



CrI.A.No.720 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2025

CORAM

THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

CrI.A.No.720 of 2021

L.G.Ravi

... Appellant

Vs

A.Srinivas,
Prop., M/s.VERATT PROPERTY DEVELOPERS,
No.31/4, Vinayakar Koil Street,
Ayyavu Colony,
Aminthakarai, Chennai-600 029.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to allow the above Criminal Appeal and set aside the order of Acquittal passed by the learned XVIII Additional District City Civil Judge, Chennai in C.A.No.327 of 2019 dated 28.10.2020 reversing the order of conviction and sentence of the learned Metropolitan Magistrate, FTC-II, Egmore, Allikulam, Chennai-03 dated 27.08.2019 in C.C.No.1491 of 2017.



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For Appellant : Mr.J.Chandran Sundar Sashikumar

For Respondent : Mr.S.Rajendran

ORDER

The appellant as complainant filed a private complaint under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.1491 of 2017 against the respondent/accused before the learned Metropolitan Magistrate, Fast Track Court-III, Egmore, Allikulam, Chennai (trial Court). The trial Court by judgment dated 27.08.2019 convicted the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.6,00,000/- as compensation to the respondent in default to undergo Simple Imprisonment for three months. Challenging the same, the respondent/accused preferred an appeal before the learned XVIII Additional Sessions Judge, Chennai (lower appellate Court) in CrI.A.No.327 of 2019 and the same was allowed on 28.10.2020 setting aside the conviction of the trial Court. Aggrieved over the



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same, the present criminal appeal is filed by the complainant/appellant.

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2.Gist of the complaint is that the respondent/accused was doing construction business in the name and style of M/s.Veratt Property Developers. The appellant and the respondent are friends known to each other for quite sometime. The respondent approached the appellant for financial assistance to develop his business. During the second week of April 2013, the respondent availed loan of Rs.6,00,000/- (Rupees six lakh only) from the appellant, at that time, the respondent issued a cheque bearing No.992333 (Ex.P1) dated 20.05.2013 for Rs.6,00,000/- drawn on State Bank of India, Race Course Branch, Coimbatore. When the cheque (Ex.P1) presented by the appellant in Andhra Bank, Anna Nagar Branch, Chennai on 19.08.2013 for encashment, the same dishonoured and returned for the reason “Insufficient Funds” with a return memo dated 21.08.2013. Thereafter, statutory notice (Ex.P3) dated 27.08.2013 issued to the respondent’s addresses, one to the office address viz., No.4, Railway Colony 4th Street,



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Nelson Manickam Road, Aminthakarai, Chennai and another notice to the residential address viz., No.31/4, Vinayakar Kovil Street, Ayyavu Colony, Aminthakarai, Chennai. The notices returned on 03.09.2013 and 12.09.2013 as Refused Door Locked. Following the statutory procedure, the complaint in C.C.No.1491 of 2017 under Section 138 of Negotiable Instruments Act, 1881 filed before the trial Court.

3.During trial, the appellant examined himself as PW1 and marked four documents Exs.P1 to P4. On the side of the defence, no witness examined but two document marked as Exs.D1 & D2. On conclusion of trial, the trial Court convicted the respondent as stated above. On appeal, the lower appellate Court acquitted the respondent setting aside the conviction of the trial Court. Challenging the same, the present Criminal Appeal is filed by the complainant/appellant.

4.Learned counsel for the appellant submitted that the respondent is



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known to the appellant as a Builder and he was doing construction business.

For business development, the respondent availed loan of Rs.6,00,000/- from the appellant, in discharge of liability, the respondent issued a cheque (Ex.P1) dated 20.05.2013 drawn on State Bank of India, Race Course Branch, Coimbatore. The respondent is in the construction business is not denied. The appellant purchased a flat from the respondent for Rs.65,00,000/- and Rs.10,00,000/- paid for sale and execution of UDS. The respondent not denied execution of sale deed for Rs.65,00,000/-. It is projected as though the respondent issued two cheques towards settlement when the appellant raised objection with regard to unauthorised construction converting a portion of car parking into a flat and also open space in the second floor into a flat, the appellant sent complaint to Chennai Metropolitan Development Authority, Chennai Corporation, marking copy to Land Owners and to the respondent's wife on 19.04.2013 and 25.05.2013.

5.He further submitted that the respondent is the Proprietor of



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M/s.Veratt Property Developers and his wife Ms.A.Ramasri is the Proprietor

of M/s.Virat Constructions. It is the respondent who was taking care of both businesses. As a businessman, the respondent required money, approached the appellant who extended loan. When the Court questioned the respondent on 19.07.2017, he admits that he availed loan from the appellant but gives an explanation that the loan was not given as projected, he also admits that he gave undated signed cheque for Rs.6,00,000/-. The trial Court finding that the respondent admitted issuance of cheque (Ex.P1), its signature and could not probablize his defence, convicted the respondent. On the contrary, the lower appellate Court heavily relied upon Exs.D1 & D2 and gave a finding that from Exs.D1 & D2, it can be seen that there was animosity between the appellant and respondent, hence, there is no possibility of the respondent availing loan, issuing cheque (Ex.P1) dated 20.05.2013 to the appellant. Once the respondent admits his signature and issuance of cheque (Ex.P1), the statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881 comes into play. The trial Court rightly convicted the respondent



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but the lower appellate Court misread the evidence and materials allowed the appeal setting aside the conviction. Hence, the appeal to be allowed and the judgment of conviction to be confirmed.

6.Learned counsel for the respondent submitted that in this case, the respondent's mother tongue is Telugu and he hails from Coimabtoire and he was doing business in Chennai as Property Developer. The respondent developed a property in Panneer Nagar, Mogappair after entering into an agreement with the property owners Ms.Nalini and Mr.V.Ramanakumar. This property was developed into flats. The appellant purchased a flat on the first floor, UDS registered in his name and the flat was constructed and handed over to the appellant at the cost of Rs.65,00,000/-. When the respondent received sale amount for the flat of Rs.65,00,000/- from the appellant, there is no reason or requirement to avail loan of Rs.6,00,000/- from the appellant. In fact, the admitted position of the appellant is that he issued two notices (Exs.D1 & D2). In Ex.D1, the appellant makes specific allegation against the developer alleging that the respondent put up an unauthorised construction of



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two bedroomed flat measuring 550 sq.ft in the car parking area in the ground floor and put up a construction measuring 350 sq.ft in the second floor open terrace, which is in violation of building and plan permission. At that time, the respondent as a Builder approached the appellant for a compromise and the appellant demanded Rs.6,00,000/- for plot No.67 and another Rs.6,00,000/- for plot No.71 to withdraw the complaint from Chennai Metropolitan Development Authority and Chennai Corporation. Contrary to the agreement, the appellant pursued the complaint and filed a writ petition before this Court and also initiated contempt case against the CMDA and Corporation officials and ensured demoliton of unauthorised constructions. The cheques were not given in discharge of any liability, it was to buy peace with the appellant, so that unauthorised construction is not disturbed. Hence, the cheque (Ex.P1) is not issued in discharge of any liability and it was on condition to withdraw the complaints, hence, the cheque (Ex.P1) has got no relevance.



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7.He further submitted that the statutory notice (Ex.P3) was issued addressing to M/s.Virat Constructions but the cheque signed by the respondent as M/s.Veratt Property Developers. The Proprietor of M/s.Virat Constructions is the wife of of the respondent Ms.A.Ramasri, hence, Section 138(b) of Negotiable Instruments Act, 1881 not complied in this case. He further submitted that the trial Court merely gone by Sections 118 & 139 of Negotiable Instruments Act, 1881 and found that the respondent not denied issuance of cheque (Ex.P1) and its signature failing to look into the fact that the cheque is drawn by M/s.Veratt Property Developers but the statutory notice (Ex.P3) issued to M/s.Virat Constructions and the complaint filed against M/s.Veratt Property Developers and the respondent is not the Proprietor of M/s.Veratt Property Developers. The appellant admits the animosity between the appellant and respondent by marking Exs.D1 & D2.

8.He further submitted that the appellant's specific stand is that during second week of April 2013, the respondent availed loan of Rs.6,00,000/- and



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Exs.D1 & D2 are dated 19.04.2013 and 25.05.2013, which would prove that

there is no possibility of the respondent approaching the appellant for a loan when there was no cordial relationship between them. When the relationship was animus between the appellant and respondent, the appellant could not have extended loan to the respondent, defies normal conduct. The appellant admits that his relative Babu from Arakkonam and filed a complaint under Section 138 of Negotiable Instruments Act, 1881 before the learned Judicial Magistrate, Arakkonam against the respondent and the appellant accompanied Babu during the hearings of the case. The contention of the respondent is that the cheque for another plot received by the appellant, was misused and a 138 case filed using the name of Babu in C.C.No.47 of 2016 before the learned Judicial Magistrate, Arakkonam. The said Babu was questioned in cross examination about the relationship that how he got the cheque from the appellant and Babu only a name lender, but the said Babu was unable to give proper explanation about the relationship with the respondent and M/s.Virat Constructions. Having no answer and finding



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caught about the falsity of the case and getting exposed, Babu thereafter not attended the Court and finally the case in C.C.No.47 of 2016 dismissed for non-prosecution on 25.11.2024.

9.It is further submitted that right from the beginning the respondent's stand is that the cheque (Ex.P1) was given only to buy peace from the appellant not to pursue the unauthorised constructions. The appellant admits that unauthorised constructed was demolished and cleared. In such circumstances, the cheque (Ex.P1) has got no relevance. Thus, the conviction of the trial Court is on a wrong premise, on the other hand, the lower appellate Court rightly found the presumption rebutted by the respondent and the appellant failed to prove his case, following the case of ***Rangappa v. Sri Mohan*** reported in ***(2010) 11 SCC 441*** allowed the appeal setting aside the conviction. In view of the above, the appeal to be dismissed confirming the acquittal of lower appellate Court.



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10.Considering the submissions and on perusal of the materials, it is seen that the appellant purchased a flat in Panneer Nagar, Mogappair is not disputed. The respondent as Proprietor of M/s.Veratt Property Developers, is the developer of the property in Panneer Nagar, Mogappair in plot Nos.67 & 71 and the property owners are Ms.Nalini and Mr.Ramanakumar. The appellant purchased a flat in the first floor and paid Rs.65,00,000/-, of which, Rs.10,00,000/- was towards UDS. The respondent obtained a plan and building permission in the year 2011, according to the approved plan, the entire ground floor was for open car parking, two flats to be constructed in the first and second floor and open terrace in the second floor. The respondent put up an unauthorized construction of two bedroomed flat measuring 550 sq.ft in car parking area in the ground floor and also put up a construction measuring 350 sq.ft in second floor open terrace in both plots which was objected by the appellant. For this violation, appellant sent complaints to Chennai Metropolitan Development Authority and Chennai Corporation on 19.04.2013, followed it, by a legal notice on 25.05.2013 to



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Chennai Metropolitan Development Authority, Chennai Corporation, Land

Owners and to the Proprietor of M/s.Virat Constructions Ms.Ramasri.

11.The contention of the respondent is that to buy peace, on this contingency he issued two cheques of Rs.6,00,000/- each to the appellant, one of the cheque is Ex.P1. The cheque (Ex.P1), according to the respondent, is not issued to the appellant in discharge of any liability and he had no reason to avail loan from the appellant more so during the second week of April 2013 when the complaint and notices Exs.D1 & D2 issued. The complaint made against the respondent to Chennai Metropolitan Development Authority and others, was during April and May 2013. When there is such animosity between the appellant and respondent, there cannot be any request for loan by the respondent. The reason given by the appellant defies normal conduct.

12.In this case, admittedly, the cheque (Ex.P1) was issued by



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M/s.Veratt Property Developers signed by the respondent as Proprietor. The statutory notice (Ex.P3) was issued to Mr.A.Srinivas as Proprietor of M/s.Virat Constructions. But the Proprietor of M/s.Virat Constructions is Ms.A.Ramasri, wife of the respondent. It is cannot be contended by the appellant that he was not aware that the respondent is the Proprietor of M/s.Veratt Property Developers and his wife Ms.Ramasri is the Proprietor of M/s.Virat Constructions. No such contention or any such representation made by the respondent. The appellant by his own admission in Ex.D2 admits that the 5th noticee is Ms.A.Ramasri, Proprietor of M/s.Virat Constructions. Hence, the statutory notice (Ex.P3) addressed to the respondent in the name of M/s.Virat Constructions is not in compliance to Section 138(b) of Negotiable Instruments Act, 1881. Hence, the foundational fact itself is defective. The respondent questioned the appellant with regard to animosity, issuance of notice and removal of encroachment, all admitted by the appellant. In this case, the appellant admits his relative Babu, filing 138 case against the respondent in C.C.No.47 of 2016 before the learned



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Judicial Magistrate, Arakkonam and the appellant accompanying Babu to the

Court not denied or seriously disputed. The copy of the judgment of acquittal in C.C.No.47 of 2016 dated 25.11.2024 produced further fortifies the explanation of the respondent that the appellant misused the two cheques which were given to buy peace. Apart from the appellant receiving two cheque from the respondent, made complaint to Chennai Metropolitan Development Authority, Chennai Corporation, Land Owners and others and ensured removal of unauthorised construction, encroachment. Hence, the respondent rebutted the presumption by way of probable defence.

13.The trial Court had merely gone by the statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881, not considered the defence put forth by the respondent disputing issuance of cheque (Ex.P1) and probability of loan from the appellant. The lower appellate Court on the facts of the case found that the respondent rightly rebutted the presumption by probable defence and following *Rangappa case* (cited supra) allowed the



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appeal setting aside the trial Court conviction.

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14.From the above, it is clear that the probable defence on the part of the respondent is well established and the burden shifted upon the appellant to establish the case beyond all reasonable doubt which he failed. Thus, the conviction of the trial Court is not sustainable. This Court finds no reason to interfere with the judgment of the lower appellate Court.

15.In the result, this Criminal Appeal stands dismissed confirming the judgment of acquittal, dated 28.10.2020 in CrI.A.No.327 of 2019 passed by the learned XVIII Additional Sessions Judge, Chennai.

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Speaking order/Non-speaking order

Index: Yes/No

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Chennai.

2.The Metropolitan Magistrate,
Fast Track Court-II, Chennai.



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