



Crl.A.No.113 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.113 of 2022

V.Saravanan

...Appellant

Vs.

P.Ananda Kumar

...Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, pleaded to set aside the acquittal in the judgment dated 23.01.2021 made in C.C.No.615 of 2017 on the file of the Judicial Magistrate, Fast Track Court No.I @ ML, Coimbatore and punish the respondent/accused for the offence committed by him with order of payment of compensation to the appellant/complainant by imposing fine under Section 357 of Cr.P.C.

For Appellant : Mr.A.Swaminathan

For Respondent : Mr.A.E.Ravichandran



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JUDGMENT

This appeal is filed against the judgment of the learned Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Coimbatore, dated 23.01.2021 made in C.C.No.615 of 2017.

2.By the said judgment the respondent / accused acquitted of offence under Section 138 of Negotiable Instruments Act.

3.This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure. The case of the complainant is that the complainant and accused were jointly running a business in the name and style of Sri Ayyappa Earth Movers and they were dealing with the machineries and hiring JCB equipments etc., and supplying to the customers from time to time. While they were doing the business jointly for many years, in the year 2017, they have decided to sell the machineries. After perusing all the accounts and statements it was agreed that the accused will take the machineries and towards full and final settlement the complainant will be paid a sum of Rs.77,00,000/-. Of the said sum of Rs.77,00,000/-, on 17.05.2017 the accused transferred a sum of Rs.6,00,000/-, on 29.05.2017 the accused transferred a sum of Rs.6,00,000/- and on 03.07.2017



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the accused transferred a sum of Rs.20,00,000/-. In all totalling a sum of Rs.32,00,000/- . With reference to the balance, it was agreed by the accused that he will settle the complainant on or before 20.07.2017. However, he did not do so and upon repeated demand, issued a cheque dated 24.07.2017 for the said sum of Rs.45,00,000/-. When the said cheque was presented for collection the same returned with an endorsement “funds insufficient”. When a statutory notice was issued the accused chose to send a reply containing false particulars and no amount is paid and hence the complaint. The complaint was taken on file upon recording of sworn statement. Upon issue of summons, copies and questioning, the accused denied the imputations and stood trial.

4.In order to bring home the charge, the complainant examined himself as P.W.1. The complainant marked statement of accounts with reference to his bank account for a period of 01.01.2017 to 31.07.2017, so as to demonstrate the receipt of sum of Rs.32,00,000/- as Ex.P1. The subject matter cheque for the sum of Rs.45,00,000/- was marked as Ex.P2. The return memo as Ex.P3. The statutory notice as Ex.P4. Acknowledgment card as Ex.P5 and the reply notice issued by accused as Ex.P6. When the accused was questioned on the material evidence and



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incriminating circumstances on record under Section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, on behalf of the accused, the brother of the accused one Ramamoorthy was examined as D.W.1. One Vijayakumar, the Bank official from the IndusInd Bank was examined as D.W.3. A common friend who is said to be acquainted with the dealings between the accused and the complainant was examined as D.W.2. The accused examined himself as D.W.4. On the side of the defence, the vehicle sale agreement which contained the endorsement for payment of Rs.32,00,000/- was marked as Ex.D1. The acknowledgement by the Central Board of Excise and Customs to Ayyappa Earth Movers is marked as Ex.D2. The legal notice sent on behalf of the IndusInd Bank was marked as Ex.D3. The statement of accounts of the accused is marked as Ex.D4 and Ex.D5 and his savings account statement is marked as Ex.D6. The complaint that was lodged by the accused against the complainant was marked as Ex.D7. The stop payment letter that was issued by the accused was marked as Ex.D8 and the acknowledgement receipt that is issued by the Minor Minerals Department was marked as Ex.D9.



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5. Thereafter, the trial Court considered the case of the parties. On the strength of the Ex.D1 whereby the endorsement was made in the reverse even by the complainant of the receipt of Rs.32,00,000/- as sale consideration of the vehicle and Ex.D2 portraying that the said Ayyappa Earth Movers is proprietary concern run by the D.W.1., the trial Court held that the case of the accused seem to be probable and holding that the accused has rebutted the presumption gave the benefit of doubt to the accused and acquitted the accused.

6. Mr.A.Swaminathan, the learned counsel appearing on behalf of the appellant would submit that firstly in this case, the case of the accused as if the complainant was only an employee in Ayyappa Earth Movers is false. The Ex.D1 document itself would show that the complainant was joined in the purchase of vehicle as a co-borrower. Secondly, the accused and the defence witnesses have made it different statements at different point of time as to the status of the complainant. In the cross examination the prevaricating stands are brought forth.



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7. At one instance, the complainant was mentioned as an employee and another instance they have mentioned that he was working with them together by pooling his vehicles also. Therefore, on a cumulative reading of the evidence on record it can be seen that the entire business was run together. Therefore, the first version of the accused as if the complainant is only an employee and that he misused the cheque is absolutely false. Secondly, with reference to Ex.D1, the learned counsel would submit that the arrangement between the complainant and the accused is that the vehicles will go to the accused and total sum of Rs.77,00,000/- would come to the complainant. As a part of the exercise, when the accused is getting loan from the IndusInd Bank it was shown as if it was given to the vehicle which was partly true also. Therefore, Ex.D1 does not in any manner dislodge the case of the complainant. The third submission made by the learned counsel for the appellant is that when it is the case of the accused that three cheques were stolen and misused by the complainant and the said cheques having been given as a blank cheque towards the payment of instalment for the IndusInd Bank, it can be seen from the statement of account that is filed by the accused themselves that the cheques are not given as per serial number and the manner in which the cheques are given would falsify the case of the accused. No



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person would give the cheque as a blank cheque, even if it is meant for payment of instalment to IndusInd Bank.

8.Further it is to be seen in this case that it is the case of the complainant that the accused has duly filled up the cheque and delivered it to him. On the contrary when the accused got into the box as D.W.4 in his chief examination or otherwise he did not specifically say that he did not make the writings in the Ex.P2 cheque. Therefore, if it is the case of the accused that he has handed over the cheque as a blank cheque, and he has not denied the writings in the cheque such as date, name of the complainant and the amount etc., an adverse inference should be drawn against the accused. It can be seen that the complainant has duly discharged his onus and the presumption under Section 118 and 139 of the Negotiable Instruments Act, 1881, would also operate in favour of the complainant. The accused has not done anything to prove as to how the signature found place in the hands of the complainant. The case that is projected is absolutely untenable. Therefore, this is a fit case for this Court to interfere with the judgment of the trial Court.



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9.Per contra, Mr.A.E.Ravichandran, the learned counsel appearing on behalf of the accused would submit that it is only the case of the complainant that kept on improving and the complainant made different statements as the case progressed. The statutory notice as well as the complaint clearly projected a case as if the said Ayyappa Earth Movers is a partnership firm. The same was disproved by the accused by marking Ex.D2 which categorically demonstrates that the said concern was only a proprietary concern run by D.W.1. Secondly with reference to the balance amount due said to have been claimed by the complainant, Ex.D1 has been marked. D.W.3, the Bank Manager has also signed as a witness to Ex.D1. It is seen that the earlier payment of Rs.32,00,000/- was paid only towards the sale consideration of the said vehicle. The Ex.D1 agreement clearly depicts that the amount is given only towards the sale consideration of the vehicle. The vehicle was also purchased by duly obtained loan from the IndusInd Bank. The money was paid and credited to the account of the accused who in turn transferred it to the account of the complainant and the bank Manager has ensured and supervised the same and he has claimed personal knowledge of the same also. Therefore, the version of the complainant that the



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sum of Rs.32,00,000/- was paid as part payment of the total settlement amount due is also disproved by the accused.

10. With reference to the handing over of the subject matter of cheque, the accused has let in evidence in the form of D.W.4 by examining himself and also D.W.2 and D.W.3 to bring forth that the complainant was also handling those cheque issues and there is a fair chance of the complainant laying his hands to the signed cheques. Even though, it is not prudent to hand over duly signed blank cheques alone from the nature of business and from the transaction between the parties that there were several loans that are borrowed and in respect thereof, in those days only cheques were given for the payment of installments and the serial number of the cheque also coinciding with the other cheques that is given in respect of the IndusInd bank loan, it can be seen that the version of the accused though three cheques would have been taken away and misused by the complainant is a probable case. The fact that the accused issued a due reply notice also gave a Police complaint with reference thereto and also issued a stop payment in respect of the other cheques would all buttress and corroborate the said stand of the accused. When the same has been taken into consideration and



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the trial Court has acquitted the accused and there is nothing for this Court to interfere in this appeal.

11.The learned counsel for the accused would also rely upon the judgment of Hon'ble Supreme Court in *M.S.Narayana Menon Vs. State of Kerala and another reported in [(2006) 6 Supreme Court Cases 39]*. The learned counsel would more specifically rely upon the paragraph Nos.44 and 45 to contend about the nature of “Presumption” and how it has to be treated as “rebutted”.

12.I have considered the said submissions on either side and perused the materials on record.

13.Firstly, by the pleadings made in the complaint and by producing the Ex.P2 cheque and by the examination of the complainant himself as P.W.1, the complainant has discharged his initial onus and thereafter the burden is on the accused to rebut the presumption under Section 139 of the Negotiable Instruments Act. In this regard it can be seen that by due cross-examination of the complainant the answers were extracted by the accused. Firstly with reference to



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the liability, though it is stated that in the statutory notice and in paragraph No.3 of the complaint that after perusing the accounts and statements towards the share of the complainant a sum of Rs.77,00,000/- was agreed by the accused to be paid. In the cross examination it is mentioned that Rs.77,00,000/- was agreed because in the last two years the amount that is due to the complainant was not paid.

14.In the further cross-examination, the complainant states that it is only the agreement was that the accused will retain all the three vehicles and it is only towards the sale consideration of these three vehicles the sum of Rs.77,00,000/- is paid. In another place it is mentioned that the business was closed only because there was loss in the business. In another place, the complainant states that both towards the sale consideration of the vehicle and towards his share the sum of Rs.77,00,000/- is given. Therefore, leaving apart the defence of the accused, the very claim of the complainant is different in different places and prevaricating statements are made. In the teeth of the said answers extracted from P.W.1, in order to further rebut the presumption, firstly, Ex.D2 given by the public authorities is one document where it shows the particular concern as the proprietary concern. Secondly, Ex.D1 is marked which is also witnessed by



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D.W.3. On the reverse side of the Ex.D1 due endorsement has been made in respect of the payment of the said Rs.32,00,000/-, as if it is the sale consideration of the said vehicle which also probablise the case of the accused and not that of the complainant. Therefore, by taking into account the above when the trial Court has come to the conclusion that the case of the accused seems to be probable, it cannot be said that the said finding is a perverse finding or implausible so as to upturn in an appeal against acquittal.

15. Accordingly, finding no merits, the appeal stands dismissed.

20.11.2025

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Neutral citation : Yes/No

To

The Judicial Magistrate, Fast Track Court No.I @ ML, Coimbatore.



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D.BHARATHA CHAKRAVARTHY, J.,

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