



Crl.A.(MD)No.664 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2025

Pronounced on : 05.01.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.664 of 2022

S.Premachandran

... Appellant/
Complainant

Vs.

1.Venkatesh Babu

2.S.Sumathi Venkatesh Babu

... Respondents/
Accused

Prayer : This Criminal Appeal filed to take the appeal on file call for the records from the lower Court, hear the appeal and allow the appeal as prayed for.

For Appellant : Mr.V.Balaji

For Respondents : Mr.R.Anand



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JUDGMENT

The Criminal Appeal is directed against the judgment made in S.T.C.No.128 of 2016 dated 26.02.2019 on the file of the Court of the Judicial Magistrate No.4, Tirunelveli, in acquitting the respondents / accused 1 and 2 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 respondents / accused 1 and 2 for the alleged offence under Section 138 r/w 142 of the NI Act.

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

4. The case of the complainant is that the complainant and the accused are medical practitioners at Tirunelveli and are well known to each other. The accused jointly borrowed a sum of Rs.45 lakhs on several occasions during the period between December-2013 and August-2014 for



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development of their hospital and agreed to repay the said amount within a short time. Since the accused failed to repay the said amount, the complainant demanded the accused to repay the amount immediately. Hence, the accused on 01.01.2015 gave a post dated cheque dated 10.06.2015 drawn on State Bank of India, Tirunelveli Branch for Rs.45 lakhs in favour of the complainant to discharge their liability, requesting the complainant to present the cheque on 10.06.2015 or subsequently and encash the same. Believing the words of the accused, the complainant presented the cheque for collection on 10.06.2015 through State Bank of India, Tirunelveli Branch but the same was returned dishonored for the reason payment stopped by the drawer. The complainant immediately informed about the dishonor of the cheque to the accused, who in turn requested the complainant to re-present the cheque again after four weeks and they would make necessary arrangements for encashment. The complainant, believing the same, presented the cheque again for collection on 13.07.2015 through State Bank of India, Tirunelveli Branch but the cheque was again returned dishonored as payment was stopped by the drawer, through banker's memo on 13.07.2015. Hence, the complainant sent a legal notice dated 10.08.2015 to the accused demanding them to pay



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the amount covered by the cheque. The first accused received the said notice on 11.08.2015 but the second accused managed to return as unclaimed. The first accused sent a reply notice dated 20.08.2015 with false and frivolous allegations. Since the accused have not paid the cheque amount within the stipulated time, the complainant was constrained to file the above complaint for the offence under Section 138 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.128 of 2016 and ordered for issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to them under Section 207 Cr.P.C. When the accused were questioned about the offence alleged against them, they denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined himself as P.W.1 and exhibited 7 documents as Ex.P.1 to Ex.P.7.



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7. After closure of the complainant's side evidence, the accused were examined under Section 313(1)(b) Cr.P.C. with regard to the incriminating aspects found against them and the accused denied the same as false and further stated that a false case has been foisted against them.

8. The defence examined the first accused as D.W.1 and exhibited 12 documents as Ex.D.1 to Ex.D.12. Thereafter, the complainant summoned the Bank Manager of State Bank of India, Sripuram Branch and examined Thiru.Chellappa as C.W.1 and the said witness produced the copy of the bank statement of the accused under Ex.C.1.

9. 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 26.02.2019 holding that the complainant has not proved the offence under Section 138 of the NI Act against the accused beyond reasonable doubt, acquitted both the accused under Section 255(1) Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has filed the present appeal.



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10. Whether the impugned judgment of acquittal passed in S.T.C.No.128 of 2016 dated 26.02.2019 on the file of the Judicial Magistrate No.4, Tirunelveli, is liable to be set aside? is the point for consideration.

11. 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.”



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12. It is the admitted case of both the parties that the complainant as well as the accused are practising Doctors at Tirunelveli, that the second accused is the wife of the first accused and that the complainant and the accused were holding the post of President, Secretary and Joint Secretary of Indian Medical Association, Tirunelveli Branch from 2012 for a period of three years.

13. It is the specific case of the complainant that the accused having good acquaintance with the complainant borrowed Rs.45 lakhs on several occasions during the period between December-2013 and August-2014 for the development of their hospital promising to repay the amount within a short time, that since the accused failed to repay the amount as agreed, the complainant demanded the accused to repay the amount immediately, that the accused on 01.01.2015 issued a post dated cheque dated 10.06.2015 drawn on State Bank of India, Tirunelveli Branch for Rs.45 lakhs in favour of the complainant under Ex.P.1, that the complainant presented the cheque for collection on 10.06.2015 through State Bank of India, Tirunelveli Branch but the same was returned dishonored as payment stopped by the drawer vide banker's memo dated 10.06.2015 under Ex.P.2



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series, that the complainant informed about the dishonor of the cheque to the accused immediately and the accused requested the complainant to present the cheque again after four weeks promising to honor the cheque, that the complainant, believing the words of the accused, presented the cheque again on 13.07.2015 but the same was again returned dishonored as payment was stopped by the drawer through banker's memo dated 13.07.2015 under Ex.P.2 series, that the complainant sent a legal notice dated 10.08.2015 under Ex.P.3 to the accused directing them to pay the amount covered by the cheque, that the first accused received the notice on 17.08.2015 as evident from Ex.P.4 and the second accused managed to return as unclaimed under Ex.P.5 (returned postal cover), that the first accused sent a reply notice dated 20.08.2015 under Ex.P.6 with false and untenable allegations and that since the accused failed to pay the cheque amount within the stipulated time, the complainant was forced to file the above complaint.

14. 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 (first accused), is that the complainant and the accused being office



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bearers of Indian Medical Association and as per the aspiration of its members for buying an own building for Indian Medical Association, they proposed to purchase a building in an apartment under Mayan IMA Residence from one Mr.Ramesh Raja of Mayan Builders for a sum of Rs.44 lakhs, that they have also decided to inaugurate Indian Medical Association, Tirunelveli office in the new building along with State Council meeting of Indian Medical Association Tamil Nadu on 15.06.2014, that since the entire sale consideration was not paid and the inauguration date was nearing, the complainant asked the accused to give an empty cheque so that he would fill and give it to Mayan Builders as security in order to obtain the possession of the building and believing the words of the complainant, the accused gave a blank signed cheque, that thereafter they conducted the inauguration function in the said apartment on 15.06.2014 and subsequently, settled the entire balance sale price with the support of other members of their Association, that the accused, after coming to know that the cheque issued by them was not utilized, approached the complainant and requested him to return the cheque but the complainant informed them that the said cheque was misplaced and he was trying to find out the same and hence, the accused apprehending that



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the cheque may go to wrong hands, gave intimation to their bank for stop payment on 20.08.2014 after informing the complainant, that due to election of new office bearers for Indian Medical Association, Tirunelveli Branch, the relationship between the complainant and the accused got strained in March-2015 and the complainant fraudulently misused the blank cheque issued to him, as if, the accused borrowed a sum of Rs.45 lakhs and handed over the cheque on 01.01.2015 and that the accused neither borrowed any amount from the complainant nor issued any cheque in his favour.

15. The accused have also taken a stand that the complainant and the accused have jointly purchased a house building bearing Door No.178, 7th Street, Main Road, Perumalpuram in a public auction conducted by Bank of Baroda under SARFAESI Act on 20.03.2013 and sale certificate was issued by the Bank on 16.05.2013, that total sale consideration of Rs.1,05,05,000/- and the registration charges and other expenses of Rs.15 lakhs were contributed by the accused through their bank account, that the complainant had taken more than one year to pay his share of sale price through cash and cheques and that subsequently the accused purchased the



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complainant's 1/3rd share in the house property for valid consideration vide sale deed dated 30.07.2014 under Ex.D.6.

16. As rightly contended by the learned counsel appearing for the complainant, it is evident from the reply notice and the evidence adduced by the accused that they have specifically admitted that Ex.P.1 (cheque) was belonging to them and also the signatures found therein. But according to the accused, the said cheque was given to the complainant for giving it to Mayan Builders as a security for permitting to inaugurate the building without settling the entire sale price.

17. 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 cheque therefor, dishonor of cheque, issuance of statutory notice and the failure of the accused to pay the amount within the stipulated time. On considering the evidence of P.W.1 and also the admission of the accused with regard to Ex.P.1 (cheque) and the signatures found therein, the learned Judicial Magistrate has rightly drawn a presumption under Section 139 of the NI Act in favour of the complainant.



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18. The learned counsel appearing for the complainant would rely on a decision of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in ***(2019) 4 SCC 197***, wherein, the Hon'ble Apex Court has specifically held that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the NI Act and the relevant passages are extracted hereunder:

“37. 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 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.

38. 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



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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.

....

40. 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.

.....

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of



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the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.”

19. The learned counsel appearing for the complainant would also rely on a decision of the Hon'ble Supreme Court in ***M/s.Kalamani Tex and another Vs. P.Balasubramanian*** reported in ***(2021) 2 SCC (Cri) 555*** and the relevant passage is extracted hereunder:

“14. Adverting to the case in hand, we find on a plain reading of its judgment that the trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these ‘reverse onus’ clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystalized by this Court in Rohitbhai Jivanlal Patel vs. State of Gujarat, (2019) 18 SCC 106 in the following words:

“In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the



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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.....””

20. The learned counsel appearing for the accused would rely on a decision of the Hon'ble Supreme Court in ***N.Vijay Kumar Vs. Vishwanath Rao N*** reported in ***2025 SCC OnLine SC 873***, wherein, the decision of the Hon'ble Supreme Court in ***Rajesh Jain Vs. Ajay Singh*** reported in ***(2023) 10 SCC 148*** was referred and the Hon'ble Apex Court has dealt with the standard of proof required to rebut the presumption and the relevant passages are extracted hereunder:



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“39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of ‘preponderance of probabilities’, similar to a defendant in a civil proceeding. [Rangappa vs. Mohan (AIR 2010 SC 1898)]

40. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words ‘until the contrary is proved’ occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513



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41. *In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was 'no debt/liability'. [Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]*

42. *The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of*



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law or fact.

43. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act.

44. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both



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parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441]”

21. At this juncture, it is also necessary to refer the decision of the Hon'ble Supreme Court in ***Rangappa Vs. Sri Mohan*** reported in **(2011) 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 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



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accused/defendant cannot be expected to discharge an unduly high standard or 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.

22. The Hon'ble Supreme Court, in ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in **(2022) 6 SCC 738**, has observed that the accused is not expected to discharge an unduly high standard of proof and the principle has developed that all which the accused needs to establish is a probable defence and as to whether a probable defence has been



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established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist and the relevant portion is extracted hereunder:

“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 the 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..”

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



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24. The only point to be decided is as to whether the accused through the cross-examination evidence of P.W.1 and the evidence produced on either side have specifically shown a probable defence and thereby rebutted the presumption drawn under Sections 118 and 139 of the NI Act._

25. It is admitted by both the parties that the complainant and the accused have jointly purchased a property bearing Door No.178, 7th street, Main Road, Perumalpuram in a public auction conducted by Bank of Baroda under SARFAESI Act on 20.03.2013 and that sale certificate was issued by the Bank on 16.05.2013 under Ex.D.5. It is also not in dispute that the complainant subsequently sold his undivided 1/3rd share in the property purchased at Perumalpuram in favour of the accused vide sale deed dated 30.07.2014 under Ex.D.6. But at the same time, the complainant as well as the accused gave different version with regard to the contribution of part of the sale price by the complainant and the subsequent payment of sale price by the accused for Ex.D.6 sale to the complainant.



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26. The learned counsel appearing for the complainant would submit that conveyance and re-conveyance of Perumalpuram property under Ex.D.5 and Ex.D.6 are totally distinct and different transactions among the parties to the present proceedings and the said sales had no nexus with the present cheque transaction, that the accused gave weightage to the sale transactions only to cause misconception and confusion in the mind of the trial Court to consider it as a rebuttal evidence as against its statutory presumption in favour of the complainant under Section 139 of the NI Act and that the trial Court misconceived the transactions under Ex.D.5 dated 16.05.2013 and Ex.D.6 dated 30.07.2014.

27. It is the case of the accused that the entire sale consideration, registration charges and other expenses for the purchase of property at Perumalpuram through public auction were provided by the accused and that though the complainant was liable to pay his share of Rs.40 lakhs, he did not pay at the time of purchase but paid subsequently in piece-meal during one year period. But according to the complainant, since the accused were holding the amount of Rs.65 lakhs given by the complainant as loans to the accused, the accused informed the complainant not to give



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any amount for purchase of the property and they would give the complainant's share also and that therefore, the complainant did not pay any amount for purchasing the said property. It is the further case of the complainant that since the complainant did not pay any amount for the purchase, while selling his share of the property to the accused he executed the sale deed under Ex.D.6 without receiving any sale consideration and that is why, it was recited in Ex.D.6 sale deed that sale consideration was already paid. But according to the accused, since the complainant did not want to retain any share in Perumalpuram property, the accused have paid the sale consideration and after settling the entire sale price, Ex.D.6 was executed by the complainant. To put it in short, according to the complainant, he did not receive any sale consideration for Ex.D.6 sale but on the other hand, according to the accused, they have paid the sale consideration to the complainant.

28. As rightly contended by the learned counsel appearing for the accused, even according to the complainant, the accused were liable to pay Rs.65 lakhs to the complainant. The contention of the complainant that he executed Ex.D.6 sale deed without receiving any sale price, is very hard to



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believe. Even assuming for argument's sake that the complainant did not contribute his share of sale price at the time of purchasing the property in a public auction, as rightly observed by the learned trial Judge, no prudent person would execute a sale deed without receiving the sale price of Rs.40 lakhs when a sum of Rs.65 lakhs was due to him from the sellers / accused. As rightly contended by the learned counsel appearing for the accused, the complainant has not offered any acceptable reason or explanation for executing Ex.D.6 sale deed without receiving any sale price, particularly, when Rs.65 lakhs was due by the accused to him at that time.

29. As rightly pointed out by the learned counsel appearing for the accused, the complainant, in his pre-complaint notice under Ex.P.3 as well as in his complaint and in his chief examination, has stated that the accused jointly borrowed a sum of Rs.45 lakhs on several occasions during the period between December-2013 and August-2014 for the development of their hospital and promised that they would repay the said amount within a short time but not elaborated anything further.



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30. The complainant has not furnished particulars about the dates and amounts lent, but in cross-examination, P.W.1 would admit that he advanced loans on seven occasions between December-2013 and August-2014, of which, three transactions were shown in his account and two loans were paid through cheques. As rightly pointed out by the learned counsel appearing for the accused, even during cross-examination, P.W.1 did not furnish the dates of cash payments, cheque payments or the loan amounts.

31. It is the specific case of the complainant that apart from lending Rs.45 lakhs on several occasions from December-2013 to August-2014, he gave two other loans through cheques one to the first accused for Rs.15 lakhs and another to the second accused for Rs.5 lakhs to meet out the educational expenses of their sons. It is not in dispute that the complainant filed a civil suit in O.S.No.113 of 2015 for recovery of the said amount of Rs.20 lakhs from the accused and was pending on the file of the III Additional District Judge, Tirunelveli.

32. The learned counsel appearing for the complainant would



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submit that the suit in O.S.No.113 of 2015 was decreed in his favour on 14.10.2019 and the appeal filed by the accused is pending in A.S.(MD)No. 41 of 2020 before this Court.

33. According to the complainant, the above two cheque transactions covered under the judgment and decree in O.S.No.113 of 2015 for recovery of money is totally different and distinct money transactions between the complainant and the accused and the same cannot be taken as a defence in the present proceedings. But according to the defence, the said two cheque payments were made by the complainant towards his share of sale consideration for Perumalpuram property to the accused, as the entire sale consideration and other expenses were paid by the accused earlier. According to the complainant, the said two cheques were dated 18.07.2013. But as rightly pointed out by the learned counsel appearing for the accused, P.W.1, in his cross examination, would admit that he did not advance any loan to the accused prior to December-2013 and the relevant portion is extracted hereunder:

“எதிரிகளுக்கு 2013 டிசம்பர் மாதத்தில்தான் முதன் முதலில் கடன் கொடுத்தேன். அதற்கு முன் எதிரிகளுக்கு கடன் கொடுத்தேனா என்றால் இல்லை. அவர்கள் கேட்கவும்



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இல்லை. முதன் முதலில் எதிரிகளுக்கு எவ்வளவு பணம் கடன் கொடுத்தேன் என்றால் ஐந்து லட்சம் பணம் கொடுத்தேன். எப்போது பணம் கடன் கொடுத்தேன் என்றால் 2013 நவம்பர் மாதம் கொடுத்தேன். தேதி தற்போது ஞாபகம் இல்லை. ஆனால் குறித்து வைத்துள்ளேன். எந்த எந்த கால கட்டத்தில் எவ்வளவு தொகைகளை எதிரிகளுக்கு கொடுத்தேன் என்று என்னால் தற்போது சொல்ல முடியுமா என்றால் எதிரிகளுக்கு கொடுத்த தொகைகளை குறித்து வைத்துள்ளேன். எனது கணக்குகளை பார்த்தால் தெரியும். நான் குறித்து வைத்துள்ள எதிரிகளுக்கு கடனாக கொடுத்த தொகைகள் ஆடிச் செய்யப்பட்ட எனது கணக்குகளில் துலங்குமா என்றால் துலங்கும்.”

34. As already pointed out, P.W.1 would admit that he gave three loans which were shown in the audits but he gave money on some occasions which were not shown in accounts. He would say,

“ஆடிச் இல்லாமல் சில முறை பணம் கடனாக கொடுத்துள்ளேன். ஆடிச் செய்த கணக்கில் மூன்று முறை பணம் கடனாக கொடுத்துள்ளேன். எதிரிகளுக்கு எத்தனை முறை பணம் கடனாக கொடுத்தேன் என்றால் சுமார் 7 முறை பணம் கடனாக கொடுத்தேன். எதிரிகளுக்கு கடன் கொடுத்த மொத்த தொகையான 45,00,000/- த்தையும் நான் பணமாக கொடுத்தேனா என்றால் இரண்டு முறை காசோலை மூலம் கொடுத்தேன். அந்த காசோலை



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மூலமாக கொடுத்த கடன் தொகையை எந்த வங்கி காசோலை மூலம் கொடுத்தேன் என்றால் ஸ்டேட்மென்டை பார்த்துதான் சொல்ல இயலும். ஒவ்வொரு முறை எதிரிகளுக்கு கடன் கொடுக்கும் போதும் அதை குறித்துக் கொண்டு எதிரிகளிடம் கையெழுத்து வாங்கும் பழக்கம் உண்டா என்றால் இல்லை. எனது டைரியில் குறித்துக் கொள்வேன். என்னுடைய டைரியை பார்த்தால் என்ன என்ன தேதிகளில் எதிரிகளுக்கு கடனாக கொடுத்தேன் என்று தெரியும் என்றால் ஆமாம். வழக்கறிஞர் அறிவிப்பு அனுப்பும் போது அந்த டைரியை காட்டி எந்த எந்த தேதிகளில் பணம் கடன் கொடுத்தேன் என்று அறிவிப்புகளில் குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான்.”

35. As rightly contended by the learned counsel appearing for the accused, though the complainant has specifically admitted that he is having accounts to show the loans advanced to the accused, he has not chosen to produce the same. Moreover, P.W.1 would admit in his cross-examination that he advanced two loans through cheques (allegedly covered under the civil suit) during the period in which Rs.45 lakhs was given.

“இந்த நாற்பத்தைந்து லட்சம் தவிர எதிரிகளுக்கும் எனக்கும் வேறு ஏதாவது கடன் தொகை உள்ளதா என்றால் ரூ.4500000/- கடனாக கொடுத்த கால கட்டத்தில்



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1ம் எதிரிக்கு தனது பிள்ளைகளின் படிப்பு செலவிற்காக 1ம் எதிரியின் பெயருக்கு 15 லட்சமும், 2ம் எதிரி பெயருக்கு 5 லட்சமும் செக் மூலம் கடன் கொடுத்தேன். 1 மற்றும் 2ம் எதிரிகளுக்கு இந்த வழக்கு காசோலை தொகையான ரூபாய் நாற்பத்தைந்து லட்சத்தை படிப்படியாக கடனாக எதிரிகளுக்கு கொடுத்த காலத்தில்தான் மேலே சொன்ன 15 லட்சத்தை 1ம் எதிரிக்கும் ரூபாய் ஐந்து லட்சத்தை 2ம் எதிரிக்கும் காசோலை மூலம் கடனாக கொடுத்தேன். இந்த வழக்கு காசோலை தொகையான 4500000/- த்தை எதிரிகளுக்கு கொஞ்சம் கொஞ்சமாக கொடுத்துக் கொண்டிருந்த கால கட்டத்தில் இறுதி கட்டத்தில்தான் 1ம் எதிரிக்கு 15லட்சமும் 2ம் எதிரிக்கு ரூபாய் ஐந்து லட்சமும் கடனாக கொடுத்தேனா என்றால் ஆமாம். ஆக மொத்தம் 1 மற்றும் 2 எதிரிகள் எனக்கு 65,00,000/- கடனாக கொடுக்க வேண்டி இருந்தது என்றால் சரிதான்.”

36. As already pointed out, according to the complainant, he gave the said two cheques on 18.07.2013 to the accused but as per the pre-complaint notice, complaint and evidence, he had no loan transaction prior to December-2013 but in cross-examination, he would admit that he lent first loan of Rs.5 lakhs in November-2013 and two cheque transactions were at the end of period during which Rs.45 lakhs was paid piece-meal. As rightly pointed out by the learned counsel appearing for the accused,



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P.W.1 would admit that the loan transactions can be viewed in his bank statement. He would say,

“எதிரிகளுக்கு கொடுத்த கடன் தொகை சம்பந்தமாக வங்கி பாலன்ஸ் ஷீட்டுகளை என்னால் தாக்கல் செய்ய முடியுமா என்றால் முடியும். எனது வருமான வரி கணக்குகள் மற்றும் ஆடிட் ரிப்போர்ட் ஆகியவற்றை நீதிமன்றத்தில் தாக்கல் செய்ய முடியுமா என்றால் முடியும். அந்த கணக்கு வழக்குகளை பார்த்தால் நான் எதிரிகளுக்கு எந்த எந்த கால கட்டத்தில் கடனாக பணம் கொடுத்தேன் என்று தெரியும் என்றால் சரிதான்.”

37. But admittedly, the complainant has not chosen to produce the bank statement or Income Tax Returns to prove the alleged loan transaction, since the same were specifically disputed by the accused.

38. As rightly contended by the learned counsel appearing for the accused, the complainant, in his evidence, would admit that he did not take any loan documents from the accused while advancing Rs.65 lakhs except Ex.P.1 cheque and the relevant portion is extracted hereunder:

“மேற்படி எதிரிகள் கொடுக்க வேண்டிய அனுபத்தைந்து லட்சத்திற்கு எதிரிகளிடம் இருந்து ஆதரவு எதுவும் எழுதி வாங்கவில்லை என்றால் அந்த தொகைக்கு



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ஆதரவாக இந்த வழக்கு காசோலையை மட்டும் வாங்கினேன். நான் எதிரிகளுக்கு கொடுத்த அறுபத்தைந்து லட்சத்திற்கு வட்டி வாங்கினேனா என்றால் நண்பர்கள் என்பதால் வட்டி வாங்கவில்லை. காசோலையை எதிரிகள் எந்த தேதியில் கொடுத்தார்கள் என்றால் 1.1.15 அன்று கொடுத்தார்கள். எதிரிகளுக்கு பணம் கடனாக கொடுத்த கால கட்டத்தில் அதற்காக நான் எந்த ஆதரவும் வாங்கவில்லை என்றால் சரிதான். 1.1.15ம் அன்று அவசர தேவைக்காக எதிரிகளிடம் பணம் கேட்டேனா என்றால் நான் நாற்பத்தைந்து லட்சம் ரூபாய் பணம் கொடுத்திருந்ததால் அதற்கு ஆதரவு ஏதாவது வேண்டும் என்று வீட்டில் கேட்டதால் நான் எதிரிகளிடம் ஆதரவு கேட்டேன்.”

39. The learned counsel appearing for the accused would submit that on the basis of the complaint given by the complainant, FIR came to be registered under Ex.D.2 against the accused in Crime No.6 of 2016 on 09.02.2016 under Sections 406, 420 and 120B IPC and in the said complaint, the complainant had taken a totally contradictory stand with regard to the loan transaction. He would further submit that the accused were forced to file a petition in Crl.O.P.(MD)No.3368 of 2016 under Section 482 Cr.P.C. to quash the FIR in Crime No.6 of 2016 and this Court vide order dated 11.03.2019 considering the complaint averments and also



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taking note of the judgment of acquittal made in S.T.C.No.128 of 2016 quashed the FIR.

40. As rightly pointed out by the learned counsel appearing for the accused, in Ex.D.2 (FIR), it was stated,

□.... சேவியர் காலனியில் புதிதாக மருத்துவமனை கட்டுவதற்காகவும் பையனின் மருத்துவ படிப்பு சேர்க்கைக்காகவும் என்னிடம் பல தவணையாக ரூ.65,00,000 (ரூபாய் அறுபத்தைந்து இலட்சம்) கடனாக பெற்றுக் கொண்டார்கள். இதற்கு அவர்கள் செக்கும், அவர்கள் இருவரும் சேர்ந்து கையெழுத்திட்ட பிராமசரி நோட்டு என்னிடம் கொடுத்திருந்தார்கள். 11.06.2015 அன்று அந்த பிராமசரி நோட்டில் சில மாற்றம் செய்வதாக கூறி இருவரும் என்னிடம் வாங்கிச் சென்றார்கள். ... இன்று வரை அந்த பிராமசரி நோட்டை என்னிடம் திருப்பி தரவில்லை. செக்கை வங்கியில் போட்டதில் பணம் இல்லையென்று திரும்பி வந்துவிட்டது.□

41. But as rightly pointed out by the learned counsel appearing for the accused, P.W.1, in his evidence, would say that he approached the accused on 01.01.2015 for repayment of the loan amount and they have issued Ex.P.1 cheque requesting him to present the cheque on 10.06.2015 and accordingly, he presented the cheque on 10.06.2015, but the



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complainant, in his pre-complaint notice or in the complaint, has nowhere whispered about the execution of promissory note and more importantly, taking back the promissory note by the accused on 11.06.2015. P.W.1, in his cross-examination, would say,

“எதிரிகள் என் கண் முன்னால் காசோலையை நிரப்பி கையொப்பம் போட்டுக் கொடுத்தார்களா என்றால் வரும் போதே நிரப்பி கையொப்பம் போட்டுக் கொண்டு வந்திருந்தனர். காசோலையில் நிரப்பப்பட்டுள்ள எழுத்துக்கள் 1ம் எதிரியினுடையது. எதிரிகள் காசோலையை தேதி போடாமல் தந்தார்கள். 13.6.15ம் தேதி காசோலையை வசூலுக்கு போடுங்கள் பணம் இருக்கும் என்றார்கள். அதனால் காசோலையை 13.6.15 என்று நான் நிரப்பினேன் என்றால் ஆமாம். எதிரிகள் காசோலையை கொடுத்த போது தேதியை நிரப்பி கொடுக்க சொல்லி நான் கேட்டேனா என்றால் பத்துநாள் முன்னே பின்னே ஆகும் என்பதால் நான் அவ்வாறு கேட்கவில்லை.”

42. But according to the accused, they have sent a intimation to their bank on 20.08.2014 directing them not to honor the cheque in dispute.

43. As already pointed out, it is the specific case of the complainant that after the return of the cheque on 10.06.2015, he approached the accused and informed about the dishonor but the accused requested him to present the cheque again after four weeks and accordingly, he presented



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the cheque again on 13.07.2015 but the same was dishonored again as payment was stopped by the drawer.

44. Considering the entire evidence available on record and more particularly, the admission of P.W.1 in his evidence before the trial Court, the learned trial Judge has rightly held that the accused have successfully rebutted the presumption drawn in favour of the complainant under Sections 118 and 139 of the NI Act and as such, the burden gets shifted to the complainant to prove that the disputed cheque was issued for discharging the lawful amount due by the accused to him. As already pointed out, the complainant has not produced any other evidence to show that Ex.P.1 cheque was issued for discharging the legally enforceable debt or liability. Hence, this Court has no hesitation in holding that the complainant miserably failed to prove the liability of the accused and the issuance of the cheque in dispute therefor. Consequently, this Court concludes that the judgment of acquittal passed by the learned Judicial Magistrate is perfectly legal and the same cannot be found fault with and that therefore, the Criminal Appeal, which is devoid of merits, is liable to be dismissed.



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45. In the result, this Criminal Appeal is dismissed confirming the judgment made in S.T.C.No.128 of 2016, dated 26.02.2019, on the file of the Court of the Judicial Magistrate No.4, Tirunelveli in acquitting the respondents under Section 138 of the Negotiable Instruments Act.

05.01.2026

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

csn

To

1. The Judicial Magistrate No.4,
Tirunelveli.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
Crl.A.(MD)No.664 of 2022

Dated : 05.01.2026