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CRL A No. 645 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 645 of 2021

K.Periyammal
W/o. Sakthivel,
21/15, 2nd Street, Suriyampalayam,
Tiruchengode Taluk, Namakkal District.

..Appellant(s)

Vs

R.Mohanraj
S/o. Ramasamy,
Driver Municipality,
S.V.A. Extention, 1st Street,
Tiruchengode Town and Taluk,
Namakkal District.

..Respondent(s)

PRAYER: This criminal appeal filed under Section 378 CrI.P.C. to call for the records in connection with the judgment dated 09.10.2019 made in S.T.C.No.336 of 2018 on the file of Judicial Magistrte (FTC), Tiruchengode and set aside the same and pass such further or other order as it may deem fit and thus render justice.

For Appellant(s): Mr.R.MURUGA BHARATHI

For Respondent(s): Mr.M.VIGNESH



JUDGMENT

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The appellant as complainant filed 138 of NI Act case against the respondent. The trial Court in STC No.336 of 2018 by judgment dated 09.10.2019 dismissed the complaint discharging the respondent, against which, the present appeal.

2.The complaint of the appellant is that the respondent is working as Driver in Thiruchengodu Municipality. The appellant previously employed as house maid for nine months in the house of the respondent and that, came to know each other. The respondent borrowed a sum of Rs.1 lakh from the appellant for his urgent family expenses and business on 25.11.2015 and agreed to pay interest at Rs.2/- per Rs.100/- and executed a promissory note. Further, he borrowed a sum of Rs.3 lakhs from her on 15.07.2015 and on the same terms and conditions, again borrowed a sum of Rs.1 lakhs on 08.09.2016 and executed a promissory note and failed to repay the interest. Thereafter, the appellant demanded to repay the loan amount taken from her. The respondent to discharge his debt and liability issued cheque bearing No.348964 dated 28.06.2018 for Rs.6 lakhs drawn on Canara Bank, Thiruchengode Branch. After receipt of cheque, the promissory note dated 08.09.2016 returned. Thereafter, after getting instructions, cheque presented by the appellant in her bank, namely, Canara Bank, Thiruchengode Branch on 14.09.2018 and the cheque



was not honoured and returned for the reasons funds insufficient. The complainant given the loan out of hard-earned money through working as Sweeper in private hospital and also working as house maid. Further, she pledged the house deed before Abirami Finance and also pledged her jewels in Canara Bank. Hence, after dishonour of cheque, statutory notice issued on 22.09.2018 and the same received by the respondent on 24.09.2018, thereafter, false reply sent on 29.09.2018 and reputing the same, rejoinder sent on 05.10.2018. Thereafter, following statutory provisions, under Section 138 complaint was filed.

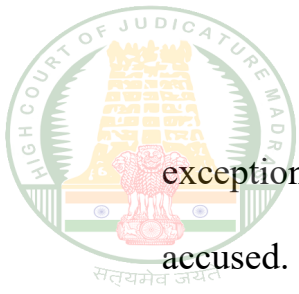
3.Before the trial Court, the complainant examined as PW1 and marked as Exs.P1 to P13. The respondent neither examined the witness nor produced any documents. On completion of trial, the trial Court dismissed the complaint, against which, the present appeal.

4.The learned counsel for the appellant submitted that appellant was previously employed as housemaid in the respondent's house. Hence, the appellant and respondent are known to each other. Though respondent is working as Driver in Tiruchengodu Municipality, he was also doing small time business by providing phenol, detergent and other articles. For his business required, he requested loan from the appellant. Appellant pledged her house deed with Abirami Finance and her jewels with Canara Bank, thereafter, given



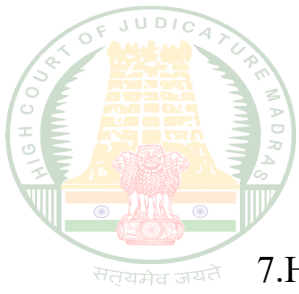
the loan on three occasions. To prove that the property was pledged with Abirami Finance and that the appellant was repaying the loan amount, she produced Ex.P10 to P13. Further, after the statutory notice, a false reply was sent by the respondent, which was properly denied by a rejoinder. In discharging of the liability, respondent issued cheque but the same was dishonoured. The respondent neither denied the cheque nor his signature. In such circumstances, the statutory presumption prosecuted against the respondent and the respondent ought to have given proper explanation, supported by some evidence and materials. In this case, no explanation given and no witnesses examined. Even in the cross examination, he was unable to probabalise any defence. He further submitted that the defence taken by the respondent that while the appellant was working as house maid in his house, she came into possession of the cheque is highly improbable. If that were so, the respondent ought to have given a police complaint or some instructions ought to have given to the bank, after the statutory notice. Nothing has been done, but merely, by cross examination, without any materials, it cannot be said that the defence has been probabalised. Hence, the finding of the trial Court is perverse and is liable to be set aside and reversed.

5. In support of the his contention, the appellant relied upon the judgement in the case of ***Bir Singh Vs. Mukesh Kumar*** reported in (***AIR 2019 Supreme Court 2446***) , wherein, the apex court held that Section 139 introduces an



exception to the general rule as to the burden of proof and shifts the onus on the accused. Further, for the point of statutory presumption, he relied upon the judgement of the apex Court in the case of ***Sanjabij Tari V. Kishore S.Borcor*** reported in ***2025 INSC 1158***, wherein, the apex court held that the complainant source of income for a cash loan can be used by the accused to rebut statutory presumptions.

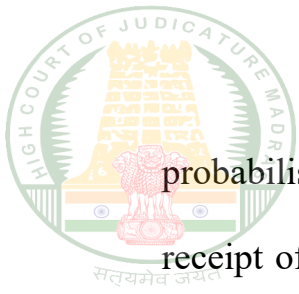
6.The learned counsel for the respondent strongly opposed the appellant's contention and submitted that the appellant herself admitted that she was employed under the respondent for nine months. When such admission is there, the defence raised by the respondent that the cheque was stolen and misused gets probalised. He further submitted that a person, who earns her livelihood by doing domestic and sweeping work, cannot have amount of Rs.5 lakhs as claimed by her . The source of income and wherewithal of the appellant were questioned but the appellant failed to produce any document to show that she took a loan except for producing some repayment receipts relating to Abirami finance. When the loan was received, what was the amount received by her, how she retained the same and how she given as loan to the respondent have not been proved.



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7.He further submitted that even at the earliest stage, the respondent denied the liability and stated that the cheque was stolen and misused. All has been mentioned during trial, which was admitted by the appellant. Thus, the appellant without any liability misused the cheque. Though it has been claimed that one Masilamani w/o. the respondent was there, when the appellant received the loan amount but she had not been examined as witnesses in this case. The trial Court rightly found that the respondent probalised his defence and that the appellant failed to prove her case beyond reasonable doubt and rightly dismissed the complaint. He further submitted that the Hon'ble Apex Court as well as this Court time and again had held that when two views possible unless there is perversity and gross miscarriage of justice, the judgment of acquittal not to be disturbed.

8.Considering the submissions and on perusal of the materials available on record, this court finds that the admitted position is that the appellant was employed as domestic helper for nine months in the house of the respondent. The appellant is a Sweeper and was doing small domestic work to sustain herself. A person with limited means of income accumulated the amount of Rs.5 lakhs and lent the same to the respondent on interest, there is no material to show that at the relevant point of time, the appellant was having such money and she was also doing money lending business. The respondent had



probabilised his defence from the initial stage itself immediately after the receipt of statutory notice, he had given a reply denying any liability under the cheque and also giving explanation that the cheque has been stolen and wrongly misused. Though the appellant has refuted to the same, the consistent stand of the respondent is that when the appellant was employed as domestic helper in his house, she came into possession of the cheque Ex.P1 which was subsequently misused and filled up and the above case initiated. The trial Court, after considering the materials on record in detail, rightly found that the respondent had probabilised his defence. This court finds no reason to interfere with the judgement of the trial Court.

9.In view of the above, the criminal appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

01-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To
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M.NIRMAL KUMAR, J.

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