



Crl.A.(MD)No.115 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.11.2025

Pronounced on : 09.01.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.115 of 2023

M.Star Janet Joy

... Appellant/
Complainant

Vs.

T.Justin Dhas

... Respondent/
Accused

Prayer : This Criminal Appeal filed under Section 378(4) of the Criminal Procedure Code, to call for the records relating to the judgment made in S.T.C.No.87 of 2016 on the file of the learned Judicial Magistrate No.I, Padmanabhapuram dated 29.06.2018 and set aside the same and allow this criminal appeal and convict the accused for the offence under Section 138 of the Negotiable Instrument Act, 1881.

For Appellant : Mr.T.Antony Arulraj

For Respondent : Mr.K.P.Narayana Kumar



Crl.A.(MD)No.115 of 2023

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JUDGMENT

The Criminal Appeal is directed against the judgment made in S.T.C.No.87 of 2016 dated 29.06.2018 on the file of the Court of Judicial Magistrate No.I, Padmanabhapuram, 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 complainant's husband and the accused are friends and on account of that friendship, the accused borrowed a sum of Rs.14 lakhs on 27.11.2015 for the improvement of his jewelry business promising to repay the amount within one month. The



Crl.A.(MD)No.115 of 2023

WEB COPY

complainant approached the accused on 29.12.2015 and demanded the amount. The accused issued a cheque dated 29.12.2015 for Rs.14 lakhs drawn on Andhra Bank, Marthandam Branch in favour of the complainant. The complainant presented the cheque for collection on 29.12.2015 through his banker Pandiyan Grama Bank, Mekkamandapam Branch but the same was returned dishonored as account closed. The complainant sent a legal notice dated 08.01.2016 to the accused demanding him to pay the amount covered by the cheque and the accused having received the notice on 09.01.2016 neither sent any reply nor complied with the notice demand. Since the accused has not repaid the cheque amount within the stipulated time, 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, 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.87 of 2016 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



Crl.A.(MD)No.115 of 2023

questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined herself as P.W.1, her husband as P.W.4 and Bank Managers of the complainant as well as the accused Bank as P.W.2 and P.W.3 respectively and exhibited 13 documents as Ex.P.1 to Ex.P.13. The accused examined himself as D.W.1 and 2 other witnesses Thiru.Suresh Paul and Thiru.Andrin Prabhu as D.W.2 and D.W.3 respectively and exhibited 2 documents as Ex.D.1 and Ex.D.2.

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 29.06.2018 holding that the complainant failed to prove the offence under Section 138 of the NI Act against the accused beyond reasonable doubt, acquitted him under Section 255(1) Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant preferred the present appeal.

8. Whether the impugned judgment of acquittal passed in S.T.C.No.



Crl.A.(MD)No.115 of 2023

WEB COPY

87 of 2016 dated 29.06.2018 on the file of the Judicial Magistrate No.I, Padmanabhapuram, 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 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 of the complainant's husband borrowed a sum of Rs.14 lakhs on



Crl.A.(MD)No.115 of 2023

WEB COPY

27.11.2015 promising to repay the said amount within one month, that the complainant approached the accused and demanded the loan amount and at that time, the accused issued a cheque dated 29.12.2015 for Rs.14 lakhs drawn on Andhra Bank, Marthandam Branch under Ex.P.1, that the complainant presented the cheque for collection through his banker Pandiyan Grama Bank, Mekkamandapam Branch on 29.12.2015 but the same was returned dishonored as account of the accused was closed through banker's memo dated 31.12.2025 under Ex.P.2, that the complainant sent a legal notice dated 08.01.2016 under Ex.P.3 directing the accused to pay the amount covered by the cheque, that the accused received the legal notice on 09.01.2016 vide Ex.P.4 postal acknowledgement card, that the accused sent a reply notice dated 16.12.2016 under Ex.P.5 with false and untenable allegations and that since the accused has not complied with the notice demand, the complainant was forced to file the above complaint.

11. It is pertinent to note that though the accused having received the statutory notice, has not chosen to send reply immediately and after lodging of the private complaint, the accused sent the reply notice on 16.02.2016 under Ex.P.5.



Crl.A.(MD)No.115 of 2023

WEB COPY

12. The defence of the accused, as evident from the cross-examination of P.W.1 and P.W.4 and the evidence of D.W.1 to D.W.3, is that there was no acquaintance between the complainant and the accused, that the accused had friendship with the complainant's husband, that the accused borrowed a sum of Rs.1,50,000/- from the complainant's husband during 2010 for his business needs and at that time, he issued three cheques as security for the loan transactions, that the accused regularly paid monthly interest at Rs.7,500/- per month, that the accused during the year 2011 borrowed another loan of Rs.1 lakh from the complainant by issuing two cheques for security purposes, that the accused repaid the entire principal amount of Rs.2,50,000/- on 11.10.2015, that there was a balance of Rs.10,000/- due by the accused towards interest, that the complainant citing the balance amount of Rs.10,000/- due by the accused to complainant's husband refused to give security cheques and instituted the present complaint through his wife (complainant herein) by utilizing one of the cheques issued to him and that the accused had no money transactions with the complainant at any point of time and never issued any cheque to the complainant.



Crl.A.(MD)No.115 of 2023

WEB COPY

13. It is pertinent to mention that the accused in Ex.P.5 (reply notice) has specifically admitted that he borrowed Rs.1 lakh from the complainant in 2011 and issued two cheques as security apart from the loan of Rs.1,50,000/- obtained from the complainant's husband in 2010 and that the accused repaid the entire loan amount of Rs.2,50,000/- on 11.10.2015.

14. As rightly contended by the learned counsel appearing for the complainant, it is evident from the defence evidence that the accused has specifically admitted that Ex.P.1 (cheque) was belonging to him and also the signature found in Ex.P.1 (cheque). As already pointed out, according to the accused, the said cheque along with other cheques were issued to the complainant as well as to her husband as security for the loan transactions he had with the complainant and her husband.

15. It is pertinent to note that the complainant as P.W.1 and her husband as P.W.4 gave evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonor of cheque, issuance of statutory notice and the failure of the



Crl.A.(MD)No.115 of 2023

accused to pay the amount within stipulated time. On considering the evidence of P.W.1 and also the admission of the accused with respect to Ex.P.1 (cheque) and the signature found therein, this Court has no other option but to draw a presumption under Sections 118 and 139 of the NI Act.

16. No doubt, as rightly contended by the learned counsel appearing for the accused, the presumptions available under Sections 118 and 139 of the NI Act are rebuttable in nature. It is settled law that the accused, in 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.

17. The learned counsel appearing for the accused would rely on a decision of the Hon'ble Supreme Court in ***APS Forex Services Private Limited Vs. Shakti International Fashion Linkers and others*** reported in ***(2020) 12 SCC 724*** to show the legal position that whenever accused



Crl.A.(MD)No.115 of 2023

raises a issue of financial capacity of complainant in support of his probable defence, despite presumption in favour of complainant regarding legally enforceable debt under Section 139, onus shifts again on complainant to prove his financial capacity by leading evidence. Moreover, in the same decision, the Hon'ble Apex Court has also held that once the accused has admitted the issuance of cheque which bears his signature, there is presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act and such a presumption is rebuttable in nature and the accused is required to lead the evidence to rebut such presumption and that the accused was required to lead evidence that the entire amount due and payable to the complainant was paid and the relevant portions are extracted hereunder:

“6.1 In the case of K.N.Beena vs. Muniyappan, (2001) 8 SCC 458, it is observed and held by this Court that under Section 118 of the N.I. Act, unless the contrary is proved, it is to be presumed that the negotiable instruments (including a cheque) had been made or drawn for consideration. It is further observed and held that under Section 139, the Court has to presume, unless the contrary is proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. It is further observed that thus in complaints



Crl.A.(MD)No.115 of 2023

under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that the cheque has not been issued for a debt or liability is on the accused.

.....

6.3 In the case of Kishan Rao (Supra) after considering the decision of this Court in the case of Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513, it is observed and held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose.....

7. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the N.I. Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The



Crl.A.(MD)No.115 of 2023

story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence.”

18. As already pointed out, the main defence of the accused is that he borrowed two loans at Rs.1,50,000/- and Rs.1 lakh during the years 2010 and 2011 respectively from the complainant's husband and repaid the



Crl.A.(MD)No.115 of 2023

entire loan amount of Rs.2,50,000/- on 11.10.2015 and that he had no acquaintance with the complainant and never borrowed any amount nor issued any cheque to the complainant. But in Ex.P.5 (reply notice), the accused has specifically admitted that he borrowed Rs.1 lakh in 2011 from the complainant and issued two cheques as security for the said loan transactions.

19. Though the accused has alleged that he repaid the entire loan amount of Rs.2,50,000/-, he has not produced any evidence to substantiate the discharge of the said loan. The accused examined D.W.2, Suresh Paul, to prove repayment; however, even according to the evidence of both the accused and D.W.2, the accused did not repay the loan amount of Rs.2,50,000/- in the presence of D.W.2, as alleged. D.W.1 (the accused), in his evidence, would state that he went to the house of the complainant along with D.W.2 on a Sunday at about 7.00 p.m., and when he demanded the return of the security cheques, the complainant informed him that a sum of Rs.10,000/- was still due from the accused towards interest, and that the cheques could be returned only upon payment of the said amount. But D.W.2, in his evidence, would say,



Crl.A. (MD) No. 115 of 2023

“2015 நவம்பர் முதல் வாரத்தில் ஒரு ஞாயிற்று கிழமை எதிரி என்னிடம் மேக்காமண்டபத்திலுள்ள வாதி வீட்டிற்கு செல்ல வேண்டுமென்றும் ரூ.2,50,000/- பணத்தை தான் ஏற்கனவே வாதிக்கு கொடுத்துவிட்டதாகவும், ஆனால் காசோலையை வாங்கவில்லை என்றும் தனக்கு உடல்நிலை சரியில்லாததால் வண்டியில் வாதி வீட்டிற்கு தன்னை அழைத்து செல்லும் படியும் தெரிவித்தார். நான் என்னுடைய இருசக்கர வாகனத்தில் எதிரியை அழைத்துக்கொண்டு கடமலைக்குன்றில் உள்ள வாதி வீட்டிற்கு சென்றேன். எதிரி ஜஸ்டின் தாஸ் வாதியிடம் கொடுத்த காசோலையை திரும்ப கேட்டபோது வாதி கொஞ்சம் வட்டி கணக்கு பார்க்க வேண்டியுள்ளது என்றும், கணக்கை பார்த்துவிட்டு மறுநாள் காசோலையை தந்து விடுவதாகவும் சொன்னார். அதன்பிறகு என்ன நடந்தது என்று தெரியாது.”

20. D.W.2, in cross-examination, would admit,

“வழக்கு சம்பந்தப்பட்ட விவரங்கள் எனக்கு தெரியாது. எதிரி அனுப்பிய பதிலறிவிப்பு பற்றி எனக்கு தெரியாது. அந்த பதிலறிவிப்பில் என்னை பற்றி ஏதேனும் விவரங்கள் சொல்லி உள்ளாரா என்பது பற்றி தெரியாது. வாதியிடமிருந்து எதிரி எந்த தேதியில் கடன் வாங்கினார் என்று தெரியாது. ஆனால் கடன் வாங்கியிருப்பது தெரியும்.”

21. But during cross-examination of P.W.1, it was suggested by the



Crl.A.(MD)No.115 of 2023

defence,
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□நான் அனுப்பிய வழக்கறிஞர் அறிவிப்பை பெற்றுக்கொண்டு எதிரி 10 தினங்கள் கழித்து அவர் நண்பர் சுரேஸ்பாலோடு வந்து எதற்காக அறிவிப்பு அனுப்பினீர்கள் என்று விளக்கம் கேட்டார் என்றால் அவ்வாறு யாரும் வரவில்லை. எதிரி அவ்வாறு வந்தார் என்றும் அப்போது நான் வட்டி பாக்கிக்காக ரூ.10000/- உள்ளது என்றும் அதைகொடுத்தால் காசோலை தந்துவிடுவதாகவும் சொல்லி உள்ளார் என்றால் சரியல்ல.□

22. As rightly pointed out by the learned counsel appearing for the complainant, in light of the above suggestions, it is evident that the accused had taken the stand that he went to the house of the complainant along with D.W.2 only after the receipt of the legal notice under Ex.P.3. However, neither the accused nor D.W.2 stated this in their evidence. It is not in dispute that the complainant sent the statutory notice on 08.01.2016, whereas according to the accused, he and D.W.2 visited the complainant's house in November 2015, i.e., approximately two months prior to the issuance of the statutory notice. The accused as D.W.1 would admit,

“பணம் கொடுத்த பிறகு காசோலை தரவில்லை என்று வாதி மீதோ வாதி கணவர் மீதோ நான் எந்தவொரு காவல் நிலையத்திலும் புகார் கொடுக்கவில்லை என்றால்



Crl.A.(MD)No.115 of 2023

WEB COPY

சரிதான்.”

23. The complainant as P.W.1 would reiterate her case about the borrowal of the accused,

□27.11.2015 அன்று எதிரிக்கு 14 லட்சம் கொடுத்தேன். என்னுடைய வீட்டில் வைத்து காலை 10.00 மணிக்கு கொடுத்தேன். என் கணவர் அப்போது இருந்தார். வேறு யாரும் அப்போது இல்லை. 29.12.2015-ல் எதிரி மேற்படி காசோலையை எனக்கு கொடுத்தார். எதிரி தனியாக தான் பணம் வாங்க வந்தார். எதிரியாகவே தான் காசோலை எழுதி கொண்டு தந்தார்.□

24. P.W.4 (husband of the complainant), in his evidence, would reiterate the version of the complainant about the borrowal of the accused and the issuance of Ex.P.1 (cheque).

25. During the trial, the accused also took the stand that the complainant had no financial capacity to advance such a large loan amount to him. As rightly contended by the learned counsel appearing for the complainant, it is pertinent to note that in his Ex.P.5 reply notice, the accused did not dispute the financial capacity of the complainant to lend



Crl.A.(MD)No.115 of 2023

money. In Ex.P.5, the accused specifically stated that the complainant was working as a postal office RD agent and that he had obtained a loan of Rs.1,00,000/- from the complainant in 2011 and Rs.1,50,000/- from her husband in 2010. During her testimony, P.W.1 was cross-examined on the suggestion that she had no wherewithal to lend money. P.W.1 in cross-examination would say,

□சீட்டு பணம் சேர்த்து வைத்த பணம் என் வருமான பணம் எல்லாம் சேர்த்து 15 லட்ச ரூபாய் இருந்தது. கடமலைக்குன்று சிஎஸ்ஐ சர்ச் நடத்திய சீட்டில் சேர்ந்திருந்தேன் அது 10 லட்ச ரூபாய் சீட்டாகும். 8 லட்ச ரூபாய் சீட்டு பணத்தை வாங்கினேன். முதி 7 லட்சமானது என் கணவர் சேர்த்து வைத்த வருமானமாகும். போஸ்ட் ஆபீசில் ஆர்டியாக போட்டபணத்தை சேமித்து வைத்திருந்தேன். ஆர்டியிலிருந்து ரூ.2 லட்சம் எடுத்திருப்பேன். மீதி 5 லட்சம் வங்கியிலிருந்து எடுத்தேன். எனக்கு கடன் எதுவும் கிடையாது.□

26. P.W.4, in his evidence, would say that he saved Rs.7 lakhs for meeting out the educational expenses of his son and that the complainant had Rs.8 lakhs from the chit transactions. He would say,

“அப்போது எதிரி வந்து கேட்டிருந்தால் என் மகனுக்கும் அப்போது மெடிக்கல் கிடைக்காமல் இன் ஜினியரிங் கிடைத்துவிட்டதால் ஒரு மாதத்தில் எதிரி



Crl.A.(MD)No.115 of 2023

WEB COPY

திருப்பி பணத்தை தந்துவிடுவதாக நம்பிக்கை
தெரிவித்ததால் என் மனைவி மூலம் ரூ.14 லட்சம்
கொடுத்தேன்.”

27. As rightly pointed out by the learned counsel appearing for the complainant, the complainant has produced the copies of bank passbooks and documents to show that she was working as an agent for small savings scheme. It is pertinent to mention that the accused himself in his evidence would say that the complainant's husband was doing money lending business.

28. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Rohitbhai Jivanlal Patel Vs. State of Gujarat and another*** reported in ***2019 18 SCC 106***, relied on by the learned counsel appearing for the complainant, wherein, the Hon'ble Apex Court has observed that when such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not and the relevant passages are extracted



Crl.A.(MD)No.115 of 2023

hereunder:

WEB COPY

“18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant- accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

.....

20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was



Crl.A.(MD)No.115 of 2023

clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the



Crl.A.(MD)No.115 of 2023

earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant.”

29. It is also necessary to refer the decision of the Hon'ble Supreme Court in the case of ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in **2022 6 SCC 735**, wherein the Hon'ble Apex Court has held that in the case under 138 of NI Act, the complainant need not show that he had the capacity and the relevant passages are extracted hereunder:

“10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing



Crl.A.(MD)No.115 of 2023

documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

11. We have gone through the nature of the evidence in this case. We also bear in mind the fact that three courts have held in favour of the respondent. In this regard, we bear in mind that though it is true that reply notice was sent by the appellant, therein he admits the case of the respondent that the parties were having a cordial relationship. In the reply notice the appellant has not set up any case that the respondent did not have the financial capacity to advance the loan. In fact even we notice that there is no reference to the loss of the cheque book or signed cheque leaf. No complaint was given of the loss of the cheque book or the signed cheque leaf either to the police or to the bank.”

30. The Hon'ble Supreme Court in ***S.S.Production Vs. T.R.Pavithran Prasanth*** reported in ***2024 INSC 1059***, has held that mere



Crl.A.(MD)No.115 of 2023

taking a counter stand to raise a probable defence is not sufficient to shift the onus to the complainant and the relevant passage is extracted hereunder:

“8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. ”



Crl.A.(MD)No.115 of 2023

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31. Considering the above, as rightly contended by the learned counsel appearing for the complainant, since the presumption in favour of the complainant has not been rebutted, the question of producing evidence to show the source of income of the complainant does not arise.

32. The learned counsel appearing for the accused would submit that the particulars of the cheque were filled in different ink, and that the date and signature were also in different ink, which, according to him, would indicate that the cheque in dispute was issued to the complainant's husband for security purposes. As rightly pointed out by the learned counsel appearing for the accused, P.W.2 and P.W.3, the Bank Managers, would admit the use of different ink in Ex.P.1 (cheque).

33. The learned counsel appearing for the accused would rely on a decision of this Court in ***K.Muniraju Vs. G.Muruges*** reported in **2017 (2) TLNJ 402 (Crl)**, wherein, the learned Judge of this Court, taking note of the fact that ink used to write the contents of the cheque is different from the ink used in the signature on the cheque along with other



Crl.A.(MD)No.115 of 2023

circumstances, has held that they are sufficient to hold that the accused has rebutted the presumption drawn against him in terms of Sections 118 and 139 of NI Act.

34. The learned counsel appearing for the accused would also rely on a decision of this Court in ***Thangaraj Vs. Byrappa*** reported in **2016 (3) MWN (Cr.) DCC 112 (Mad.)**, wherein, the learned Judge specifically held that merely because the cheque in dispute contains the signature of the accused in one ink and the other particulars are filled in a different ink, it cannot be held, in law that the cheque is invalid or an inchoate instrument.

35. As rightly contended by the learned counsel appearing for the complainant, even assuming that a blank cheque leaf was given by the accused, which is towards some payments, would attract presumption under Section 139 of the NI Act in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

36. It is necessary to refer the decision of this Court in ***Padmavathy Vs. M/s Sri Balaji Networks*** passed in ***Crl.R.C.(MD)No.523 of 2023***, dated 30.06.2023, while dealing with the scope of Section 20 of the



Crl.A.(MD)No.115 of 2023

Negotiable Instruments Act, this Court has observed as follows:

“7. The learned Counsel for the complainant would submit that as per Section 20 of the Negotiable Instruments Act, the holder of the cheque either by himself or through any third party can very well fill up the blank cheques and it is necessary to refer Section 20 of the Negotiable Instruments Act hereunder for better appreciation;

“Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an in complete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same, to nay holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead by him to be paid to thereunder.”



Crl.A.(MD)No.115 of 2023

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8. *As per Section 20 of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank pronote and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such Section 20 of the Negotiable Instruments Act, will have no application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.*

9. *The learned Counsel for the revision petitioner/accused has relied on the decision of the Division Bench of the Hon'ble Supreme Court in T.Nagappa Vs. Y.R.Muralidhar reported in 2008(2) Crimes 219 (SC) and the relevant passages are extracted hereunder:*

“ Code of Criminal Procedure 1973 – Section



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Crl.A.(MD)No.115 of 2023

243(2) r/w Article 21 of the Constitution of India – An accused has a right to fair trial and to adduce evidence for that purpose – Ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.

Negotiable Instruments Act 1881 – Section 20 – Only a prima facie right, that too conditional, had been conferred upon the holder of the negotiable instrument – Request of the appellant for referring the cheque to Forensic examination was bona fide.”

10. At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in Oriental Bank Of Commerce vs Prabodh Kumar Tewari reported in 2022 Live law SC 714, wherein it has been held as follows:

“ Negotiable Instruments Act, 1881 – Sections 138, 139 - A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a handwriting expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-



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Crl.A.(MD)No.115 of 2023

writing expert. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.”

11. In that decision, another judgment of the Three Judges Bench of the Hon'ble Supreme Court in Kalamani Tex Vs. Balasubramanian reported in 2021(5) SCC 283 was referred and wherein the Hon'ble Apex Court has reiterated the legal position settled in Bir Singh Vs. Mukesh Kumar reported in (2019)4 SCC 197, wherein it has been held as follows:

“14. In Bir Singh v. Mukesh Kumar, after discussing the settled line of precedent of this Court on this issue, a two-Judge Bench held:

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have



Crl.A.(MD)No.115 of 2023

been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

[...]

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. (emphasis supplied)”

12. The above decisions are clearly applicable to the case on hand. In the present case, according to the petitioner, she has not written the contents of the cheque. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served, if the disputed cheques are sent



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Crl.A.(MD)No.115 of 2023

for expert opinion. Even assuming for argument sake, that the expert gives his opinion that the writings found in the cheque are not that of the petitioner, that by itself would not advance the case of the petitioner further. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability and that the cheque presumption arises under Section 138 of the Negotiable Instruments Act. Section 139 of the said Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it for the discharge, in whole or in part, of any debt or other liability. In case if the accused is able to raise a probable defence which creates doubts about the existence of a legally recoverable debt or liability, the prosecution can fail. The standard of proof for rebuttal of presumption under Section 139 of the Negotiable Instruments Act is guided by preponderance of probabilities. For deciding the above, the fact that the details in the cheque have been filled up not by the drawer, but by some other person, would be immaterial.”

37. Even assuming that the contents of cheque were not filled by the accused, the same is wholly irrelevant.



Crl.A.(MD)No.115 of 2023

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38. As rightly contended by the learned counsel appearing for the complainant, despite lengthy cross-examination, the testimony of P.W.1 and the evidence of P.W.4 remained unshaken and the defence failed to elicit any material discrepancies or doubts that could undermine the prosecution case.

39. In view of the foregoing discussion, this Court is satisfied that the accused has failed to rebut the presumption drawn in favour of the complainant under Sections 118 and 139 of the NI Act. The learned Magistrate's findings are perverse, having relied on immaterial factors, while overlooking crucial evidence. Consequently, this Court concludes that the impugned judgment of acquittal is liable to be set aside and that the accused is guilty of the offence punishable under Section 138 of the NI Act.

40. 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 (CrI) DCC 161



Crl.A.(MD)No.115 of 2023

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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.

41. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of **Rs.28,00,000/- (Rupees Twenty Eight 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 trial Court shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

42. In the result, the Criminal Appeal is allowed.

09.01.2026

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

33/35



Crl.A.(MD)No.115 of 2023

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- To**
1. The Judicial Magistrate No.I,
Padmanabhapuram.
 - 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD)No.115 of 2023

K.MURALI SHANKAR,J.

csn

Pre-Delivery Judgment made in
Crl.A.(MD)No.115 of 2023

Dated : 09.01.2026