

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2023
(Arising out of SLP (Crl.) 7618/2023)

S. MURUGAN

Appellant(s)

VERSUS

M.K. KARUNAGARAN

Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. P. V. Yogeswaran, learned counsel for the appellant. Also heard Ms. Rucha Pande, learned counsel who was appointed as Amicus Curiae on behalf of the respondent to assist the Court.

3. The challenge in this appeal is to the judgment and order dated 27.10.2022 of the High Court of Madras whereunder the Criminal Appeal No.1138/2022 filed by the complainant came to be dismissed and the judgment of acquittal (dated 25.07.2022) in favour of the respondent, was upheld. The primary basis for the view taken by the two Courts below was the failure of the complainant to prove his financial capacity to advance the loan amount.

4. The learned Trial Court in the CC No.22/2019 noted that the complainant in order to show his financial capacity had indicated that he had borrowed Rs.8,00,000/- from his mother in order to advance Rs.8,00,000/- loan to the accused. It is however significant that the mother herself from whom the complainant claimed to have borrowed the sum, was not produced as a witness in

the proceeding. That apart, the sale transaction dated 31.05.2013 which was made the basis for money coming into the hand of the complainant's mother, was canceled subsequently on 13.05.2015 and as such there was no concluded transaction which will justify any money in the hand of complainant's mother.

5. It was further noted by the Court that the complainant had filed another case under Section 138 of the *Negotiable Instruments Act, 1881* i.e., CC 158/2017 against the one Uthaman but the said case was dismissed primarily on the ground that the complainant failed to produce his income document.

6. It is well settled that to rebut the presumption under Section 139 of *Negotiable Instruments Act, 1881*, it is open to the accused to not only rely on the evidence led by him but he can also rely on the materials submitted by the complainant, in order to raise a probable defence. The respondent's counsel rely on the ratio in *Basalingappa vs Mudibasappa* reported in (2019) 5 SCC 418 to say that complainant here failed to discharge his burden. The relevant paragraph is extracted hereasunder:-

"25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference or preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely."

7. The submission made by the rival counsel are considered. We have also perused the basis on which the High Court has affirmed

the judgment of acquittal favouring the accused in the proceeding under Section 138 of the NI Act. In the absence of any infirmity, we see no reason to entertain the appeal. The appeal is, accordingly, dismissed leaving the parties to bear their own costs.

8. Before parting with the case, we record our appreciation for the able assistance rendered by Ms. Rucha Pande, learned Amicus Curiae, in reaching the just conclusion in the matter.

.....J.
[HRISHIKESH ROY]

.....J.
[SANJAY KAROL]

NEW DELHI;
OCTOBER 31, 2023.

ITEM NO.16

COURT NO.8

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).7618/2023

(Arising out of impugned final judgment and order dated 27-10-2022 in CRLA No. 1138/2022 passed by the High Court Of Judicature At Madras)

S. MURUGAN

Petitioner(s)

VERSUS

M.K KARUNAGARAN

Respondent(s)

(Ms. Rucha Pande, Advocate has been appointed Amicus Curiae (A.C.) to assist the Hon'ble Court

IA No. 105246/2023 - EXEMPTION FROM FILING O.T.)

Date : 31-10-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. P. V. Yogeswaran, Adv.
Mr. Ashish Kumar Upadhyay, Adv.
Mr. L. R. Ventansan, Adv.
Mr. Y. Lokesh, Adv.
Mr. V. Kandha Prabhu, Adv.
Ms. Maitri Goal, Adv.
Mr. Sachin Kumar Verma, Adv.
Mr. Anubhav Chaturvedi, Adv.
Mr. N. B. V. Srinivasa Reddy, Adv.
Mr. Akshat Srivastava, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stand closed.

(DEEPAK JOSHI)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed Order is placed on the File)