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CRL.A.(MD).No.752 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.10.2025

PRONOUNCED ON : 31.10.2025

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**CRL.A(MD).No.752 of 2022**

D.Susaimariyan

.. Appellant/Complainant

Vs.

1. J.Kasthuri

.. Respondent/Accused

2.The Public Prosecutor,  
Srivilliputtur.

... Respondent

**PRAYER:** Criminal Appeal filed under Section 378 Cr.P.C, to call for the records from the lower Court and to set aside the order of acquittal made in C.C.No.448 of 2014, dated 06.07.2016, on the file of the Judicial Magistrate Court, Sivakasi.

For Appellant : Mr.G.Mariappan

For Respondents : Mr.S.Surya  
for R.1  
: Mr.K.Gnanasekaran  
Government Advocate (Crl.Side)  
for R.2



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## JUDGMENT

The Criminal Appeal is directed against the judgment made in C.C.No.448 of 2014, dated 06.07.2016, on the file of the Court of the Judicial Magistrate, Sivakasi in acquitting the first respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

2. The appellant, who is the complainant, filed a complaint under Section 200 Cr.P.C., against the first respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

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

4. Heard the learned Counsel for the first respondent/accused. Despite granting sufficient time and posted as no further adjournment, the learned Counsel for the appellant/complainant has not submitted his arguments, but subsequently, the appellant's side has filed written submissions. Perused the materials available on record and the written submission filed by either side.



5. The case of the complainant is that the accused who had acquaintance with the complainant borrowed a sum of Rs.16,00,000/- and Rs.8,00,000/- totally Rs.24,00,000/- from the complainant on 20.11.2013 and 23.02.2014 respectively agreeing to repay the same with interest at 10% per annum and executed a promissory notes on the respective dates and that when the complainant demanded the accused to settle the amount on 25.04.2014, the accused had issued a cheque bearing No.825958, dated 26.04.2014 drawn on State Bank of India, Sivakasi for Rs.16,00,000/- to discharge the portion of the loan borrowed by the accused and she had also executed an acknowledgement letter on 26.04.2014 admitting the liability and agreed to repay the balance amount with accrued interest. The complainant presented the cheque for collection on 30.04.2014 through his banker M/s City Union Bank Ltd., Srivilliputhur Branch, but the cheque was returned with the reason “payment stopped by drawer”, vide bank memo dated 30.04.2014. The complainant has then sent a legal notice dated 26.05.2014 to the accused for her official as well as residential address directing her to pay the amount covered by the cheque, but the accused managed to return the postal covers as not claimed. Since the accused had neither sent any reply nor complied with the notice demand, the complainant was constrained to file the above complaint for the offence under Section 138 of the Negotiable Instruments Act.



6. The learned Judicial Magistrate, upon receiving the complaint, recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed prima facie, took the case on file in C.C.No.68 of 2014 (C.C.No.438 of 2014) for the offence under Section 138 of the Negotiable Instruments Act and ordered for issuance of summons to the accused. After the appearance of the accused, copies of the records were furnished to her under Section 207 Cr.P.C., on free of costs. When the accused was questioned about the offence alleged against her, she denied the commission of offence and pleaded not guilty.

7. During trial, the complainant examined himself as P.W.1 and examined the Bank Manager, State Bank of India, Sivakasi as P.W.2 and exhibited 15 documents as Exs.P.1 to P.15. The accused examined her husband as D.W.1 and adduced no documentary evidence.

8. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned judgment dated 06.07.2016, holding that the complainant has not proved the offence under Section 138 of the Negotiable Instruments Act, acquitted the respondent/accused under Section 255(1) Cr.P.C. Aggrieved by



the impugned judgment of acquittal, the complainant has preferred the presnet Criminal Appeal.

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9. Whether the impugned judgment of acquittal passed in C.C.No.448 of 2014 on the file of the Judicial Magistrate, Sivakasi is liable to be set aside? is the point for consideration.

10. It is the specific case of the complainant that the accused borrowed Rs.16,00,000/- on 20.11.2013 and Rs.8,00,000/- on 23.02.2014 by executing promissory notes on respective dates under Exs.P.1 and P.2 agreeing to repay the same with interest at 10% per annum, that when the complainant demanded the accused to settle the promissory note debts, the accused issued a cheque dated 26.04.2014 under Ex.P.3 drawn on State Bank of India, Sivakasi branch for Rs.16,00,000/- discharging the portion of the debt and also executed the acknowledgement letter on 26.04.2014 under Ex.P.4 admitting her liability, that when the cheque was presented for collection by the complainant through his banker the City Union Bank Ltd., Srivilliputhur branch, the same was returned as unpaid with an endorsement “payment stopped by the drawer” vide return memo dated 26.04.2014 under Ex.P.6, that the complainant has then sent a legal notice dated 26.05.2014 under Ex.P.7 demanding the accused to pay the amount covered by the cheque, but the accused had managed to return the postal covers



as not claimed under Exs.P.8 and P.9 and that since the accused had neither sent any reply nor made any payment, the complainant was forced to file the above complaint.

11. The defence of the accused as evident from P.W.1's cross-examination and the evidence of D.W.1 is that the complainant was introduced to D.W.1, husband of the accused, through an Advocate's clerk, namely Varadhan. D.W.1 borrowed a sum of Rs.1,00,000/- from the complainant on 05.05.2011, agreeing to repay the same with interest at 12% per month. D.W.1 borrowed Rs.2,00,000/- and one month thereafter Rs.2,50,000/-. The accused executed a mortgage deed dated 24.05.2012 in favour of the complainant and obtained a loan of Rs.2,00,000/- under Ex.P.11. D.W.1 thereafter received Rs.8,50,000/- in installments, totalling Rs.16,00,000/- within February 2015. At the time of giving the loan, the complainant received 19 unfilled cheques of the accused, 3 cheques of D.W.1, 4 unfilled promissory notes, 3 signed unfilled white papers of the accused and a Rs.20 unfilled bond signed by the accused and a Rs.20 unfilled bond signed by D.W.1. The complainant also received the accused's ATM card and withdrew the amounts on various dates totalling Rs.10,28,800/-. The complainant transferred Rs.40,000/- and Rs.12,000/- from the accused's bank account to his own account via electronic transfer totalling Rs.52,000/-. On 31.07.2013, the complainant transferred Rs.40,000/- and Rs.3,000/- from the



accused's bank account through electronic transfer to his relative's bank account in Srivilliputhur. Since the complainant had threatened the accused, D.W.1 filed a police complaint leading to an enquiry at Krishnankoil Police Station and Malli Police Station. At that time, the complainant admitted in writing that he would not go to the house or college thereafter and that he would take necessary proceedings through a Court of law.

12. As pointed out by the complainant side, since the complainant gave evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonour of the cheque, issuance of statutory notice and failure of the accused to pay the amount within the stipulated time, a presumption under Sections 118 and 139 of the Negotiable Instruments Act have to be drawn in his favour.

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

“118. ...

*(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 ;*



*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.”*

14. The learned Counsel for the complainant would rely on the following decisions:

(i) ***Pushpa V. P.Balasubramanian*** reported in **2014 ACD 492 (MAD)**:

*“Negotiable Instruments Act (26 of 1881), Ss.138, 139 – Dishonour of cheque – Conviction and sentence – Cheques issued by accused towards re-payment of borrowed amount were dishonoured – Accused not only failed to adduce sufficient evidence to rebut such presumption, but also categorically admitted complainant's case – Admission made by accused in his letter would shatter the entire defence raised on the side of the accused – Conviction of accused is therefore proper – Sentence awarded by the courts below however enhanced by way of payment of compensation of twice the cheque amount by the accused to the complainant.”*

(ii) ***A.J.Asana Vs. Sittrarasu*** reported in **2016(3) MWN (Cr.) DCC 73 (Mad.)**:

*“NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 181), Sections 118, 138 and 139 – Dishonour of Cheque – Conviction – Challenge to – Petitioner/Accused not denied issuance of Cheque*



*but admitted – Presumption under Section 118 can be raised that Cheque issued for consideration – Petitioner only questioning financial capacity of Complainant to lend huge amount of Rs. 50,00,000/- - Complainant/Respondent specifically stating that he received money from 4 persons – Lending of money thus proved by evidence of P.W.1 – Non-examination of 4 persons as mentioned by Complainant, if, fatal to case of complainant – Accused having admitted issuance of Cheque, no necessity on part of Complainant to examine said 4 persons from whom he received money – No illegality in concurrent findings of Courts below – Conviction upheld.”*

(iii) ***S.Ponnusamy Vs. K.Mani*** reported in ***2015(1) MWN (Cr.) DCC 56***

***(Mad.):***

*“NEGOTIABLE INSTRUMENTS ACT, 1881 (26 OF 1881), Sections 118, 138 and 139 – Presumption as to issuance of Cheque towards legally enforceable liability – Respondent and his wife allegedly borrowed amount from Appellant by executing Promissory Note / Ex.P.1 on 1.7.2001 – Cheque in question issued on 1.12.2003 by Respondent in settlement of account – Execution of Promissory Note/Ex.P.1 and issuance of Cheque not denied – Once signature in Cheque admitted, presumption can be drawn under Sections 118 and 139 – Said presumption being rebuttable, it is for Respondent to rebut presumption – However, burden of proof to rebut presumption not so heavy, it is sufficient if probable case made out – Case of Respondent/Accused that at time of opening Bank Account in*



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*1998 at instance of Appellant, Appellant obtained two Cheques with his signature and same misused by Appellant – However, Application Form for opening Bank Account found to be dated 16.9.1994 – Case of Respondent, therefore, cannot be accepted – Appellant proved passing of consideration by marking Promissory Note/Ex.P.1 and Cheque/Ex.P2 – In view of admission as to issuance of Cheque by Respondent, presumption can be drawn in favour of Appellant – Respondent failed to rebut presumption by producing adequate evidence or by giving acceptable explanation – Trial Court rightly convicted Respondent after properly appreciating said aspects – Lower Appellate Court without appreciating law and facts of case erred in setting aside conviction and acquitting Respondent – Setting aside Order of Lower Appellate Court, Judgment of Trial Court restored.”*

15. The learned Counsel for the accused would rely on a decision of the Hon'ble Supreme Court in ***Basalingappa Vs. Mudibasappa*** reported in ***AIR 2019 SC 1983***, wherein the Hon'ble Apex Court, after referring to its various decisions summarise the principles which are as follows:

*“(i) Once the execution of cheque is admitted [Section 139](#) of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*

*(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The*



*standard of proof for rebutting the presumption is that of preponderance of probabilities.*

*(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of 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.*

*(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.*

*(v) It is not necessary for the accused to come in the witness box to support his defence.”*

16. The learned Counsel for the accused would also rely on the decision in ***M/s Kumar Exports Vs. M/s Sharma Carpets*** reported in ***AIR 2009 SC 1518***, wherein, the Hon'ble Apex Court dealt with the presumptions under section 118 and 139 of the Negotiable Instruments Act and the relevant passage is extracted hereunder for better appreciation:

*“11. The use of the phrase “until the contrary is proved” in Section 118 of the Act and use of the words “unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume” and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a*



*presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would*



*under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”*

17. At this juncture, it is also necessary to refer the following passages in the decision of Hon'ble Apex Court in **Rangappa Vs. Sri Mohan** reported in **(2010)11 SCC 441**:

*“27. [Section 139](#) of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of*



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*improving the credibility of negotiable instruments. While [Section 138](#) of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.*

*28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”*

18. It is settled law that once the signature on a cheque is admitted, the Courts are duty-bound to raise a presumption under Sections 118 and 139 of the Negotiable Instruments Act and that it is for the accused to rebut the



presumption that the cheque was not issued in discharge of a legally enforceable debt. No doubt, the presumptions available under Sections 118 and 139 of the Negotiable Instruments Act are always rebuttable in nature. It is also settled law that the accused, in order to rebut the presumption drawn in favour of the complainant under Section 139 of the Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove a probable defence through the evidence adduced by the complainant and the standard of proof required is preponderance of probabilities.

19. In the case on hand, as rightly contended by the learned Counsel for the complainant, it is evident from the records that there existed money transactions between the complainant on the one side and the accused and her husband on the other side. Moreover as rightly pointed out by the learned Counsel for the complainant, the accused has not disputed the issuance of Ex.P.3 cheque nor the signature found therein. Considering the above and taking note of the evidence of P.W.1, this Court has no other option, but to draw the initial presumption under Sections 118 and 139 of the Negotiable Instruments Act in favour of the complainant.

20. The accused has taken the defence that the complainant received 17 unfilled cheques, including the cheque in dispute, from the accused, three



cheques from D.W.1, four unfilled but signed promissory notes, signed but unfilled concur sheets and signed but unfilled Rs.20 bonds. It is alleged that one of the accused's cheque was misused by the complainant, and on that basis, the above complaint came to be lodged.

21. No doubt, as rightly pointed out by the learned Counsel for the complainant, D.W.1 in his evidence would admit that they have received the loan amount in installments to the tune of Rs.16,00,000/- and they have repaid Rs.14,52,800/- which includes interest at Rs.5,64,000/- and the principal at Rs.8,88,000/- and a sum of Rs.7,11,200/- was still due to the complainant. According to the defence, the complainant had forcibly received the ATM card of the accused salary account and withdrew the amount on various dates to the tune of Rs.10,28,000/- and they have paid Rs.2,24,000/- in cash and also paid Rs.2,00,000/- on the date when the mortgage deed was cancelled under Ex.P.12, totalling Rs.14,52,800/-.

22. Considering the above, the only point to be considered is as to whether the accused has rebutted the presumption through the evidence available on record. The complainant in his complaint as well as in his evidence has nowhere whispered that he had received the ATM card of the accused and withdrew



money. But in cross-examination, he would admit categorically and the relevant portions are extracted hereunder:

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“..... 31.5.2013 அன்று ரூ.40இ000/- ஒன்றும் ரூ.12இ000/-  
ம் ஆக மொத்தம் ரூ.52இ000ம் எதிரியின் வடிக்  
கணக்கில் நேந்து எனது வடிகணக்கிற்கு எலக்ட்ரானிக் டிரான்ஸ்பர்  
மூலம் மாற்றப்பட்டது என்றால் சரிதான். ஆனால் நான் எனது வடிக்  
கணக்கில் நேந்து அந்த பணத்தை எடுத்து எதிரியிடம் கொண்டுபாய்  
கொடுத்துவிட்டேன். எதிரி பணம் எடுப்பதற்காக பலமுறை அவரது  
ஏடிஎம் கார்டை என்னிடம் கொடுத்துவிடுவார். நான்எதிரியின் ஏடிஎம்  
கார்டை பயன்படுத்தி எதிரியின் கணக்கில் நேந்து பலமுறை பணத்தை  
எடுத்து எதிரியிடம் கொண்டுபாய் கொடுத்துள்ளேன். எனது மைத்துனர்  
அந்தாணிராஜ் வடிக் கணக்கிற்கும் 31.7.13ல் ரூ.40இ000/- மற்றும்  
3000ம் எதிரியின் வடிக்கணக்கில் நேந்து எலக்ட்ரானிக் மணி  
டிரான்ஸ்பர் செய்யப்பட்டது என்றால் சரிதான். அந்த பணத்தையும் நான்  
எனது மைத்துனரின் வடிக் கணக்கில் நேந்து எதிரி  
கட்டுக்கொண்டதின் மூலம் எதிரியிடம் கொண்டுபாய் கொடுத்துவிட்டேன்.  
வத்ராயிருப்பு எம். ஏடிஎம்இ ஸ்ரீவில்லிபுத்தூர் ஏடிஎம்இ சிவகாசி  
ஏடிஎம்இ கிருஷ்ணன் காவில் ஏடிஎம்இ ஸ்ரீவில்லிபுத்தூர்  
மாரியம்மன் காவில் ஏடிஎம்இ மதுரை ஏடிஎம் ஆகிய எம். ஏடிஎம்  
மூலம் எதிரியின் கணக்கில் நேந்து எதிரியின் ஏடிஎம் கார்டு மூலம்  
பணத்தை எடுத்து எதிரியிடம் கொடுத்துள்ளேன். எதிரி அவரது சம்பளம்  
வடிக் கணக்கில் வரவு வைக்கப்பட்டவுடன் என்னை கூப்பிட்டு அனுப்பி



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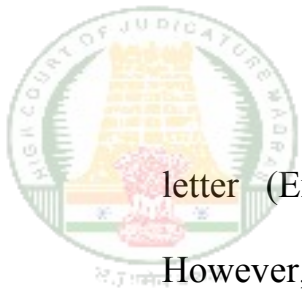
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என்னிடம் ஏடிஎம் கார்டை தந்து ஏடிஎம் மூலம் ஸ்ரீவில்லிபுத்தூரில்  
நேந்து பணத்தை எடுத்து வரும்படி கூறுவார். அதன் அடிப்படையில்  
நான் பணத்தை எடுத்து வந்து எதிரியிடம் கொடுப்பன். எதிரி  
சிவகாசியில் குடியிருக்கிறார். எதிரி குடியிருக்கும் டேர்த்தில் நேந்து  
ஸ்ரீவில்லிபுத்தூர் 15 கிமீ தூரத்தில் உள்ளது. அதிலிருந்து 20 கிமீல்  
வதராப் உள்ளது. சிவகாசியில் நேந்து 25 கிமீ தூரத்தில்  
கிடு:ணன்஁காவில உள்ளது. எதிரி என்னை செல்பானில்தான் பணம்  
எடுப்பதற்காக அழைப்பார். எந்த எண்ணில் கூப்பிடுவார் என்றால்  
9585331820 என்ற எண் செல்பான் எண்ணுக்கு கூப்பிடுவார்.  
அவரது பழைய செல்பான் எண்ணிலிருந்து கூப்பிடுவார். அந்த எண்  
நாபகமில்லை. எதிரியிடம் ஏடிஎம் கார்டை வா஁க்கிக்கொண்டு நான்  
ஸ்ரீவில்லிபுத்தூர் சென்று அ஁குள்ள ஏடிஎம்ல் பணம் எடுத்து஁க்கொண்டு  
எதிரி஁க்கு கொடுப்பன். சிவகாசியிலும் பல ஏடிஎம்கள் உள்ளன என்றால்  
சரிதான்.

..... 31.5.12 முதல் 3.4.2014 வரை 69 முறை எதிரியின் ஏடிஎம்  
கார்டை பயன்படுத்தி ரூ.10இ28இ800/- நான் எடுத்து஁ள்ள  
என்றால் சரிதான். ஆனால் அவை அனைத்தையும் எதிரியிடம்  
கொடுத்துவிட்டன்.”

23. The learned Counsel for the complainant would submit that although the complainant withdrew amounts from the bank account of the accused using ATM card, those amounts were returned to the accused herself, and she gave a



letter (Ex.P.10) admitting receipt of the amounts from the complainant.

However, as rightly pointed out by the learned Counsel for the accused, Ex.P.10 records only about 12 ATM transactions and it nowhere states that the amounts were returned by the complainant or received by the accused.

24. The learned Counsel for the accused would submit that the said document was created using signed, unfilled concur sheets. As rightly contended by the learned Counsel for the accused, Ex.P.10 contains particulars of only 12 transactions totalling Rs.1,90,000/-. But as already pointed out, P.W.1 himself would admit that he used the accused's ATM card 69 times and withdrew Rs.10,28,800/-.

25. It is pertinent to note that the accused holds a doctorate and works as a professor in a college, and her husband D.W.1 is also a graduate. Admittedly, the complainant is not a graduate. The complainant has not offered any reason or explanation for receiving ATM card of the accused. Moreover, the complainant has not explained why the accused would give her ATM card to him then and there, why he would withdraw amounts from her bank account. The evidence of P.W.1 that after taking amounts through ATM card, he returned the entire amount to the accused then and there is highly unbelievable.



26. As rightly pointed out by the learned Counsel for the accused, in all the documents in Exs.P.1 and P.2 promissory notes, Ex.P.11 mortgage deed and Ex.P.12 cancellation deed, the complainant took his neighbour Vinayagamoorthy as a witness and the same scribe Elizebeth was used for all these documents. Moreover, P.W.1 in his evidence would say that he gave the loan amount from his hard earned money saved over 25 years and that he received amounts from his relatives and friends to lend to the accused. The contention that he paid his entire savings as a loan to the accused is very hard to believe.

27. Admittedly, a mortgage deed under Ex.P.11 came to be cancelled on 19.02.2014 and on that date, the complainant received Rs.2,00,000/- from the accused. But according to the complainant, the second loan of Rs.8,00,000/- was given on 23.02.2014, ie., subsequent to Ex.P.12. It is the further case of he complainant that when he demanded promissory note debts on 25.04.2014, the accused executed the acknowledgement letter dated 26.04.2014 enclosing the cheque dated 26.04.2014 now in dispute. In Ex.P.4 – alleged acknowledgement, it has been stated that

“நம் ரூவருக்கும் உள்ள வரவு செலவுகளை சரிபார்த்து எழுதிக்கொடுத்த கடன் ஒப்புக்கடிதம் என்னவென்றால்”

But in that acknowledgement, the complainant has not referred about the discharged mortgage loan and about the amount received through electronic



transfer and also through ATM card. It is pertinent to mention that the complainant had withdrawn the amount through ATM card 69 times for the period between 31.05.2012 and 03.04.2014.

28. Considering the evidence of P.W.1 and the admissions made thereunder, as rightly observed by the learned trial Judge, the accused has successfully rebutted the presumption drawn in favour of the complainant. Taking into account the entire facts, circumstances and evidence available on record, it can easily be inferred that the defence taken by the accused appears to be probable, whereas the complainant has suppressed material facts and filed a pseudo case. Hence, the impugned judgment dismissing the complaint and acquitting the accused under Section 255(1) Cr.P.C., is perfectly legal and the same cannot be faulted with. Consequently, this Court concludes that the Criminal Appeal is devoid of merits and is liable to be dismissed.

29. In the result, the Criminal Appeal is dismissed, confirming the judgment made in C.C.No.448 of 2014, dated 06.07.2016, on the file of the Court of the Judicial Magistrate, Sivakasi in acquitting the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

**31.10.2025**



Index : Yes/No

Internet : Yes/No

SSL

To

1. The Judicial Magistrate Court, Sivakasi.

2. The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

CRL.A.(MD).No.752 of





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CRL.A.(MD).No.752 of

**K.MURALI SHANKAR, J.**

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PRE-DELIVERY JUDGMENT MADE IN

CRL.A(MD).No.752 of 2022

.31.10.2025