



CRL.A(MD).No. 114 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.11.2025

Delivered on : 09.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 114 of 2023

A.Arun : Appellant

Vs.

1.M/s.New Everest Traders,
Rep. By its Proprietor,
M.Kathiresan,
Gandhiji Street, Cumbum,
Theni District.

2.M.Kathiresan : Respondents

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 07.10.2022 made in S.T.C.No.48 of 2022 on the file of the learned Fast Track Court (Magisterial Level), Uthamapalayam.

For Appellant : Mr.M.A.M.Raja

For Respondents : Mr.K.Appadurai



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JUDGMENT

This Criminal Appeal is directed against the judgment made in S.T.C.No.48 of 2022, dated 07.10.2022 on the file of the Fast Track Court (Magisterial Level), Uthamapalayam, in acquitting the 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 second accused is the owner of the first accused concern. The second accused had good acquaintance with the complainant for several years. He approached the complainant and requested for a hand loan of Rs.6 lakhs for development of his business and for urgent family expenses, agreeing to repay the same within a period of three months.



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b) The complainant advanced the requested loan of Rs.6 lakhs on 01.03.2020. The second accused, by citing Covid-19 and consequent lock-down, was postponing the repayment of loan amount. When the complainant demanded the second accused to return the amount on 16.03.2021, the accused issued a cheque of the first accused concern for Rs.6 lakhs drawn on UCO Bank, Cumbum Branch, dated 17.03.2021 and requested the complainant to present the cheque and get the amount. Believing the words of the second accused, the complainant presented the cheque for collection on 17.03.2021 through his Bank Karur Vysya Bank, Cumbum Branch, but the cheque was returned dishonored as 'funds insufficient' vide bankers memo, dated 18.03.2021. Hence, the complainant sent a legal notice, dated 07.04.2021 to the accused demanding them to pay the amount covered by the cheque, but the accused having received the said notice on 16.04.2021, neither sent any reply nor complied with the notice demand. Hence, 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



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records, upon satisfied that there existed a *prima facie* case, took the case on file in S.T.C.No.48 of 2022 for the offence under Section 138 of Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, the accused were questioned about the offence alleged against them and they have denied the commission of offence and pleaded not guilty. The complainant exhibited 4 documents as Ex.P.1 to Ex.P.4. After closure of the complainant's side evidence, when the accused were examined under Section 313(1)(b) Cr.P.C., they have denied the evidence as false and stated that a false case has been foisted against them. The accused have stated that they are having defence evidence. The defence examined the second accused as D.W.1 and one Tmt.Ganga Gowri and Thiru.Savadeeswaran as D.W.2 and D.W3. The defence summoned and examined Thiru.Vedhajebin, Bank Manager of UCO Bank as D.W.4. and exhibited one document as Ex.D.1.

6. 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 07.10.2022 holding that the complainant has not proved the offence under Section 138 of Negotiable Instruments Act as against the accused beyond reasonable doubt, acquitted



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them under Section 255(1) of Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

7. Whether the impugned judgment of acquittal passed in S.T.C.No.42 of 2022, dated 07.10.2022 on the file of the Fast Track Court(Magisterial Level) Uthamapalayam, is liable to be set aside? is the point for consideration.

8. 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.”



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9. It is the specific case of the complainant that the accused being a close friend for several years, borrowed a sum of Rs.6 lakhs on 01.03.2020 from the complainant for his business development and for urgent family expenses, agreeing to repay the same within three months; that the second accused by citing Covid-19 and other reasons had been postponing the repayment of loan amount; that when the complainant approached on 13.06.2021, directing the accused to repay the loan amount, the second accused issued a cheque of first accused concern, dated 17.03.2021 for Rs.6 lakhs drawn on UCO Bank, Cumbum Branch, under Ex.P.1 and requested the complainant to present the cheque and get the amount; that the complainant believing the words of the second accused, presented the cheque for collection on 17.03.2021 through his bank Karur Vysya Bank, Cumbum Branch, but the cheque was returned for want of sufficient funds in the bank account of the accused vide bankers' memo dated 18.03.2021 under Ex.P.2; that the complainant sent a legal notice, dated 07.04.2021 directing the accused to pay the amount covered by the cheque under Ex.P.3; that the accused having received the notice on 16.04.2021 under Ex.P.4 postal acknowledgement, has not chosen to repay the cheque amount within time stipulated and that therefore, the complainant was forced to file the above complaint.



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10. The defence of the accused, as evident from the cross examination of P.W.1/complainant and the evidence of D.W.1 to D.W.3 is that there was no transaction between him and the complainant; that the second accused had carried the building construction work to the complainant's brother-in-law Prabhakaran; that since the said Prabhakaran had not paid the amount properly for the construction work, the complainant gave his jewels to the second accused for pledging the same and to carry out the construction work and as security for the same, the second accused issued a cheque of the first accused company; that the construction work was carried out for Rs.21 lakhs, but the complainant and his brother-in-law were willing to pay only Rs.17 lakhs and hence, the dispute was referred to the community leaders and other important persons of that locality; that the panchayathars had decided and directed the second accused to receive Rs.17 lakhs from the complainant and his brother-in-law and directed the second accused to hand over the jewels and accordingly, the second accused handed over the jewels given by the complainant at the panchayat, but the complainant failed to return the security cheque; that though the complainant had agreed to return the said cheque, has not returned the same and that the above cheque was misused and on that basis, the above false case came to be lodged.



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11. At the outset, it is pertinent to note that the accused having received the statutory notice under Ex.P.3, admittedly, did not send any reply notice. Considering the evidence of D.W.1 and the cross examination made to P.W.1, it is clearly evident that the second accused has admitted that Ex.P.1 cheque was belonging to the first accused concern for which, he is the owner and also the signature found in Ex.P.1 cheque. But according the accused, the said cheque was issued as a security for the jewels given by the complainant for pledging and for proceeding construction work of the complainant's brother-in-law's house.

12. 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 cheque 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 implied 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 Negotiable Instruments Act in favour of the complainant.



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13. The learned counsel for the accused would rely on a decision of this Court in ***S.Burushotham Alwyn Vs. A.Gunasingh Immanuel*** reported in ***2023(1) MWN (Cr.) DCC 56 (Mad)***, wherein it was observed,

'Mere admission of signatures found in the Cheques, cannot be taken as if, the Cheques were issued towards discharge of legally enforceable debt. Even otherwise, the execution of Cheques and the signatures found in the Cheques would only lead to the presumption under Section 139 of Negotiable Instruments Act. However the said presumption is a rebuttable presumption. The accused can always rebut the presumption by preponderance of probabilities. The onus of proof on the Accused is not that much heavy as that of the Complainant. The Accused can always rebut the presumption by preponderance of probabilities.'

14. 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



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defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

15. Now the only point to be decided is as to whether the accused during cross examination of P.W.1 and through the evidence of D.W.1 to D.W.4 has specifically shown the probable defence and thereby rebutted the presumption drawn under Sections 118 and 139 of Negotiable Instruments Act.

16. When the complainant P.W.1 was cross examined on 21.07.2022, it was suggested that the notice sent by the complainant was received by the accused while he was in Madurai Hospital and that since no proper notice was served on the accused, reply notice was not given. But the said suggestions were specifically denied by the complainant and the relevant portion is extracted hereunder :

“நான் அனுப்பிய அறிவிப்பை எதிரி மதுரை மருத்துவமனையில் இருக்கும் போது வாங்கிக் கொண்டார் என்றால் சரியல்ல கம்பத்திலிருந்து வாங்கினார். எதிரிக்கு முறையாக அறிவிப்பு சார்வு செய்யப்படாததால் தான் பதிலறிவிப்பு கொடுக்கப்படவில்லை என்றால் சரியல்ல.”



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17. During cross examination of the first accused as D.W.1, he admitted the receipt of legal notice and the relevant portion is extracted hereunder :

“

இவ்வழக்கிற்கான சட்ட அறிவிப்பை எனது கடையின் முகவரியில் வாங்கியுள்ளேன் என்றால் சரிதான். என்னிடம் காட்டப்படும் ம.சா.ஆ.4 ஒப்புகை அட்டையில் உள்ள கையெழுத்து என்னுடையது தான். பதிலறிவிப்பு நான் அனுப்பவில்லை என்றால் சரிதான்.

18.Considering the above, it is clear that the accused has admitted the receipt of statutory notice and his failure to send any reply. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of **Rangappa Vs. Sri Mohan** reported in **(2010) 11 SCC 441**, wherein also the accused did not reply to the notice sent in the manner contemplated under Section 138 of the Act, the Hon'ble Apex Court has specifically held that the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version and the relevant portion is extracted hereunder :



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29. *Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability.*

19. It is also necessary to refer the decision of the Hon'ble Supreme Court in ***Rajesh Jain Vs. Ajay Singh*** reported in (2023) 10 SCC 148, wherein also the accused did not respond to the statutory notice, the Hon'ble Supreme Court has observed as follows :

“46. The accused has neither replied to the demand notice nor has led any rebuttal evidence in support of his case. The case set up by him needs to be drawn from the suggestions put during the cross examination and from his reply given in the statement recorded under Section 313 of Cr.P.C.



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...

52. ... *The accused has also not explained as to why he has not set up his defense at the earliest point, that is, at the stage of receiving the demand notice, even though he admits having received the demand notice in his 313 statement, yet he makes a suggestion to the complainant in his cross examination that no legal notice had been issued. The theory of 'blank cheque' being misused has been suggested, only to be denied by both, the complainant and Gita Sunar-CW-3. No action has been taken by way of registering a police complaint in order to prosecute the alleged illegal conduct of his blank cheque having been misused by CW-3.*

20. Undoubtedly, the mere fact that the accused did not issue any reply to the statutory notice or failed to offer an explanation while being examined under Section 313(1)(b) of the Code of Criminal Procedure cannot, by itself, lead to the conclusion that the accused has failed to rebut the statutory presumption. It is well settled that the accused is entitled to rebut the presumption through other legally permissible modes as well.

21. The complainant, both in the complaint and in his evidence, has stated that he and the second accused are friends from their school days and



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that, owing to such close friendship, he advanced the loan amount. The second accused in his evidence has also stated that he and the complainant were friends from childhood (சிறு வயது முதல்). Further D.W.2 the wife of the second accused, in her evidence has reiterated that P.W.1 and D.W.1 were friends from their early days.

22. It is evident from the records that the second accused had undertaken the construction of the house belonging to the complainant's brother-in-law, Prabhakaran. The complainant, in his evidence, has admitted that disputes arose between the second accused and his brother-in-law in connection with the said construction. He further deposed that the dispute was referred to the elders of the locality for a panchayat, that the panchayatdars settled the issue, and that, pursuant thereto, a sum of Rs.14,25,000/- was paid to the second accused.

23. As already pointed out, according to the defence since the complainant's brother-in-law failed to pay the amount properly, there arose some disputes and the complainant gave his jewels for pledging the same and to proceed with the construction, for which, the second accused issued a cheque as a security; that the second accused after completing the



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construction, demanded the complainant's brother-in-law to pay Rs.21 lakhs for which, they were willing to pay only Rs.17 lakhs and hence, the matter was referred to the community elders and elders of that locality and at the panchayat, it was decided and directed the second accused to received Rs.17 lakhs and to hand over the jewels of the complainant to him and accordingly, the second accused handed over the jewels at the panchayat, but the complainant failed to return the security cheque and that the complainant by misusing the said cheque filed the above case.

24. During the cross examination of P.W.1, a suggestion was put to him by the defence as to why, if the second accused was a close friend, a cheque had been obtained as security. P.W.1 would say

“உயிர் நண்பரான எதிரியிடம் எதற்காக காசோலை வாங்கினேன் என்றால் கடன் வாங்கி ஒரு வருடம் ஆகிவிட்டதால் காசோலை வாங்கினேன்.

....

எனது மைத்துனர் பிரபாகரனுக்கு எதிரி எந்த வருடம் வீடு கட்டி கொடுத்தார் என்றால் 2019ல் ஆரம்பித்து 2020ல் முடித்து கொடுத்தார். பிரபாகரன் வீடு கட்டும் போது பணம் பற்றாக்குறையால் வீடு வேலை பாதியில் நின்று விட்டதால் நான் எனது நகைகளை அடகு வைத்து பணம் கொடுத்து வீடு கட்ட சொன்னேன் என்றால் சரியல்ல.



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எதிரியிடம் நகை கொடுக்கும் போது எதிரியிடம் கையொப்பம் மட்டும் செய்யப்பட்ட பூர்த்தி செய்யப்படாத காசோலையை பெற்றுக்கொண்டேன் என்றால் சரியல்ல.

....

எதிரியிடம் பணம் கொடுத்தபோது எதிரி ஏற்கனவே கொடுத்திருந்த காசோலையை திரும்ப கேட்டார் என்றால் சரியல்ல அப்போது காசோலை எதுவும் வாங்க வில்லை தற்போதுதான் காசோலை கொடுத்தார்.”

25. According to the complainant, the transaction between the second accused and his brother-in-law is entirely different from the loan transaction that existed between himself and the second accused. It is the further case of the complainant that since the second accused was his close friend, he did not take any documents at the time of advancing loan amount, but since the loan amount was not repaid as agreed by the second accused, he demanded the accused to pay the amount on 16.03.2023 and at that time only, the second accused issued Ex.P.1 cheque.

26. As rightly contended by the learned counsel for the complainant, there is absolutely no evidence or material on record to show that there existed any difference of opinion between the complainant and the second



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accused. As rightly pointed out by the learned counsel for the complainant, even assuming for the sake of argument that the defence raised by the accused is true, the second accused ought to have raised a request before the panchayat seeking a direction to the complainant to return the security cheque, especially when it is the admitted case of the second accused that the dispute was amicably settled by the panchayatdars and that he had handed over the jewels belonging to the complainant in accordance with the decision of the panchayat.

27. Even assuming that the cheque was not returned subsequently, it is not the case of the second accused that he preferred a compliant before the panchayathars or before the concerned police. D.W.1 in his evidence would say,

“காசோலைக்கு தொகை ஏதும் வழங்கக்கூடாது என்று வங்கியில் விண்ணப்பம் ஏதும் கொடுத்துள்ளேனா என்றால் கொடுத்துள்ளேன். என்னிடம் காட்டப்படும் ம.சா.ஆ.2 காசோலையானது போதிய பணமில்லை என்ற காரணத்திற்காக திருப்பப்பட்டது என்றால் சரிதான். நான் வங்கிக்கு 'Stop payment' எதுவும் கொடுக்காமல் வழக்கிற்காக அவ்வாறு கொடுத்ததாக பொய் சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல. புகார்தாரர் காசோலையை திருப்பி தரவில்லை என காவல்நிலையத்தில் புகார் ஏதும் கொடுத்தேனா என்றால் இல்லை.”



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28. D.W.1 in his evidence, though stated that he sent an instruction to his Bank not to honour the the disputed cheque, he has not produced any iota of materials to substantiate the same. D.W.4/Bank Manager would admit that Ex.P.1 cheque was returned only for the reason as 'funds insufficient' in the bank account of the accused.

29. The next defence raised by the accused is that the complainant had no financial capacity to advance such a huge amount as loan to the second accused. In support of the said contention, the learned counsel for the accused placed reliance on a statement elicited during the cross-examination of P.W.1, wherein he stated that he had no means to advance the loan amount.

'எனக்கு கடன் கொடுக்கும் அளவுக்கு வசதி இல்லை என்றால் சரிதான்.'

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 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



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consideration while examining if the accused has been able to rebut the presumption or not and the relevant passages are extracted hereunder :

'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



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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 earlier cheques in the rains though the office of the



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complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant.”

30. The learned counsel for the complainant would rely on the decision of 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,



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namely, by examining his witnesses and producing 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.”

31. In the case on hand, the accused, at the initial stage, did not take any specific stand that the complainant lacked the financial wherewithal to



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advance the loan amount, and therefore, the complainant cannot be expected to adduce such evidence at the outset. However, as rightly pointed out by the learned counsel for the complainant, P.W.1, in his evidence, has stated that he is running a tyre and puncture shop and is also deriving rental income from two houses owned by him.

32. Even according to the second accused, in order to settle the disputes between him and his brother-in-law, the complainant had handed over his jewels with a direction to pledge the same and utilise the proceeds for carrying on the construction work. Moreover, D.W.2, in her evidence, has admitted that the panchayatdars negotiated the settlement and fixed the amount at Rs.17 lakhs, and that the complainant had paid the said sum of Rs. 17 lakhs towards the amount due from his brother-in-law, Prabhakaran.

33. D.W.3, in his evidence, has admitted that he had no knowledge about the transaction said to have taken place between the complainant and the second accused and that he came to know of the same only during the panchayat. As rightly pointed out by the learned counsel for the complainant, even according to the defence witness, when the complainant had paid a sum of Rs.17 lakhs towards the amount due from his brother-in-



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law and is admittedly running a tyre and puncture shop besides owning two houses, it cannot be contended that he lacked the necessary financial means to advance a loan of Rs.6 lakhs.

34. The learned counsel for the complainant would submit that the aforesaid admission can only be construed as a slip of the tongue or a result of confusion on the part of P.W.1, as he was referring to his financial position at the time of giving evidence, especially when he had admitted that he was having only Rs.8,000/- in his bank account at that point of time. Moreover, as rightly contended by the learned counsel for the complainant, the trial Court, by placing reliance on a single sentence, without appreciating the entire evidence of P.W.1 and the evidence adduced on the side of the defence, has erroneously decided the issue against the complainant.

35. No doubt, as rightly pointed out by the learned counsel for the complainant, P.W.1 in his evidence has admitted that he filled the date and his name in Ex.P.1 cheque, while the remaining contents were filled up by the second accused himself. However, it is the specific case of the defence that only a signed blank cheque was handed over to the complainant as security. At this juncture, it is necessary to refer the decision of this Court in



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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, 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.”



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 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



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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 hand-writing 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 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 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



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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. In view of the legal position referred to above, the mere fact that cheque was filled up not by the accused, but by some other person is immaterial and therefore, the statutory presumption cannot be rebutted by raising such a defence.

37. Upon considering the entire evidence available on record, this Court has no hesitation in holding that the accused have miserably failed to establish a probable defence and thereby failed to rebut the statutory presumption drawn under Section 139 of the Negotiable Instruments Act. However, the learned trial Judge, by placing reliance on certain isolated



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sentences in the cross-examination of P.W.1, arrived at a conclusion that the accused had rebutted the presumption. Such a finding is perverse and is therefore liable to be set aside. Consequently, this Court holds that the accused are guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. It is also the admitted case of the accused that the second accused is the proprietor of the first accused concern and, since the first accused is a proprietary concern, it does not have a separate legal entity.

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 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 second accused is sentenced to pay a fine of Rs. 12,00,000



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(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
Index : Yes / No
Internet : Yes / No
das

To

- 1.The Fast Track Court (Magisterial Level),
Uthamapalayam.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

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09.01.2026