



Crl.A.(MD)No.121 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.11.2025

Pronounced on : 19.12.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.121 of 2024

T.Ramkumar

... Appellant/
Complainant

Vs.

Sivasamy

... Respondent/
Accused

Prayer : This Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records pertaining to the judgment acquittal S.T.C.No.1427 of 2022 dated 27.12.2023 on the file of Judicial Magistrate, Tiruchendur, Thoothukudi District and set aside the same.

For Appellant : Mr.S.Ramasamy

For Respondent : Mr.N.Vignesh



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JUDGMENT

The Criminal Appeal is directed against the judgment made in S.T.C.No.1427 of 2022 dated 27.12.2023 on the file of the Court of Judicial Magistrate, Tiruchendur, in acquitting the respondent / accused for the offence under Section 138 of the Negotiable Instruments (hereinafter referred as 'NI') Act.

2. The appellant, who is the complainant, filed a complaint under Section 200 Cr.P.C. against the respondent / accused for the alleged offence under Section 138 r/w 142 of the NI Act.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The case of the complainant is that the accused having acquaintance with the complainant borrowed Rs.4,00,000/- on 24.08.2020, R.2,00,000/- on 11.01.2021, Rs.50,000/- on 01.07.2021, Rs.2,00,000/- on 16.09.2021 and Rs.1,50,000/- on 02.10.2021, totalling Rs.10,00,000/- for



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his urgent expenses and to purchase lorry agreeing to return the amount within two months. The complainant demanded the accused to return the amount and the accused issued a post-dated cheque dated 02.09.2022 for Rs.10,00,000/- drawn on Canara Bank, Attur Branch and requested the complainant to present the cheque and encash the same. Believing the words of the accused, the complainant presented the cheque for collection on 02.09.2022 through his banker Tamilnad Mercantile Bank, Attur Branch but the cheque was returned dishonored as funds insufficient. Hence, the complainant sent a legal notice dated 21.09.2022 to the accused demanding him to pay the amount covered by the cheque. The accused having received the notice on 24.09.2022 neither sent any reply nor paid the cheque amount. Therefore, the complainant was constrained to file the above complaint for the offence under Section 138 r/w 142 of the NI Act.

5. The learned Judicial Magistrate, Tiruchendur, upon receiving the complaint, recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed a *prima facie* case took the case on file in S.T.C.No.1427 of 2022 for the offence under



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Section 138 of the NI Act. The Court sent the copies of complaint and records along with summons. After appearance of the accused, the accused was questioned about the offence alleged against him and he denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined himself as P.W.1 and exhibited 5 documents as Ex.P.1 to Ex.P.5.

7. After closure of the complainant's side evidence, the accused was examined under Section 313(1)(b) Cr.P.C. with regard to the incriminating aspects found against him and he denied the same as false. The accused stated that the accused took a loan of Rs.8,500/- on 01.07.2021 from the complainant, that he had taken loans earlier and repaid them, that the accused did not take loans as alleged by the complainant, that the accused gave six cheques when borrowing Rs.8,500/-, that the signature found in Ex.P.1 (cheque) is his signature and that the accused requested the complainant to hold the cheque due to insufficient funds in the bank account and agreed to pay in installments but the complainant presented the cheque anyway. The accused adduced neither oral nor documentary evidence.



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8. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 27.12.2023 holding that the complainant has not proved the offence under Section 138 of the NI Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has filed the present appeal.

9. Whether the impugned judgment of acquittal passed in S.T.C.No. 1427 of 2022 dated 27.12.2023 on the file of the Judicial Magistrate, Tiruchendur, is liable to be set aside? is the point for consideration.

10. Before entering into further discussion, it is necessary to refer Sections 118(a) and 139 of the Negotiable Instruments Act, which deal with statutory presumptions,

*“Section 118 : Presumptions as to negotiable instruments,
- Until the contrary is proved, the following presumptions
shall be made:-*

*(a) of consideration – that every negotiable instrument
was made or drawn for consideration, and that every such
instrument, when it has been accepted, indorsed,*



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negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;”

“Section 139 : Presumption in favour of holder. - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.”

11. It is the specific case of the complainant that the accused being a relative borrowed money on five occasions Rs.4,00,000/- on 24.08.2020, Rs.2,00,000/- on 11.01.2021, Rs.50,000/- on 01.07.2021, Rs.2,00,000/- on 16.09.2021 and Rs.1,50,000/- on 02.10.2021, totalling Rs.10,00,000/- for his urgent expenses and for purchasing a lorry, that the complainant out of Rs.10,00,000/- had paid Rs.1,32,500/- through bank transfer, that the accused agreed to return the amount within two months, that since the amount was not paid, the complainant approached the accused and demanded the amount several times and thereafter, the accused issued a post-dated cheque dated 02.09.2022 for Rs.10,00,000/- drawn on Canara Bank, Attur Branch under Ex.P.1, that the complainant presented the cheque for collection vide Ex.P.2 through his banker Tamilnad Mercantile



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Bank, Attur Branch on 02.09.2022 but the same was returned dishonored for want of sufficient funds in the bank account of the accused through banker's memo dated 03.09.2022 under Ex.P.3, that the complainant sent a legal notice dated 21.09.2022 under Ex.P.4 directing the accused to pay the amount covered by the cheque, that the accused having received the notice on 24.09.2022 vide Ex.P.5 – postal acknowledgement card neither sent any reply nor complied with the notice demand and that therefore, the complainant was forced to file the above complaint.

12. The defence of the accused, as evident from the cross-examination evidence of P.W.1 and examination of the accused under Section 313(1)(b) Cr.P.C., is that the accused borrowed a sum of Rs.8,500/- from the complainant on 01.07.2021 and at that time, he gave six cheques, that the accused even before that used to obtain loans from the complainant and repay the same, that the accused never obtained the loans as alleged by the complainant and that the accused requested the complainant not to present the cheque for collection, as he was not having sufficient funds in the bank account and agreed to pay in installments. The accused has also taken a stand during the cross-examination of P.W.1 that



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the accused obtained Rs.1,00,000/- from the complainant's wife to meet out the educational expenses of his children by issuing a cheque and that cheque was fraudulently used for claiming more amount and on that basis, the above case came to be filed.

13. At the outset, it is pertinent to note that the accused having received Ex.P.4 (statutory notice) under Ex.P.5 (postal acknowledgement card), admittedly has not sent any reply notice. During the examination of the accused under Section 313(1)(b) Cr.P.C., when the issuance of statutory notice by the complainant and receipt of the same by the accused was put to him, he replied that he sent a reply notice belatedly but the accused has not produced the copy of the reply notice nor any material to show that such a reply notice was sent. Considering the above, as rightly contended by the learned counsel appearing for the complainant, it can easily be inferred that the accused has admitted the receipt of the statutory notice and his failure to send any reply.

14. It is evident from the cross-examination made to P.W.1 and examination of the accused under Section 313(1)(b) Cr.P.C. that the



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adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

17. The learned counsel appearing for the complainant would rely on a decision of the Hon'ble Supreme Court in the case of **Rangappa Vs. Sri Mohan** reported in **(2010) 11 SCC 441**, wherein also the accused did not reply to the notice sent in the manner contemplated under Section 138 of the Act, has specifically held that the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version and the relevant portion is extracted hereunder :

“29. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused



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had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability.”

18. It is necessary to refer the decision of the Hon'ble Supreme Court in ***Rajesh Jain Vs. Ajay Singh*** reported in (2023) 10 SCC 148, wherein also the accused did not respond to the statutory notice, the Hon'ble Supreme Court has observed as follows;

“46. The accused has neither replied to the demand notice nor has led any rebuttal evidence in support of his case. The case set up by him needs to be drawn from the suggestions put during the cross examination and from his reply given in the statement recorded under Section 313 of Cr.P.C.

...

52. ... The accused has also not explained as to why he has not set up his defense at the earliest point, that is, at the stage of receiving the demand notice, even though he admits having received the demand notice in his 313 statement, yet he makes a suggestion to the complainant in his cross examination that no legal notice had been issued.



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Section 313(1)(b) Cr.P.C., has taken a stand that he obtained loan of Rs.8,500/- from the complainant and at that time, he gave six cheques to him. The accused has further stated that he is not liable to pay any amount to the complainant and that the complainant was possessing his four cheques. But during the cross-examination of P.W.1, it was suggested that the accused borrowed a sum of Rs.1,00,000/- from the complainant's wife to meet out the educational expenses of his children by issuing a cheque and that cheque was misused and the above case came to be filed and the relevant portion is extracted hereunder:

□எதிரி எங்களுக்கு உறவினர் என்ற முறையில், அவரின் குழந்தைகளின் படிப்பு செலவிற்காக என்னுடைய மனைவியிடம் வாங்கிய ரூபாய் 1,00,000/- க்கு ஆதரவாக கொடுக்கப்பட்ட இவ்வழக்கு காசோலையை மோசடியாக இந்த வழக்கில் கூடுதலாக பணம் கேட்டு இந்த வழக்கை தாக்கல் செய்துள்ளேன் என்றால் சரியல்ல.□

23. The learned counsel appearing for the complainant would submit that in another case in S.T.C.No.150 of 2023 now pending in Crl.A.(MD)No.757 of 2024, the accused sent a reply notice to one Thangaesakki (complainant therein) stating that the accused borrowed



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Rs.8,500/- on 01.07.2021, Rs.84,500/- on 06.09.2021 and Rs.40,000/- on 02.10.2021 from his relative Krishna Jeyanthi, W/o.Ramkumar (present complainant's wife) by issuing cheques and on three occasions, the said Ramkumar had transferred the loan amount from his bank account to the account of the accused and that the accused neither borrowed any amount nor issued any cheque to the complainant Thangaesakki. He would further submit that the accused has specifically stated that he borrowed Rs.8,500/- on 01.07.2021 from the complainant by bank transfer.

24. The accused has also admitted that he used to obtain loan and repay the same often. As rightly pointed out by the learned counsel appearing for the complainant, the complainant, in his complaint as well as evidence, has specifically stated that he transferred totally Rs.1,32,500/- through bank transfer towards portion of the loan amount obtained by the accused.

25. It is pertinent to note, as rightly pointed out by the learned counsel appearing for the complainant, that the accused has not specifically disputed the sending of reply notice in the other case in



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S.T.C.No.150 of 2023 stating that he borrowed amount only from the complainant's wife, particularly, Rs.8,500/- on 01.07.2021, but in the present case, the accused has specifically stated that he borrowed Rs.8,500/- on 01.07.2021 from the complainant. As already pointed out, though the accused has stated that he is not liable to pay any amount to the complainant, in the same proceedings under Section 313(1)(b) Cr.P.C. he would say,

“காசோலை வசூலுக்காக போடும் போது என்னிடம் கூறினார்கள். நான் வங்கி கணக்கில் பணம் இல்லையென்றும், கொஞ்சம், கொஞ்சமாக பணத்தை தந்துவிடுவதாகவும் கூறினேன். ஆனால் காசோலையை வசூலுக்காக தாக்கல் செய்துவிட்டார்.”

26. The learned counsel appearing for the accused attempted, albeit weakly, to argue that the complainant had not demonstrated sufficient financial capacity to lend Rs.10 lakhs to the accused. During P.W.1's cross-examination, questions were raised about his children's education expenses and housing loan obligations, aiming to challenge his financial standing.



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27. The learned counsel appearing for the complainant would submit that in the reply notice sent by the accused in the connected case, he has stated that the present complainant's wife Krishna Jeyanthi was doing money lending business. Notably, the accused did not produce documents, examine independent witnesses or present evidence on the complainant's financial capacity to lend money.

28. No doubt, the accused can use the evidence adduced by the complainant to rebut the presumption about a legally enforceable debt or liability, but in the present case, the evidence of P.W.1 does not show complainant lacked means to lend money to the accused.

29. The learned counsel appearing for the accused would submit that the complainant's case is doubtful since loans were given at regular intervals, despite a two month repayment agreement. He would further submit that complainant's claim of loans for purchasing lorry does not hold water, given the different dates of disbursement.

30. P.W.1 in his cross-examination would say,



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□எதிரி லாரி வாங்குவதற்காக தான் என்னிடம் பணம் கேட்டதாக இந்த வழக்கில் கூறியுள்ளேன் என்றால் சரிதான். எதிரி லாரி வாங்கினாரா என்றால் வாங்கியுள்ளார். எதிரி எந்த ஆண்டு லாரி வாங்கினார் என்றால் 2020 ஆம் ஆண்டு ஒரு லாரியும், 2021 ஆம் ஆண்டு ஒரு லாரியும் வாங்கினார். அந்த லாரிகளின் பதிவு எண் எனக்கு தெரியுமா என்றால் தெரியாது. எதிரி முதலில் பெற்றுக்கொண்டதாக கூறும் பணத்தை திருப்பி கொடுக்காத போது எதன் அடிப்படையில் நான் அவருக்கு மீண்டும் மீண்டும் பணத்தை கடனாக கொடுத்தேன் என்றால் அவர் எனக்கு உறவினர் என்ற முறையிலும், அவர் லாரி வைத்திருப்பதால் பணத்தை திருப்பி தந்து விடுவார் என்ற நம்பிக்கையிலும் கொடுத்தேன். எதிரி TN 69 F 5544 என்ற பதிவெண் கொண்ட லாரியை 18.09.2014 ஆம் தேதி அசோக் அன்ட் கோ நிறுவனத்தில் நிதிஉதவி பெற்றும், அதன் பிறகு அதே லாரிக்கு மனோகர் பாய் கோத்தாரி என்ற சென்னையில் உள்ள நிதிநிறுவனம் மூலம் 17.05.2018 ஆம் தேதியில் நிதிஉதவி பெற்று தான் வாங்கினார் என்றால் இதை தவிர இரண்டு லாரிகள் இருக்கிறது. அந்த இரண்டு லாரிகளின் பதிவு எண் மற்றும் அவைகள் எதிரியின் பெயரில்தான் இருக்கிறது என்பதற்கு என்னால் ஆவணம் எதுவும் நீதிமன்றத்தில் தாக்கல் செய்ய முடியுமா என்றால் அவர் லாரிகளை தூத்துக்குடியில் கார்பரில் விட்டுள்ளதால் அந்த விபரம் எனக்கு தெரியாது.□

31. Considering the evidence available on record, as rightly



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contended by the learned counsel appearing for the complainant, the defence of the accused is contradictory and inconsistent on loan amounts and sources. Despite a lengthy cross-examination, P.W.1's testimony remained unshaken and the defence failed to elicit any material discrepancies or doubts that would undermine the case of the complainant.

32. No formal loan document besides a cheque does not automatically make complainant's case doubtful. No doubt, defence can use lack of loan agreement, promissory note or financial records to create reasonable doubt about the loan transaction.

33. Failure of the accused to respond to the legal notice demanding repayment of the loan amount of Rs.10,00,000/- raises significant doubts about his explanation. Given the substantial amount involved, it is reasonable he would have disputed the claim promptly if it were indeed unfounded.

34. In view of the foregoing discussions, this Court has no hesitation in holding that the accused failed to rebut the presumption



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under Sections 118 and 139 of the NI Act favouring complainant. The finding of the learned Magistrate, relying on immaterial factors and overlooking crucial evidence, are perverse and unsustainable. Consequently, this Court concludes that the impugned judgment of acquittal is liable to be set aside and the accused is guilty of the offence punishable under Section 138 of the NI Act.

35. Now turning to the punishment to be awarded, the Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta* reported in (2017)3 MWN (Crl) DCC 161 SC, has observed that the offence under Section 138 of the Negotiable Instruments Act related to a civil wrong and the same was a regulatory offence and that the object was described as punitive as well as compensatory. It is very much clear that the intention of the provision is not only to punish the accused, but at the same time, the aggrieved party is to be compensated.

36. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of **Rs.20,00,000/- (Rupees**



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Twenty Lakhs only) (twice the cheque amount) within a period of two months from the date of receipt of copy of this judgment, in default, to undergo simple imprisonment for six (6) months. Upon payment, the learned trial Judge shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

37. The Criminal Appeal is accordingly allowed.

19.12.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Judicial Magistrate,
Tiruchendur.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
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Dated : 19.12.2025