BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.04.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

**Crl. A(MD) No. 262 of 2022**

P.Rajalingam ...Appellant/Complainant

Vs.

1.Arunagiri,
Pazhaniyandavar Match works,
Omanaakulam,
Kadampur Via,
Tuticorin District.

2. Pazhaniyandavar Match Works,
Omannakulam,
Kadampur Via,
Tuticorin District ...Respondents/Accused

**PRAYER:** Criminal Appeal filed under Section 378 of Cr.P.C to set aside the order passed by the learned Judicial Magistrate No.II, Sattur in C.C.No.123 of 2018 on 04.03.2022

For Appellants : Mr.M.Jothi Basu

**JUDGMENT**

This Criminal Appeal has been preferred as against the order of acquittal of the respondent in CC No.123 of 2018, on the file of the learned Judicial Magistrate No.II, Sattur for the offences under Section 138 of the NI Act.

2. The learned counsel for the petitioner would submit that trial Court without considering the fact that the first respondent admitted his signature found in Ex.P.1 and as per Section 118 and 139 of the Negotiable Instruments Act, it is the duty of the trial Court to presume the fact that it was issued for legally enforceable debt or liability. On 05.01.2018, the first accused had borrowed a sum of Rs.12,00,000/- and on 30.04.2018, in order to repay the same, the first accused issued Ex.P.1/cheque and when the same was presented for collection it was returned for the reason 'Funds Insufficient'. After causing statutory notice, the petitioner filed a compliant for the offence under Section 138 of the NI Act.

3. On a perusal of the document, it would reveal that the petitioner lodged a complaint for the offence under Section 138 of the NI Act, alleging that the first accused had borrowed a sum of Rs.12,00,000/- for himself, his business and for his family expenses. In order to repay the same, the first accused issued a cheque for a sum of Rs.12,00,000/- drawn on State Bank of India, Kovilpatti Branch. It was presented for collection and the same was returned for the reason 'Funds Insufficient'. After causing statutory notice under Section 138 of the NI Act, the petitioner lodged a complaint and the trial Court after taking cognizance, had issued summons.

4. On the side of the petitioner he was examined as PW.1 and marked document Ex.P.1 to Ex.P.7. On the side of the respondent, none was examined but documents Ex.D.1 to Ex.D.3 were marked.

5. The defence taken by the accused is that there is no legally enforceable debt between the first accused in favour of the petitioner herein. Further, the case of the respondent is that the alleged cheque was given as a security in favour of one Parthiban, which was wrongly filled up by the complainant, which amounts to an alteration in the instrument and as such it becomes void. When it being so, the cheque was filled by the complainant without the consent of the accused and as such, he has not shown any interest to invoke the presumption under Section 118 of the NI Act. However, the accused failed to prove that the cheque was issued for security purpose, whereas, one Parthiban has misused the same. Therefore the statutory presumption under Section 118(a) and 139 of the NI Act is in favour of the complainant. The said statutory provision is rebuttable. The accused can rebut the presumption either by let in evidence or by preponderance of probabilities. . The standard of proof required to rebut the presumption has been discussed by the Hon'ble Apex Court in ***Basalingappa vs Mudibasappa in Criminal Appeal No.636 of 2019.***

6. A persual of the deposition of PW.1 reveals that the notice, dated 20.12.2017 which was marked as Ex.D.1 was issued to the accused by one Ramprasath and Parthiban demanding a sum of Rs.3,00,000/-. D2 is the reply notice, dated 30.12.2017 which was given stating that the complainant was not at all known to them. DW.3 is the acknowledgement card which was received by his Advocate on 01.01.2018. As per the complaint, the petitioner has deposed that he has advanced Rs.12,00,000/-as loan to the accused on 05.01.2018. Immediately after three days from the date of receipt of reply notice namely, DW.2, wherein, it has been stated that the complainant was not at all known to the accused. Therefore it is highly improbable that an ordinary prudent man advance loan to a person in such circumstance i.e., 3 days after receipt of reply notice from the accused that the complainant was not all known to

him. Therefore the argument advanced in respect of cheque transaction amount is unbelievable. Further on the date of borrowal of the loan, the accused executed a promissory note in favour of the complainant and the complainant returned the promissory note before settling the loan amount, is unbelievable. Therefore the Court below had rightly acquitted the respondent,which does not warrant any interference by this Court.

7. In the result, the Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

aav

To

1. The Judicial Magistrate No.II,
   Sattur.

2.The Record keeper,
   Criminal Section,(records)
   Madurai Bench of Madras High Court,
   Madurai.(2 copies)

+1 CC to M/s.G.M. LAW OFFICE, Advocate ( SR-16761[F] dated 06/04/2022 )

**JUDGMENT MADE IN**
**Crl. A(MD)No.262 of 2022**
05.04.2022

nsn(CO)
TR(20.04.2022) 3P 5C