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Crl.R.C.No.256 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 11.09.2024	Orders Pronounced On 09.01.2025
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Crl.R.C.No.256 of 2021

A.Nataraj

... Petitioner

Vs.

1.P.Ashok Kumar

2.State of Tamil Nadu,
Rep. by Public Prosecutor.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and. 401 of Criminal Procedure Code, to set aside the fair and final order dated 24.06.2020 passed in Crl.A.No.425 of 2018 on the file of learned III Additional District and Sessions Judge, Coimbatore and restore the fair and final order dated 03.09.2018 passed in C.C.No.2216 of 2016 on the file of the Judicial Magistrate, Fast Track Court at Magistrate Level-2, Coimbatore.



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For Petitioner : Mr.S.S.Mathivanan
For R1 : Mr.C.Deepak Kumar
For R2 : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner as complainant filed a private complaint under Section 138 of Negotiable Instruments Act against the first respondent in C.C.No.221 of 2016. The Trial Court by judgment dated 03.09.2018 allowed the complaint, found the first respondent guilty and sentenced him to undergo six months simple imprisonment and to pay compensation of Rs.10,00,000/- along with 6% interest from the date of the cheques. Aggrieved against the same, the first respondent preferred an appeal before the Sessions Court, Coimbatore in Crl.A.No.425 of 2018. The Sessions Judge by judgment dated 24.06.2020 allowed the appeal, setting aside the conviction and sentence imposed by the Trial Court and acquitted the first respondent from the case. Against which, the present revision petition filed.



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2.The facts of the case is that the petitioner's claim is that the first respondent is a family friend, who is a gold smith, for his urgent business needs, the first respondent approached the petitioner for a loan and agreed to pay interest for the loan. A sum of Rs.10,00,000/- was received by the first respondent on 14.09.2015 and on the same day, he executed a promissory note agreeing to repay the loan with 24% interest. On 14.03.2016, the first respondent issued two cheques towards discharge of the loan for a sum of Rs.5,00,000/- each dated 15.03.2016 and 19.03.2016 respectively. When the cheques were presented for encashment, the same got dishonoured for the reason 'Funds Insufficient'. Thereafter, the petitioner issued statutory notice dated 24.03.2016. Though the notice was received, the first respondent neither repaid the cheque amount nor replied. Hence, the petitioner filed the complaint. During trial, the petitioner examined himself as P.W.1 and marked documents Ex.P1 to Ex.P7. The respondent examined himself as R.W.1 and marked documents Ex.R1 and Ex.R2. The Trial Court convicted the first respondent but the Lower Appellate Court set aside the conviction. Against which, the present revision petition is filed.



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3.The contention of the learned counsel for the petitioner is that the first respondent had not denied his signature in Ex.P1/promissory note, Ex.P2 and Ex.P3/Cheques. The defence taken by the first respondent is that he approached the petitioner through his friend Saravanan @ Govindaraj, who introduced the petitioner as Financier and took him to the petitioner on 07.08.2015. The first respondent borrowed only a sum of Rs.1,00,000/- from the petitioner, at that time, the petitioner demanded four cheques, two promissory notes, handing over of title deeds and signed blank non-judicial papers of Rs.20/- and Rs.50/-. Agreeing to the same, the respondent on 08.08.2015 handed over the documents along with two cheques drawn on Indian Bank and two cheques drawn on Central Cooperative Bank. The further defence of the respondent is that the promissory note typewritten, the cheques filled up in black ink and the signature in the cheques were in blue ink, which confirms the petitioner had filled up the blank cheques and the promissory note. The further defence of the first respondent is that he repaid the loan amount of Rs,.1,00,000/-, on 01.10.2015 when the first respondent asked for return of blank promissory notes, cheques and title documents, the petitioner is said to have informed him that the same were



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kept in the locker and he would collect the same and hand over to him. But even after two months passed by, the documents were not returned. Hence, on 01.03.2016 the first respondent went in person to the petitioner asking for the documents. In the meanwhile, the said Saravanan @ Govindaraj passed away. The petitioner claimed that the said Sarvanaran @ Govindaraj borrowed Rs.4,00,000/- from the petitioner and unless the first respondent settles the same, the documents will not be returned. Hence, the first respondent sent a police complaint on 03.03.2016 to the Inspector of Police, B2 R.S.Puram Police Station, and to the Commissioner of Police, Coimbatore. This has been accepted to be a probable defence by the Lower Appellate Court contrary to the Trial Court, which found the first respondent admitting his signature in Ex.P1 to Ex.P3 and his explanation is only an after thought. As per Section 20 of the Negotiable Instruments Act once a blank signed instrument signed and handed over to the holder, the executant to the document gives a right, authority to the holder to fill up the same. Further, as per Section 118 of the Negotiable Instruments Act, the presumption is in favour of the holder of the cheque/Negotiable Instrument. Further, the Trial Court found that the complaint/Ex.R1 is addressed to the



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Assistant Commissioner of Police, Coimbatore which is without any acknowledgment and Ex.R2 is a postal acknowledgment addressed to the Inspector of Police, B2 R.S.Puram Police Station. Ex.R2 is not an acknowledgment for Ex.R1 and both cannot be correlated. Further, the admitted position of the respondent as could be seen from Ex.R1/police complainant the first respondent admits execution of the documents and deposit of title deeds. The first respondent later questioned the financial capability of the petitioner, which was rejected by the Trial Court. Hence, the conviction and sentence imposed by the Trial Court to be restored.

4.The learned counsel for the first respondent submitted that the Lower Appellate Court considered both oral and documentary evidence independently and rightly found that the first respondent has probalised his defence. The Lower Appellate Court found that though the signature in Ex.P1 to Ex.P3 is admitted, Ex.P1 is in a typed form, though it is not required to examine the witness to the promissory note but when the same was questioned, the petitioner/complainant ought to have examined one Chinnaraj witness to Ex.P1 promissory note. Likewise the petitioner



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claimed that he had taken loan from one Loganathan but he failed to examine the said Loganathan. Further, the petitioner not given any explanation for the difference in the ink colours in the cheques and there is no explanation for the fact that for a loan of Rs.10,00,000/-, why two cheques of Rs.5,00,000/- each obtained. The first respondent lodged a complaint on 03.03.2016, in such circumstances the respondent would not have given cheques dated 15.03.2016 and 19.03.2016. Further, in this case, statutory notice was issued on 24.03.2016, the same was received by the first respondent on 28.03.2016 and the complaint was filed on 13.04.2016 without waiting for fifteen days, hence no cause of action arose. It is further submitted that when the first respondent questioned the financial capability of the petitioner, he ought to have examined one Loganathan, from whom he took loan or produced any documents to show the petitioner had sufficient capability to pay the loan amount. Thus, the finding of the Lower Appellate Court that the first respondent rebutted the statutory presumption and probabilized his defence and hence, set aside the conviction and allowed the appeal is in order needs no interference. Hence, prayed for dismissal of the revision.



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5. In support of his contention, the learned counsel for the first respondent relied upon the following judgments:

- 1) *M.S.Narayana Menon Alias Mani vs. State of Kerala and another* reported in (2006) 6 SCC 39, *Vijay vs. Laxman and another* reported in (2013) 3 SCC 86 and *K.Prakashan vs. P.K.Surenderan* reported in (2008) 1 SCC 258 for the point that burden of proof on accused is not heavy – he can discharge his burden on the basis of preponderance of probability through direct or circumstantial evidence. Further so long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged.
- 2) *Basalingappa vs. Mudibasappa* reported in *AIR 2019 SC 1983*, *M.Sivabakiyam vs. K.Kulanthaivel* reported in *2023 Supreme (Mad) 2887* and *K.Subramani vs. K.Damodara Naidu* reported in (2015) 1 SCC 99 for the point that the complainant to prove his financial capability.



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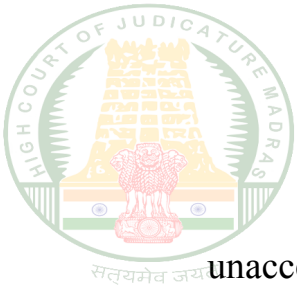
- 3) ***B.Poongothai vs. K.Karuppusamy*** reported in ***2021-1-LW(Crl.) 441*** for the point that non-reflection of transaction in the Statement of Accounts and in the Income Tax Returns ought to be taken note of.
- 4) ***Arumugam vs. K.S.Sampath Kumar*** reported in ***(2017) 2 MLJ(Crl.) 387*** and ***G.S.Gunasekar vs. Vinayaga Trading Company*** reported in ***2017 Supreme (Mad) 422*** for the point that when the complainant deposes that he does not know the accused where he resides, details of his business transaction, in such cases the complainant failed to establish his case that the cheque was issued in his favour to discharge the liability.
- 5) ***M.R.Parthibanraj vs. R.Kausik*** reported in ***2017 (4) MLJ (Crl.) 675*** and ***P.Eswaran vs. J.A.Abdul Hameed*** reported in ***2006 (2) Bankmann 481*** for the point that different pens used to fill the contents of the cheque and signature portion of the cheques are sufficient to hold that the respondent discharged his initial burden.



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6.Considering the submissions made and on perusal of the materials, in this case the first respondent had not denied his signature in the promissory note/Ex.P1 and two cheques/Ex.P2 and Ex.P3. The defence taken by the first respondent is that he had approached the petitioner through his friend Saravanan @ Govindaraj, who took him to the petitioner, at that time, the first respondent handed over blank signed promissory notes, blank signed cheques and blank signed non-judicial stamp papers. This is during September 2015 and the amount borrowed was only Rs.1,00,000/-. By December 2015, the first respondent is said to have repaid the entire loan amount and discharged his liability. But to prove the same, the first respondent is unable to produce any document or material. From perusal of Ex.R1, which is the admitted case of the first respondent, it is seen that he admits about the loan and handing over of four blank cheques including Ex.P2 and Ex.P3. It is also to be seen that the admitted case of the first respondent is that he handed over properly Document No.15693/2010 to the petitioner. For a loan of Rs.1,00,000/- neither there would be a demand of title deeds by the loaner nor the loanee would hand over the title deeds which would prove that the defence propounded by the first respondent is



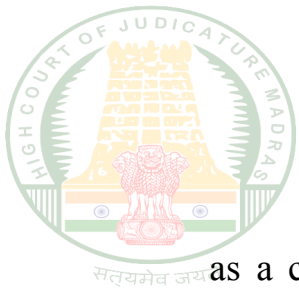
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unacceptable. Added to it, the first respondent had not denied the receipt of statutory notice/Ex.P6 and Ex.P7 is the acknowledgment for receipt of statutory notice by the first respondent. The signature of the first respondent in Ex.P1 to Ex.P3 and P.W.7 confirm that the first respondent had consciously and knowingly executed the documents for the loan of Rs.10,00,000/-. The first respondent is unable to give any reason as to why there is no reply for the statutory notice/Ex.P6. The Lower Appellate Court had given a finding that it is not necessary to examine the witness to the promissory note/Ex.P1 and further confirms the execution of Ex.P1 to Ex.P3 by the respondent but merely on the difference in the ink, it cannot reject Ex.P1 to Ex.P3. Likewise, the Lower Appellate Court confirms that Ex.R1 is the copy of the complaint and Ex.R2 is the acknowledgment but it is for two different persons. The first respondent failed to produce the copy of the acknowledgment for Ex.R1 and the copy of the complaint for Ex.R2. Hence, it cannot be construed that the first respondent has probablized his defence.



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7. That being so, holding that during cross examination the petitioner admitted that the first respondent preferred a complaint and coming to the conclusion that the admitted facts need not be proved is not proper. During the cross examination of P.W.1 on 09.12.2016, it is seen that Ex.R1 and Ex.R2 not produced, marked as exhibits and the documents not confronted with the petitioner. Ex.R1 and Ex.R2 marked by the first respondent who examined himself as R.W.1 on 06.07.2017. Hence, the finding of the Lower Appellate Court that the admitted facts need not be proved as regards Ex.R1 and Ex.R2 is not proper. Likewise, the finding of the Lower Appellate Court that why two cheques have been given to discharge one loan is not acceptable since the cheques are of two different dates and for the financial arrangements, such cheques are given. Thus, this Court is of the view that the finding of the Lower Appellate Court is not on proper appreciation of evidence and materials produced and hence, the same is not sustainable. Further, on the facts and circumstances of the above case it is seen that in this case, the Trial Court convicted the first respondent but the Lower Appellate Court acquitted him without proper appreciation of evidence leading to miscarriage of justice. Hence, this case cannot be viewed merely



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as a case of appeal against acquittal since two contra judgment has been passed by the Courts below.

8. Accordingly, the Criminal Revision Petition stands allowed, the judgment of acquittal rendered by the learned III Additional District and Sessions Judge, Coimbatore in Crl.A.No.425 of 2018 dated 24.06.2020 is set aside and the conviction and sentence passed and imposed by the learned Judicial Magistrate, Fast Track Court at Magistrate Level-2, Coimbatore in C.C.No.2216 of 2016 dated 03.09.2018 is restored. The learned Judicial Magistrate, Fast Track Court at Magistrate Level-2, Coimbatore is directed to issue conviction warrant immediately and secure the first respondent to undergo his period of sentence without any delay.

09.01.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court at Magistrate Level-2,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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