



CRL.A(MD).No. 719 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 18.11.2025

Delivered on : 09.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 719 of 2024

PL.Karuppan Chettiar : Appellant/Complainant

Vs.

R.Kumar : Respondent/Accused

Prayer : This Criminal Appeal is filed under Section 419 of B.N.S.S., (378 of Cr.P.C)., to call for the records relating to the impugned judgment, dated 05.06.2024 made in C.C.No.153 of 2019 on the file of the learned Judicial Magistrate (Fast Track Court), Karaikudi and set aside the same.

For Appellant : Mr.J.Anandkumar,

For Respondent : Mr.S.Bharathy Kannan.

JUDGMENT

This Criminal Appeal is directed against the judgment made in C.C.No.153 of 2019, dated 05.06.2024 on the file of the learned Judicial Magistrate (Fast Track Court), Karaikudi, in acquitting the



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respondent/accused for the offence under Section 138 of Negotiable Instruments Act.

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

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

4.The complainant's case is :

a) The accused, having good acquaintance with the complainant, requested for a loan for development of his grocery shop, renewal of his son Singapore permit and for family expenses. Accordingly, the accused borrowed a sum of Rs.4,00,000/- on 15.05.2019 from the complainant, agreeing to repay the same within two months and executed a promissory note therefor.

b) The accused again approached the complainant and requested further loan for extending his son Singapore permit and borrowed a sum of Rs.3,00,000/- on 10.06.2019. The accused received back the promissory



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note already executed and issued a cheque, dated 25.07.2019 for Rs.7,00,000/- drawn on Indian Bank, Pattamangalam Branch for discharging the said loan.

c) As per the request of the accused, the complainant presented the cheque for collection on 25.07.2019 through his Bank Lakshmi Vilas Bank, Karaikudi, but the said cheque was returned dishonored as 'funds insufficient'. Hence, the complainant sent a legal notice, dated 02.08.2019 to the accused demanding to pay the amount covered by the cheque. The accused having received the notice, dated 03.08.2019, sent a reply notice, dated 16.08.2019 with false and untenable allegations. Since the accused failed to pay the cheque amount within the stipulated period, the complainant was constrained to file the above complaint against the accused for the alleged offence under Sections 138 r/w 142 of Negotiable Instruments 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 C.C.No.153 of 2019 for the offence under Section 138 of



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Negotiable Instruments Act. The Court sent the summons along with copy of the complaint. After appearance of the accused, he was questioned about the offence alleged against him and he denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined himself as P.W.1 and exhibited 10 documents as Ex.P.1 to Ex.P.10. The accused examined himself as D.W.2 and examined one Annaveeran as D.W.1, but adduced no documentary evidence.

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 05.06.2024 holding that the complainant failed to prove the offence under Section 138 of Negotiable Instruments Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) of 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.153 of 2019, dated 05.06.2024 on the file of the learned Judicial Magistrate (Fast



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Track Court), Karaikudi, is liable to be set aside ? is the point for consideration.

9. Before proceeding further, it is necessary to refer Section 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.”

10. It is the specific case of the complainant that the accused, having acquaintance with the complainant, borrowed a sum of Rs.4,00,000/- on 15.05.2019 for developing his grocery business, renewal of his son Singapore permit and for family expenses, by executing a promissory note and again borrowed another loan of Rs.3,00,000/- on 10.06.2019 by issuing



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a cheque, dated 25.07.2019 for Rs.7,00,000/- drawn on Indian Bank, Pattamangalam Branch under Ex.P.1 by receiving back the promissory note already given; that the complainant presented the cheque for collection on 25.07.2019 through his Bank Lakshmi Vilas Bank, Karaikudi Branch vide challan under Ex.P.2, but the cheque was returned dishonored for want of sufficient funds in the bank account of the accused through bankers' memo, dated 29.07.2019 under Ex.P.3; that the complainant sent the legal notice, dated 02.08.2019 under Ex.P.4, directing the accused to pay the amount covered by the cheque; that the accused having received the notice on 03.08.2019 vide Ex.P.5 postal acknowledgement, sent a reply notice, dated 16.08.2020 under Ex.P.6 with false and untenable allegations and that since the accused has not paid the cheque amount within the stipulated time, the complainant was forced to file the above complaint.

11. The defence of the accused as evident from Ex.P.6 reply notice, cross examination evidence of P.W.1 and the evidence of D.W.1 and D.W.2 is that one Annaveeran introduced the complainant to the accused for getting loan ; that the accused borrowed a sum of Rs.1,50,000/- on 01.06.2017 for sending his son Kannan to Singapore; that the accused again borrowed a sum of Rs.50,000/- within one month, totally Rs.2,00,000/-, agreeing to



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repay the same with interest at the rate of 5% per month; that the complainant had taken blank and signed promissory note, original patta relating to the land of the accused and two blank and signed cheques from the accused; that the accused had paid interest at Rs.10,000/- per month for 1 ½ of years and he used to pay more amount in some months; that the complainant sent a legal notice falsely alleging as if the accused had borrowed a sum of Rs.7,00,000/-; that though the accused was not able to pay interest for six months, he was ready to settle the amount within short time and accordingly, he repaid the loan amount of Rs.2,00,000/- on 20.08.2019; that though the complainant has agreed to return the blank cheques, promissory note and original patta within two days, failed to return the same and filed the above false complaint and that since the accused never borrowed Rs.7,00,000/- from the complainant and the amount borrowed at Rs.2,00,000/- was already repaid, he is not liable for any claim.

12. As rightly contended by the learned counsel for the complainant, the accused in his evidence would specifically admit that Ex.P.1 cheque was belonging to him and the signature found therein. But according to the defence, two cheques, including Ex.P.1 cheque, were issued as blank and signed to the complainant at the time of borrowing of Rs.1,50,000/-.



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13. It is pertinent to mention that the complainant as P.W.1 gave evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of the cheques therefor, dishonor of cheque, issuance of statutory notice and the failure of the accused to pay the amount within stipulated time. On considering the evidence of P.W.1 and also the admission of the accused that Ex.P.1 cheque was also belonging to him and also the signature found therein, the learned Magistrate has rightly drawn a presumption under Sections 118 and 139 of Negotiable Instruments Act in favour of the complainant.

14. The learned counsel for the accused would rely on a decision of the Hon'ble Supreme Court in ***Basalingappa Vs. Mudibasappa*** reported in ***(2019) 5 SCC 418***, wherein the Hon'ble Apex Court, considering the various decisions, summarized the principles :

(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.



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(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.*

15. 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 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



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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.”



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16. As rightly contended by the learned counsel for the accused, the presumptions available under Section 118 and 139 of the Negotiable Instruments Act are always rebuttable in nature. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove his probable defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

17. At the outset, it is pertinent to note that the accused has specifically admitted the borrowal of loan amount from the complainant on two occasions and according to him, he borrowed a sum of Rs.1,50,000/- on 01.06.2017 and Rs.50,000/- within a month thereafter. But according to the complainant, the accused borrowed a sum of Rs.4,00,000/- on 15.05.2019 and Rs.3,00,000/- on 10.06.2019. The main contention of the accused is that after the receipt of Ex.P.4 statutory notice, he sent the reply notice on 16.08.2019 and repaid the loan amount of Rs.2,00,000/- on 20.08.2019, but admittedly, the accused has not produced any material to show that he discharged the loan amount to the complainant.



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18. As rightly contended by the learned counsel for the complainant, after the exchange of legal notice, the contention of the accused that he repaid the loan amount within four days of sending his reply, directly to the complainant, without obtaining any receipt or any documentary proof, is highly improbable.

19. It is the further case of the accused that he demanded the complainant to return the documents, whereupon the complainant informed him that the documents were kept at his daughter's house and assured that the same would be returned within two days, and believing the said assurance, the accused left the place. As already pointed out, after the exchange of legal notices, the version of the accused that, even after allegedly discharging the loan, he returned without obtaining the documents and merely on the assurance of the complainant that they would be returned within two days, is wholly unbelievable. It is also not the case of the accused that he issued any letter or notice to the complainant seeking the return of the said documents.

20. The learned counsel for the accused would submit that the complainant has stated that he and the accused are close friends, but the said



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averment itself is false as both of them are neither friends nor relatives and that the accused was introduced only through D.W.1 Annaveeran.

21. As rightly pointed out by the learned counsel for the complainant, the complainant has nowhere stated that he and the accused were close friends. However, in the pre-complaint notice as well as in the complaint, it has been stated that the accused was well acquainted with him. Further, during cross examination, P.W.1 would admit that D.W.1 Annaveeran was residing as a tenant in his house and that the said Annaveeran introduced the accused, who is his relative, to the complainant. However, P.W.1 denied the suggestion that the loan transactions were routed through D.W.1.

22. The learned counsel for the accused would further submit that the accused was only running a small petty shop and that, despite the earlier loan neither being repaid nor any interest having been paid, the complainant is alleged to have advanced a further sum of Rs.4,00,000/- and another sum of Rs.3,00,000/- in the subsequent month.

23. It is the specific case of the complainant that, after the first borrowal on 15.05.2019, the accused again approached him on 10.06.2019



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seeking a further loan of Rs.3,00,000/- for the purpose of renewal of his son's Singapore permit, thereby borrowing a total sum of Rs.7,00,000/- within a period of one month. The learned Magistrate has observed that, when the accused was neither a close relative nor a close friend of the complainant, and when no interest had been paid towards the first borrowal of Rs.4,00,000/-, the alleged advancement of a further sum of Rs.3,00,000/- within a month is difficult to believe, as no prudent person would ordinarily act in such a manner.

24. As rightly contended by the learned counsel for the complainant, since the second borrowal was made within one month of the first borrowal, the question of payment of interest does not arise at all. The accused, however, has alleged that he paid interest at the rate of Rs.10,000/- per month for a period of one and a half years from the date of borrowal. In his chief examination, the accused deposed that he paid interest at the rate of Rs. 10,000/- per month till 01.05.2019, i.e., for a period of two years. However, during cross-examination, he stated that he had paid interest only for one and a half years to the complainant.

25. Admittedly, the accused has not produced any iota of evidence to substantiate his claim of having paid interest for a period of one and a half



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years or two years, as alleged. No doubt, the learned Magistrate observed that, since the accused was running only a small petty shop, it was doubtful as to how the complainant could have believed that the accused would repay the loan amount of Rs.4,00,000/- within a period of two months and that, therefore, the subsequent advancement of Rs.3,00,000/- was unbelievable.

26. As rightly contended by the learned counsel for the complainant, the above observation is based solely on mere assumptions and is not supported by any evidence on record. During the cross examination of the accused, the complainant produced a photograph of the accused's shop, which, upon admission, was marked as Ex.P.7, wherein the name board displays the name 'Saro fancy shop'.

27. The accused placed reliance on the evidence of D.W.1 to substantiate his claim that he had borrowed only a sum of Rs.2,00,000/- and that the said loan had already been discharged. D.W.1, in his evidence, would state that he was present at the time of the first borrowal and that he was informed about the second borrowal. However, as rightly pointed out by the learned counsel for the complainant, though the accused has alleged that he handed over a blank signed promissory note, two blank signed cheques,



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and the original patta, D.W.1, in his evidence, would say that the accused had given only a promissory note, one cheque, and the patta. Significantly, D.W.1 has nowhere stated that the accused handed over two cheques, including Ex.P.1 cheque, at the time of the borrowal.

28. Regarding the repayment of the loan amount, D.W.1 would say that both the complainant and the accused had informed him through phone. D.W.1 would say,

“ 2019 ம் ஆண்டு மேற்படி பணத்தினை எதிரி செலுத்திவிட்டதாகவும், புகார்தாரர் பெற்றுக்கொண்டதாகவும் எனக்கு தொலைபேசி மூலம் இரு தரப்பினரும் தகவல் தெரிவித்தார்கள். எதிரி பணத்தைச் செலுத்திவிட்டு இரண்டு நாள் கழித்து புகார்தாரரிடம் ஆதரவாக கொடுத்திருந்த மேற்படி ஆவணங்களையும் பெற்று செல்வதாக எனக்கு தகவல் சொன்னார்.

In cross examination, he would say,

“கடன் தொகையை திரும்ப செலுத்திய விபரத்தை போன் மூலமாகதான் தெரிந்துகொண்டேன் என்றால் சரிதான் புகார்தாரரும் எதிரியும் என்னிடம் சொன்னார்கள்.



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.... புகார்தாரர் எதிரிக்கு அனுப்பிய அறிவிப்பின் விபரமும் பதில் அறிவிப்பின் விபரமும் புகாரின் விபரமும் எனக்கு தெரியாது என்றால் சரிதான்.

.... மேற்படி பதில் அறிவிப்பில் என்னை பற்றி எந்த விபரமும் சொல்லவில்லை என்ற விபரம் எனக்கு தெரியுமா என்றால் அது பற்றி எனக்கு தெரியாது. பதில் அறிவிப்பில் எதிரி பணத்தை கொடுத்துவிடுவார் என்று சொல்லப்பட்டிருக்கும் விபரம் தெரியுமா என்றால் தெரியாது. பணத்தை கொடுத்துவிட்டதாகதான் சொன்னார்கள்.”

29. D.W.1 in his evidence has nowhere stated that the date on which, the complainant and the accused had contacted him through phone and informed about the repayment of the loan amount. More importantly, as rightly contended by the learned counsel for the complainant, the accused in his reply notice has nowhere referred about the presence of D.W.1 Annaveeran and the transactions were routed through D.W.1 only.

30. Moreover, the learned Magistrate has held that the evidence of D.W.1 is relevant under Section 8 of the Indian Evidence Act with regard to the alleged discharge of the loan. As rightly contended by the learned counsel for the complainant, this Court is also at a loss to understand as to



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how Section 8 of the Indian Evidence Act is attracted in the present case. In the absence of any material evidence to prove the discharge of the loan, and in view of the failure of the accused to even refer to D.W.1 in the reply notice, the testimony of D.W.1 based merely on information allegedly received from both parties regarding repayment cannot, by any stretch of imagination, be treated as sufficient to establish discharge of the loan, nor can it be said to be relevant under Section 8 of the Act.

31. Regarding the second borrowal of Rs.3,00,000/- the learned Magistrate disbelieved the case of the complainant and the relevant portions are extracted hereunder :

“உறவினர்களிடமிருந்து பணத்தை வாங்கி தந்ததாக புகார்தாரர் கட்சி செய்யும் நிலையில் உறவினர்கள் யாரையும் சாட்சியாக விசாரணை செய்யவில்லை.”

But as rightly pointed out by the learned counsel for the complainant, P.W.1 would say,

“ நீர் 15.05.2019-தேதிக்கு பின்னர் ஒரு மாதம் கழித்து எதிரிக்கு ரூ.3,00,000/- கொடுத்ததாக சொல்லியுள்ளீர். அதை எந்த வங்கியிலிருந்து எடுத்து கொடுத்தீர் என்றால் நான் மறுநாள் வங்கியிலிருந்து சிறிது



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பணத்தை எடுத்ததோடு, தன் கையிலிருந்த ரொக்கத்தையும் சேர்த்து வந்த பணத்தோடு என் உறவினர்களிடம் பெற்ற சிறிது பணத்தையும் சேர்த்து கடந்த 10.06.2019-ம் தேதி கொடுத்தேன். நான் என் உறவினரிடம் பெற்ற பணத்தை காரைக்குடி பாண்டியன் கிராம வங்கியிலிருந்து கடந்த 11.06.2019-ம் தேதி எடுத்து அவரிடம் கொடுத்துவிட்டேன். நான் வங்கியில் பணத்தை வைப்பீடு செய்திருந்தேன் நான் ரியல் எஸ்டேட்டின் மூலமாகவும் வியாபாரத்தின் மூலமாகவும் கிடைத்த பணத்தை வைப்பீடு செய்திருந்தேன். நான் வங்கியிலிருந்த வைப்பீடை பணமாக்கி அதை என் வங்கியிலிருந்து எடுத்தேன் என்பதற்கு உரிய ஆவணத்தை இந்நீதிமன்றம் கோரும்பட்சத்தில் தாக்கல் செய்ய தயாராக இருக்கிறேன்.”

32. After examination of the accused, the complainant recalled himself and produced the statement of bank accounts under Ex.P.8 and Ex.P.9 and Pass Book under Ex.P.10. As rightly pointed out by the learned counsel for the complainant, it is evident from Ex.P.9 that the complainant had withdrawn Rs.3,04,000/- from Pandyan Grama Bank, Karaikudi Branch on 11.06.2019, which is also evident from Ex.P.10 Bank Pass Book.

33. Moreover, it is evident from Ex.P.8 Bank Statement that the accused closed his bank account in the City Union Bank and withdrew



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Rs.3,98,973/- on 15.05.2019, the date of first borrowal by the accused. In subsequent cross examination, P.W.1 would reiterate,

“என்னிடம் காட்டப்படும் ம.சா.ஆ. 9 ஆவணத்தில் 11.06.2019-ல் ரூ.3 லட்சத்து 4 ஆயிரம் எடுத்ததாக தாக்கல் செய்திருக்கிறேன் என்றாலும் ஆனால் 10.05.2019 அன்றே எதிரிக்கு ரூ.3 லட்சம் கடன் கொடுத்தாக புகார் மனுவில் சொல்லியிருக்கிறேன் என்றால் சரியல்ல. 10.06.2019 அன்று எதிரி என்னிடம் கடன் கேட்டபோது என் கையில் பணம் குறைவாக இருந்ததால் எனது உறவினர் மற்றும் தெரிந்தவர்களிடம் பணம் பெற்று எதிரிக்கு அன்றைய தினமே ரூ.3 லட்சம் கொடுத்துவிட்டேன். மறுநாள் 11.06.2019 அன்று எனது வங்கியில் இருந்து பணத்தை எடுத்து எனது உறவினர்களுக்கு செலுத்திவிட்டேன்.”

When P.W.1 was again questioned regarding second borrowal, he would say,

“.... எனது வங்கி கணக்கில் ரூ.3 லட்சம் பணம் இருந்ததா என்றால் இருந்தது. ஏன் 10.06.2019 அன்றே எதிரிக்கு வங்கியில் இருந்து பணத்தை எடுத்துக்கொடுக்கவில்லை என்றால், 10.06.2019 அன்று மாலை 3 மணிக்கு மேல் பணம் கேட்டதால் அன்றைய தினம் அதற்கு பிறகு வங்கிக்கு சென்று பணம் எடுக்கமுடியாத காரணத்தால் எனது உறவினர்களிடம் பணம்



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வாங்கி கொடுத்தேன். எதிரி என்னிடம் 10.06.2019 அன்று மதியம் 3

மணி அளவில் பணம் கேட்டதால் நான் எனது உறவினர்களிடம் பணம் வாங்கி மாலை 06.00 மணியளவில் எதிரிக்கு கொடுத்தேன். மாலை 06.00 மணிக்கு மேல் யாரும் பணம் கொடுக்க மாட்டார்கள் என்றால் அன்றைய காலக்கட்டத்தில் அவ்வாறு இருந்தது இப்போது அப்படி இல்லை.”

34. As rightly contended by the learned counsel for the complainant, the explanation offered by the complainant appears to be convincing and the observations made by the learned Magistrate are not supported by any iota of evidence. Moreover, P.W.1 in his evidence would reiterate his stand that since the accused was engaged in business and his son was employed in Singapore, he reposed confidence in the accused and accordingly, advanced the loans. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in the case of ***Rohitbhai Jivanlal Patel Vs State of Gujarat and another*** reported in ***2019 18 SCC 106***, wherein the Hon'ble Apex Court has observed that when such a presumption under Section 139 of NI Act is drawn, the factors relating to the want of evidence as regards source of funds, want of acknowledge about the dates and other particulars of the cheque, variance in the statement of complainant and witness 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 hereunder :



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'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 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



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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 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.”



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35. During cross examination of P.W.1, it was suggested by the defence that the contents of Ex.P.1 cheque and the signature are written in different ink and that the same would go to show that the blank signed cheque given by the accused was misused by the complainant. As rightly contended by the learned counsel for the complainant, even a blank cheque leaf 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. At this juncture, it is necessary to refer the decision of this Court in ***Padmavathy Vs. M/s Sri Balaji Networks in Crl.R.C.(MD)No.523 of 2023, dated 30.06.2023***, while dealing with the scope of Section 20 of the Negotiable Instruments Act, 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;



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“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.”

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



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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 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



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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-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



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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 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 for expert opinion. Even assuming for



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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.”

36. Considering the above, even assuming that Ex.P.1 cheque was not filled up by the accused, the same is wholly immaterial. Despite lengthy cross examination, the testimony of P.W.1 remained unshaken and the defence failed to elicit any material discrepancies or doubts so as to



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undermine the prosecution case. Though the accused examined himself as well as D.W.1, he failed to establish any probable defence. In particular, the stand taken by the accused that the loan has been discharged remains wholly unsubstantiated.

37. In view of the foregoing discussion, this Court is satisfied that the accused has failed to rebut the statutory presumptions available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act. The findings of the learned Magistrate are perverse, having been arrived at by placing reliance on immaterial factors and by overlooking crucial evidence on record. Consequently, this Court holds 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 Negotiable Instruments Act.

38. 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 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



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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.

39. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of Rs. 14,00,000 (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 6 months. Upon payment, the trial court shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

40. The Criminal Appeal is accordingly allowed.

09.01.2026

NCC : Yes / No
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K.MURALI SHANKAR,J.

das

To

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

Pre-delivery order made in
CRL.A(MD).No. 719 of 2024

09.01.2026