes principal and the interest. The appellant had given all details in his statutory notice, but the respondent refused to receive the notice and it was returned unclaimed. The address given in the statutory notice is the same found in the complaint and to this address summons served and the respondent appeared before the trial Court, participated in the trial, confirming that the respondent deliberately not received the statutory notice. Hence, it is a deemed service.

4.It is his further submission that in the cross examination there is a reference to a vehicle in Clause No.3 in Ex.P1 – Power of Attorney, which has been taken advantage by the respondent and stated that he had only taken a vehicle loan, for purchasing a Maruti Van and for that purchase he had taken a loan of Rs.90,000/- out of which he had paid Rs.35,000/- as part payment and for the balance amount he had issued a blank cheque and also executed documents. This is further fortified by the evidence of D.W.2, the respondent. Though oral evidence has been let in, no documents produced. The respondent admits the issuance of cheque and also the signature found in the cheque. Further it is fortified by the evidence of D.W.1, the Manager, Tondiarpet Post Office, who confirms respondent having a bank account in the post office and



having only a balance of Rs.1,125.50 on 27.10.2015 and Ex.D1 and Ex.D2 confirm the same. Thus, the respondent not having sufficient money in his bank account, committed the offence under Section 138 of Negotiable Instruments Act. Considering the respondent defence untenable and finding statutory presumption proved, the trial Court rightly convicted the respondent. But, the Lower Appellate Court misread the evidence and had given a finding that in Clause 3 of Ex.P1, there is reference to a vehicle and the respondent's contention that he had taken vehicle loan and deposed in support of the same and examined himself as D.W.2 probalised his defence, dismissed the complaint and allowed the Appeal. Hence, the appellant is before this Court with the present Appeal.

5.The learned Legal Aid counsel appearing for the respondent vehemently opposed the contentions and submitted that the respondent is a small time entrepreneur who purchased a second hand Maruti Van for Rs.90,000/- and paid Rs.35,000/- and for the balance amount of Rs.55,000/- he had taken vehicle loan and vehicle documents handed over to the appellant. The Appellant admits that he is a financier, financing for vehicles.

6.It is her further contention that the appellant though states in his complaint that the loan was taken for the business of the respondent who was doing various small time businesses, he was unable to give any details of the



business. The Power of Attorney is the brother of complainant and though he states that he is aware of the transaction between the principal and the respondent, he is unable to give any further details. The respondent to prove his case examined himself as D.W.2 and marked Ex.D3 photograph and CD of the Maruti van which is used as hearse van by the respondent. Ex.P1 confirms that there was only a vehicle loan transaction between the appellant and the respondent. It is the specific case of the appellant that the vehicle seized for non payment of dues and the cheque and other documents not returned. Further, the loan taken much earlier and the blank cheque filled up later and a case has been projected against the respondent. The appellant during cross examination of D.W.2 / Accused unable to get any answer in his favour. But the trial Court merely gone by the statutory presumption and not on the facts of the case. The Lower Appellate Court considered the facts of the case and finding that the respondent probalised his defence, by examining himself as D.W.2 and marking documents, allowed the appeal of the respondent and acquitted the respondent and she pleads that the same to be confirmed.

7.Heard both sides. Perused the materials placed on record.

8.The Hon'ble Apex Court and this Court time and again held that when there is two possible views in case of appeal against acquittal, the Appellate Court should not disturb the appeal unless there is any perversity. In this case,



no such perversity is found. Considering the submissions that the respondent admits that he taken a vehicle loan from the appellant, and the appellant admits that he is doing finance for the vehicles, confirmed in Ex.P1 – Power of Attorney. The respondent's case is also that he had taken the loan of Rs.90,000/- for the vehicle, paid Rs.35,000/- and having due of Rs.55,000/- and the documents handed over to the appellant, and for default in payment of dues, vehicle seized and taken away. P.W.1, Power of Attorney, brother of the Principal is unable to give details with regard to the vehicle transaction, but admits that Ex.P1 / Power of Attorney is only for possession and taking action for a vehicle. Ex.P2 / Promissory Note, which is said to have been given before the cheque and is not attested by any witnesses. Further, the 25% interest quoted in the Promissory Note for the amount of Rs.1,25,000/- would not correlate with the cheque amount of Rs.1,70,000/- and the dues period the Lower Appellate Court considering all these aspects found the appellant / respondent had probalised the defence and had rightly allowed the appeal.

9. In view of the above, this Court finds that Lower Appellant Court judgment does not suffer any perversity and finds no reason to interfere with the finding of the Lower Appellate Court in acquitting the respondent. Confirming the same, this Criminal Appeal is dismissed.



10.This Court appreciates the thorough preparation, effective arguments advanced and services rendered by Ms.V.Alamelu, the learned Legal Aid counsel for the respondent / accused. The Tamil Nadu State Legal Services Authority is directed to pay the remuneration to Ms.V.Alamelu, Legal Aid counsel.

09-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To.

1.III Additional Sessions Court
City Civil Court, Chennai

2.The III Metropolitan Magistrate
George Town
Chennai



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M.NIRMAL KUMAR, J.

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