



*Crl.A.Nos.794 and 801 of 2010*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

WEB COPY

DATED : 04.07.2025

CORAM :

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Crl.A.Nos.794 and 801 of 2010

K.K.V.Seetharaman

.. Appellant  
(in both the cases)

**Versus**

R.Chandera Sekar

.. Respondent  
(in both the cases)

**Prayer in Crl.A.No.794 of 2010 :** Criminal Appeal filed under Section 378(4) of Cr.P.C., against the judgment passed in C.C.No.15 of 2009, dated 22.11.2010 on the file of the learned Judicial Magistrate No.I, Tiruvallur and to set aside the same.

**Prayer in Crl.A.No.801 of 2010 :** Criminal Appeal filed under Section 378(4) of Cr.P.C., against the judgment passed in C.C.No.16 of 2009, dated 22.11.2010 on the file of the learned Judicial Magistrate No.I, Tiruvallur and to set aside the same.



WEB COPY



*Crl.A.Nos.794 and 801 of 2010*

For Appellant : Mr.A.Natarajan,  
(in both the cases) Senior Counsel,  
for Ms.A.Madhumathi

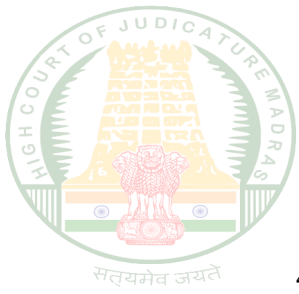
For Respondent : Mr.V.Karthikeyan,  
(in both the cases) for Ms.S.Hemalatha

### **COMMON JUDGMENT**

These two appeals are related and are therefore disposed of through this common judgment.

2. These appeals are filed against the judgments in C.C.Nos.15 and 16 of 2009 by the learned Judicial Magistrate No. I, Tiruvallur. In those judgments, the respondent/accused was acquitted of the offences under Section 138 of the Negotiable Instruments Act, 1881.

3. Heard *Mr.A.Natarajan*, learned Senior Counsel for the appellant, and *Mr.V.Karthikeyan*, learned Counsel for the respondent.



*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

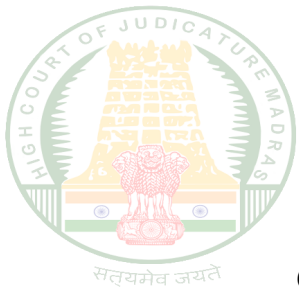
4. The learned Senior Counsel for the appellant/complainant would argue that this is a straightforward land transaction. The appellant/complainant owned land in a specific village, and the respondent/accused is a resident of that village. The appellant/complainant entrusted the property by executing a Power of Attorney in favor of the respondent/accused. It was open to the respondent/accused to register the property either for himself or for another purchaser. The total sale consideration was fixed, with only Rs.45,00,000/- paid in cash to the appellant/complainant. For the remaining amount, a cheque for Rs.73,45,000/-, which is involved in C.C.No.15 of 2009, and two other cheques totaling Rs.65,00,000/-, involved in C.C.No.16 of 2009, were issued by the appellant/complainant. When these cheques were presented, they were dishonored. The appellant/complainant issued a demand notice in accordance with Section 138 of the Negotiable Instruments Act, 1881. The respondent/accused did not deny the liability, nor did they issue a reply notice. Under these circumstances, the complaints were filed.



*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

5. When the respondent/accused did not issue any reply notice denying the transaction, that is the first circumstance the Trial Court should have considered. The second circumstance is that no defense was presented even during the cross-examination of the appellant/complainant regarding why the respondent/accused issued the cheques to the appellant/complainant. In the absence of any denial of liability, once the cheques were presented, the presumption under the Negotiable Instruments Act, 1881, applies in favour of the appellant/complainant. The respondent/accused did not offer any plausible defense, let alone meet the standard of preponderance of probability before the Trial Court. With no version from the respondent/accused and the appellant/complainant properly establishing the ingredients under Section 138 of the Negotiable Instruments Act, 1881, supported by the presumption, the Trial Court should have convicted the respondent/accused; the finding of acquittal is perverse in nature.



*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

6. The learned Senior Counsel further submits that the Trial Court's consideration of the value mentioned in the sale deed is irrelevant. The pertinent issue is the agreement between the respondent/accused, who acted as the Power of Attorney Agent, and the appellant/complainant. Even if a lesser amount is shown in the registered sale deed, the appellant/complainant has no concern with that. It is evident that the defense admitted that a sum of Rs.45,00,000/- was paid in cash, which exceeds the value stated in the sale deed. If the respondent/accused, acting as the Power of Attorney Agent, and the third-party purchaser, intentionally suppressed the actual sale amount and registered the sale deed based only on the guideline value, that does not prevent the appellant/complainant from asserting the true sale consideration. The appellant/complainant is entitled to the sale consideration because the respondent/accused agreed to pay that amount and issued the cheque. Therefore, the appellant/complainant withstood cross-examination without eliciting any answers favoring the defense. Accordingly, the Trial Court erred in holding that the liability was not

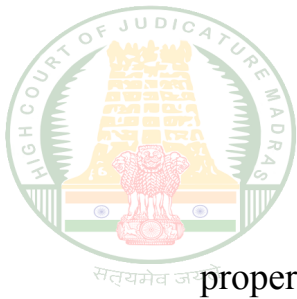


*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

proved. It should have regarded that, under the presumption established by the Act, the appellant/complainant discharged his burden. In the absence of any plausible defense from the respondent/accused, the Court ought to have convicted him. This Court should reverse the Trial Court's finding and convict the respondent/accused, and impose the cheque amount as a fine, to be paid to the appellant.

7. Per *contra*, *Mr.V.Karthikeyan*, learned Counsel for the respondent/accused, would submit that in this case, the purpose of issuing the cheque itself is not clearly mentioned either in the demand notice or in the complaint. The complaint presented a different version in the sworn statement. Yet another version appeared during the chief examination and cross-examination, and responses were elicited accordingly. Ultimately, the defense, aiming to prove that the appellant/complainant's claim cannot be true, examined a defense witness and also marked the sale deed as documentary evidence of the land sale. The respondent/accused sold the



*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

property only with the Power of Attorney of the appellant/complainant. In light of this, nothing further remains payable, and therefore, the Trial Court rightly acquitted the respondent.

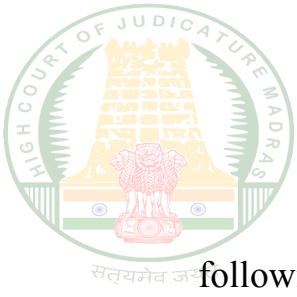
8. I have considered the rival submissions made on either side and perused the material records of the case.

9. In this case, the complaints are identical, and regarding the liability, firstly, in the demand notice issued after the dishonour of the cheque, the following averment is made concerning the liability:-

"1. That you have issue a cheque payable to our client for the land transaction.

|               |                                                                                  |
|---------------|----------------------------------------------------------------------------------|
| Cheque Number | : 286264.                                                                        |
| Date on       | : 26.06.2008.                                                                    |
| Drawn on      | : Vijaya Bank,<br>T.Nagar, Chennai - 17.                                         |
| Amount        | : Rs.73,45,000/-<br>(Rupees Seventy Three<br>Lakhs Forty Five<br>Thousand only)" |

10. Secondly, in the complaint, the only averment made is the



Crl.A.Nos.794 and 801 of 2010

following, and nothing else is mentioned:

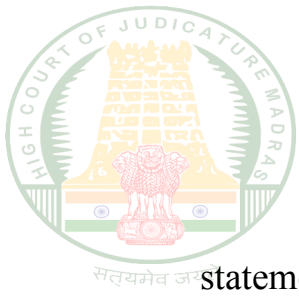
WEB COPY

" The accused is known to the complainant, in that regard the accused approached the complainant for the land transaction. Believing on the words of the accused the complainant registers the lands of his own in the same village. For that a part amount was paid by the accused and for the rest of the amount the accused issued a cheque for Rs.73,45,000/- (Rupees Seventy Three Lakhs forty five thousand only) Cheque No: 286264 Dated 26.06.2008 in favor of the complainant drawn on Vijaya Bank, T.Nagar, Chennai - 17."

11. When the cheque is claimed to relate to a large liability of Rs.73,45,000/-, it is evident that the complaint is made without even including the necessary allegations clearly stating the nature of the liability. Nevertheless, when the sworn statement was recorded, the following was the statement made by the appellant/complainant:-

"எதிரி என்னை அணுகி கடனாக ரூ.73,45,000/- (ரூபாய் எழுபத்தி மூன்று லட்சத்து நாற்பத்தைந்து ஆயிரம் மட்டும்) கொடுத்தேன். அதை நான் திருப்பிக் கேட்டதற்கு எதிரி அந்த தொகைக்கான காசோலை ஒன்று கொடுத்தார்."

12. It can be seen that a different version is asserted in the sworn



*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

statement. Then, in the proof-affidavit filed by the appellant/complainant,

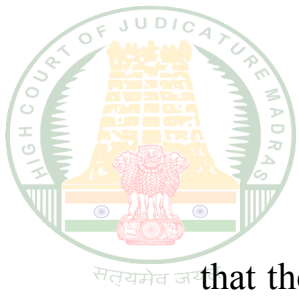
once again, the following are the averments made with reference to the liability:-

"2. I have instituted the above said case as against the accused is R.Chandrasekar S/o. Ramasamy Naicker, residing at Valasaivettikadu village, Illupur post, Thiruvallur Taluk & District whose cheque dishonoured in the Transaction.

3. It is submit for Land sale Transaction a part of amount was given by the accused the remaining amount the accused issue a cheque for Rs.73,45,000/-."

13. Identical allegations are made in the second case as well. Thus, it can be seen that in order to claim the benefit of even the presumption, there must at least be the basic allegations specifying the obligation for which the respondent/accused issued the cheque. That is not clearly stated, and a different version is presented in the sworn statement.

14. The learned Senior Counsel would bring to the notice of the Court that normally, on a crowded day, the sworn statements are typed mechanically by the typist and, except for a lack of care, it cannot be said



*Crl.A.Nos.794 and 801 of 2010*

that the appellant/complainant took a different stand in the sworn statement.

WEB COPY

I am of the view that it could have happened as the manner in which the learned Senior Counsel portrays before the Court. However, I am of the opinion that even ignoring the sworn statement, the basic averments are lacking even in the very complaint and proof-affidavit itself. Be that as it may, the defense has presented detailed evidence with reference to the actual sale consideration and the marking of the sale deed, etc. In that view of the matter, when the Trial Court has appraised the evidence and concluded that the version of the appellant/complainant is not credible. It cannot be said that the said finding is perverse in nature or a completely irrelevant finding so as to interfere with an appeal against the acquittal.

15. Further, it can be seen that although usually the Court would not insist on additional proof and would proceed based on the presumption, but when the cheque amounts are Rs.73,25,000/- and Rs.65,00,000/-, for such a significant transaction, the appellant/complainant should at least make basic



*Crl.A.Nos.794 and 801 of 2010*

WEB COPY

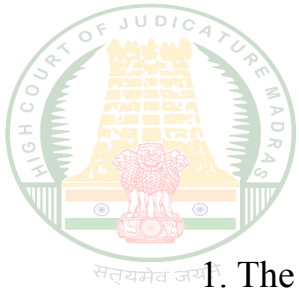
allegations regarding the total amount due, the sale consideration fixed, and the date of agreement, payment schedule, etc. The Court also takes into consideration that parties do sell lands for different amounts and record different figures in the sale deed, possibly taking advantage of the guideline value. Even if that act between the accused and a third party is not binding on the complainant, still, in the absence of any proof regarding the actual sale price agreed upon, especially without the appellant/complainant explicitly stating the total sale consideration, I am unable to agree with the appellant or overturn the finding made by the Trial Court.

16. Accordingly, finding no merits, these Criminal Appeals are dismissed.

04.07.2025

Neutral Citation : no  
grs

To



*Crl.A.Nos.794 and 801 of 2010*

1. The Judicial Magistrate No.I,  
Tiruvallur.

2. The Section Officer,  
Criminal Section,  
High Court of Madras.

**D.BHARATHA CHAKRAVARTHY, J.**

grs

Crl.A.Nos.794 and 801 of 2010



WEB COPY



*Crl.A.Nos.794 and 801 of 2010*

04.07.2025