



Crl.A.(MD)No.739 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.10.2025

Pronounced on : 07.11.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.739 of 2022

T.S.Krishnappa

... Appellant/
Complainant

Vs.

Tennisan

... Respondent/
Respondent

Prayer : This Criminal Appeal filed under Section 378(1) of the Criminal Procedure Code, to set aside the order of acquittal dated 29.05.2013 passed in C.C.No.81 of 2012 on the file of the Judicial Magistrate Fast Track Court No.II, Nagercoil, by allowing the above criminal appeal.

For Appellant : Mr.K.Sivabalan
for Mr.G.Aravinthan

For Respondent : Mr.S.C.Herold Singh



Crl.A. (MD)No.739 of 2022

WEB COPY

JUDGMENT

The Criminal Appeal is directed against the judgment made in C.C.No.81 of 2012 dated 29.05.2013 on the file of the Judicial Magistrate (Fast Track Court) No.2, Nagercoil, 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 herein after will be referred to as per their status / ranking in the trial Court.

4. The case of the complainant is that the accused being a close friend used to approach the complainant for his financial needs and used to repay the same, that on 01.02.2002, the accused visited the house of the complainant and demanded Rs.3 lakhs as loan for his personal expenses



Crl.A. (MD)No.739 of 2022

WEB COPY

and for investment in the business agreeing to repay the same with interest within a year, that the complainant agreed to advance loan amount on furnishing a cheque as security, that the accused visited the house of the complainant again on 02.02.2002 and obtained a loan of Rs.3 lakhs by issuing a postdated cheque dated 30.12.2002 drawn on Indian Overseas Bank, Thirunanthikarai Branch, that the complainant presented the cheque for collection through his banker Indian Overseas Bank, Ethamozhy Branch on 14.02.2003 and the same was returned dishonored for want of sufficient funds in the bank account of the accused, that the complainant has then sent a legal notice dated 13.03.2003 to the accused demanding to pay the amount covered by the cheque but the accused having received the notice on 15.03.2003 failed to pay the amount within the stipulated time and that therefore, the complainant was constrained to file the above complaint for the alleged offence under Section 138 r/w 142 of the NI Act.

5. The learned Judicial Magistrate No.1, Nagercoil, 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.2089 of 2003 for the offence under



Crl.A. (MD)No.739 of 2022

WEB COPY

Section 138 of the NI Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty. After commencement of trial, the case was transferred to the Court of Judicial Magistrate (Fast Track Court) No.2, Nagercoil and the same was taken on file in C.C.No.81 of 2012.

6. During trial, the complainant examined himself as P.W.1 and exhibited 4 documents as Ex.P.1 to Ex.P.4. The accused examined himself as D.W.3 and 2 other witnesses Thiru.Neelarajan and Thiru.Simpson as D.W.1 and D.W.2 respectively and exhibited 11 documents as Ex.D.1 to Ex.D.11.

7. 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 29.05.2013 holding that the complainant has not proved the offence under Section 138 of the NI Act as



Crl.A.(MD)No.739 of 2022

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 preferred the present appeal.

8. Whether the impugned judgment of acquittal passed in C.C.No.81 of 2012 dated 29.05.2013 on the file of the Judicial Magistrate (Fast Track Court) No.2, Nagercoil, is liable to be set aside? is the point for consideration.

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

“Section 139 : Presumption in favour of holder. - It shall



WEB COPY



Crl.A.(MD)No.739 of 2022

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.”

10. It is the specific case of the complainant that the accused being a friend borrowed a sum of Rs.3 lakhs on 02.02.2002 to meet out his personal expenses and for business purposes and issued a postdated cheque dated 30.12.2002 under Ex.P.1 drawn on Indian Overseas Bank, Thirunanthikarai Branch, requesting the complainant to present the cheque on that day and get the amount, that the complainant presented the cheque for collection through his banker Indian Overseas Bank, Ethamozhy Branch on 14.02.2003 but the same was returned dishonored for want of sufficient funds in the bank account of the accused vide memo dated 25.02.2003 under Ex.P.2, that the complainant sent a legal notice dated 10.03.2003 under Ex.P.3 to the accused directing him to pay the amount covered by the cheque, that the accused having received the notice on 15.03.2003 under Ex.P.4-postal acknowledgement, has not complied with the notice demand and that therefore, the complainant was forced to file the above complaint. According to the accused, after the receipt of legal



Crl.A. (MD)No.739 of 2022

notice under Ex.P.3, he sent a reply notice dated 20.03.2003 under Ex.D.9 but the same was suppressed by the complainant.

11. The defence of the accused, as evident from his reply notice dated 20.03.2003 under Ex.D.9 and also the evidence of D.W.1 to D.W.3 is that the complainant was not his friend at any time, that the accused never borrowed any amount nor issued any cheque to the complainant, that the accused borrowed a sum of Rs.3 lakhs from D.W.1-Neelarajan on 01.05.1995 by issuing a signed blank cheque (Ex.P.1), that the accused had paid interest at Rs.9,000/- per month, totalling Rs.6,03,000/-, that the accused sold his rubber estate measuring 2.86½ acres in Veerapuli and repaid the loan amount to D.W.1 through Canara Bank, Kulasekaram Branch cheques, that when the accused requested the D.W.1 to return the cheque, he informed that the same was misplaced, that since the accused's brother D.W.2 was a relative to D.W.1, he has not pressurized for the cheque, that the complainant utilizing the said cheque filed the above complaint, as if, he advanced the loan amount of Rs.3 lakhs, that the accused sent a complaint to the Superintendent of Police, Kanniyakumari District and that since the complainant is a total stranger and the accused



Crl.A.(MD)No.739 of 2022

has already discharged the loan due to D.W.1, the accused is not liable for any claim.

12. As rightly contended by the learned counsel appearing for the complainant, the accused has admitted that Ex.P.1-cheque was belonging to him and the signature found therein. But according to the accused, a blank signed cheque was issued to D.W.1 as a security for the loan transaction that existed between them. It is pertinent to mention that the complainant as P.W.1 has given evidence reiterating the complaint's contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonor of cheque, issuance of statutory notice and failure of the accused to pay the amount within the stipulated time. On considering the evidence of P.W.1 and also the admission of the accused with regard to Ex.P.1 cheque and signature found therein, as per the settled law, this Court has no other option but to draw a presumption under Sections 118 and 139 of the NI Act.

13. No doubt, the presumption available under Sections 118 and 139 of the NI Act are rebuttable in nature. It is settled law that the accused, in



Crl.A. (MD)No.739 of 2022

WEB COPY

order to rebut the presumption drawn in favour of the complainant under Sections 118 and 139 of the NI Act, is not required to adduce any evidence and he can very well prove his probable defence through the evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

14. Now the only point to be decided is as to whether the accused rebutted the presumption drawn in favour of the complainant under Sections 118 and 139 of the NI Act.

15. It is not in dispute that the complainant and D.W.1 are closely related, as the complainant had married the sister of D.W.1. It is also not in dispute that D.W.2, who is the brother of the accused, is related to D.W.1. It is admitted by both the complainant as well as the D.W.1 that both were running a finance company in the name and style of Ganesh Bank and that subsequently, the finance concern came to be closed.

16. The main defence of the accused is that the accused never borrowed any amount nor issued any cheque to the complainant, instead



Crl.A. (MD)No.739 of 2022

he borrowed a sum of Rs.3 lakhs from D.W.1 and issued the cheque in dispute. It is the further case that the accused paid interest amount through cheques and also through cash and that the accused repaid the principal amount of Rs.3 lakhs, for which, D.W.1 has issued 2 vouchers under Ex.D.1 series.

17. As rightly pointed out by the learned counsel appearing for the accused and referred by the learned trial Judge, during chief examination of D.W.1, it was suggested that after the bankrupt of Ganesh Bank, D.W.1 and the complainant had colluded together and filed the above case falsely to cheat the accused, he replied in affirmative. But D.W.1's evidence would only suggest this was likely a tongue slip or misrecorded. No witness typically admit to filing a false case. But D.W.1, in his evidence, would admit the receipt of Rs.3 lakhs from the accused and issuance of Ex.D.1 vouchers and the relevant portion is extracted hereunder for better appreciation;

□ரசீதில் உள்ள கையொப்பம் என் கையொப்பம்தான். அந்த ஆவணம் எ.சா.ஆ.1 ஆகும். 1வரிசை(2 எண்ணம் ஆகும்) அந்த ரசீது ஆவணத்தை என்னிடம் தந்த பணத்திற்கு நான் எழுதிக்கொடுத்தேன். எ.சா.ஆ.1 வரிசையில் 1,50,000 வீதம் இரண்டு ரசீதுகள் என



Crl.A. (MD)No.739 of 2022

ரூ.3,00,000 எனச்சுட்டிக்காட்டப்பட்டுள்ளது என்றால் சரிதான். அந்த காசோலை வரிசையில் சுட்டிக்காட்டப்பட்டுள்ளது என்றால் சரிதான்.....ஆஜர் எதிரி எ.சா.ஆ.1 வரிசை எண்.2 எ.சா.ஆ.2 வரிசைகள் 18 காசோலைகள் வீதம் 4,60,000 வழங்கியுள்ளார் என்றால் சரிதான். என்னடமிருந்து 1.5.95 3,00,000 கடன் வாங்கியிருந்தார் என்றால் வாங்கியிருந்தார் ஆனால் தேதி ரூபகமில்லை....எ.சா.ஆ.1 ரசீதுவவுச்சரில் வழக்கு காசோலை காணப்படுகிறது என்றால் சரிதான்.□

18. But in cross-examination, he would say that his signature were taken in blank vouchers under Ex.D.1 but in subsequent re-examination, he would say that he does not remember as to whether the accused had taken his signature in blank vouchers.

19. It is pertinent to note that, as rightly pointed out by the learned counsel appearing for the accused, the cheque in dispute appears in Ex.D.1 vouchers dated 06.01.2001. D.W.1 is shown to have issued those vouchers upon receipt of Rs.3 lakhs for cheque CB.0303066. During the cross-examination of P.W.1 (the complainant), it was suggested that the accused had borrowed Rs.3 lakhs from D.W.1 on 01.05.1995, and that D.W.1, by signing on the revenue stamps, issued vouchers for Rs.1,50,000/- each on



Crl.A. (MD)No.739 of 2022

06.01.2001. The complainant feigned ignorance.

WEB COPY

20. As rightly contended by the learned counsel appearing for the accused, the contention of the complainant that he being a financier advanced a loan of Rs.3 lakhs by getting a postdated cheque alone without any other document, is very hard to believe. Though the complainant, in his complaint, has stated that the accused had agreed to repay the loan amount with interest within a year period, as rightly pointed out by the learned counsel appearing for the accused, the complainant has not referred anything with regard to the interest in Ex.P.3-legal notice. Moreover, the complainant, in the statutory notice as well as in the complaint, has nowhere whispered about rate of interest agreed between them and the receipt of interest from the date of borrowal till cheque date.

21. The complainant, in cross-examination, would admit that he used to write daily accounts in diary as well as in the registers and he entered the accused loan in the accounts and that he will file documents after tracing out the same, but in subsequent cross-examination, he would say that he has not produced finance related documents nor he was having accounts for the case loan amount of Rs.3 lakhs and the relevant portion is



Crl.A. (MD)No.739 of 2022

extracted hereunder;

□எனக்கு அன்றாட கணக்குகளை டயரி மற்றும் ரிஜிஸ்டர் எழுதும் பழக்கம் உண்டு. எதிரிக்கு பணம் கொடுத்ததை எழுதி வைத்துள்ளேன். அந்த ஆவணத்தை தேடி பார்த்து கிடைத்தால் தாக்கல் செய்கிறேன்....எனது பைனான்ஸ் சம்பந்தப்பட்ட விவரங்களை இந்த நீதிமன்றத்திற்கு கொண்டு வரவில்லை. இவ்வழக்கு 300000 பணத்திற்கு நான் கைவசம் கணக்கு பட்டியல் வைக்கவில்லை.□

22. Admittedly, the complainant has not chosen to produce any records such as diary or registers as claimed by him to show that the loan given to the accused was recorded.

23. The accused as D.W.3, in his evidence, would reiterate the contentions raised in the reply notice under Ex.D.9. Though D.W.3 was subjected to short cross-examination, his evidence with regard to the loan transaction with D.W.1 and discharge of the said loan and receipt of Ex.D.1 vouchers from D.W.1 referring the disputed cheque remained unshaken. As rightly pointed out by the learned counsel appearing for the accused, D.W.2, in his evidence, would reiterate the version of D.W.3 and



Crl.A. (MD)No.739 of 2022

WEB COPY

his evidence was also unshaken.

24. Considering the above and as rightly contended by the learned counsel appearing for the accused, through the evidence of D.W.1 to D.W.3, through Ex.D.1 vouchers, and through P.W.1's admission of his failure to produce the accounts and registers, the accused has successfully rebutted the presumption drawn under Sections 118 and 139 of the NI Act in favour of the complainant. Though the burden has shifted to the complainant, there is absolutely no evidence to show that he advanced a loan of Rs.3 lakhs to the accused, for which, Ex.P.1-cheque was issued. Hence, the decision of the learned trial Judge that the complainant has failed to prove the offence under Section 138 of the NI Act cannot be found fault with. Consequently, this Court concludes that the appeal is devoid of merit and is liable to be dismissed.

25. In the result, this Criminal Appeal is dismissed.

07.11.2025

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



Crl.A. (MD)No.739 of 2022

To

1. The Judicial Magistrate (Fast Track Court) No.2,
Nagercoil.



WEB COPY



Crl.A. (MD)No.739 of 2022

K.MURALI SHANKAR,J.

csn

Pre-Delivery Judgment made in
Crl.A.(MD)No.739 of 2022

Dated : 07.11.2025