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CrI.A.No.314 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.314 of 2018

R.Prabhakaran

... Appellant

Vs.

M.Balamurugan

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to call for the records relating to order dated 21.02.2018 made in C.A.No.39 of 2017 on the file of the Fourth Additional District and Sessions Court, Erode District at Bhavani reversal of the judgment dated 10.01.2017 made in STC.No.65 of 2015 on the file of the learned Second Additional District Munsif Court, Bhavani (transferred STC No.2729 of 2013 on the file of the learned Judicial Magistrate Court, Bhavani), and set aside the same by allowing this Criminal Appeal.

For Appellant : Mr.N.Manoharan



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For Respondent : Mr.M.Guruprasad

JUDGMENT

The appellant as complainant filed a private complaint under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.65 of 2015 before the learned II Additional District Munsif, Bhavani (trial Court) against the respondent/accused. The trial Court by judgment dated 10.01.2017 convicted the respondent and sentenced to undergo Simple Imprisonment for one year and to pay the cheque amount of Rs.7,00,000/- as compensation to the respondent in default to undergo Simple Imprisonment for three months, for offence under Section 138 of Negotiable Instruments Act, 1881. Challenging the same, the respondent preferred an appeal before the learned Additional District Judge, Bhavani (lower appellate Court) in Crl.A.No.39 of 2017 and the same was allowed by judgment dated 21.02.2018 setting aside the judgment of the trial Court, aggrieved over the same, the present Criminal Appeal is filed by the appellant/complainant.

2.For clarity, the appellant and respondent are referred to as complainant and accused respectively as per the complaint.



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3. Gist of the case is that the complainant and accused are friends, the accused borrowed a sum of Rs.7,00,000/- from the complainant on 27.11.2012 for his urgent expenses and undertook to repay the same within a month. In discharge of liability, the accused issued a cheque bearing No.909287 (Ex.P1), dated 27.12.2012 drawn on Karur Vysya Bank, Bhavani Branch. When the complainant presented the cheque (Ex.P1) for encashment through his bank *i.e.*, Tamil Nadu Mercantile Bank, Bhavani Branch on 12.03.2013, the same was returned with an endorsement “Funds Insufficient” on 13.03.2013 *vide* return memo (Ex.P2). Thereafter, the statutory notice (Ex.P3) dated 08.04.2013 issued to the accused who received the same and sent a reply (Ex.P5) on 10.04.2013 with vexatious allegations, annoyed over the same, the complaint filed before the trial Court.

4. During trial, the complainant examined as PW1 and the Bank Manager, Karur Vysya Bank, Bhavani Branch examined as PW2 and marked Exs.P1 to P6. On the side of the defence, the accused examined



himself as DW1 and marked Exs.D1 & D2. On conclusion of trial, the trial Court convicted the accused and the lower appellate Court had set aside the conviction. As against the acquittal, the present appeal is filed.

5.The learned counsel for the complainant submitted that the Hon'ble Apex Court in ***Rangappa v. Shr.Mohan*** reported in ***AIR 2010 SC 1898*** held that the statutory presumption under Section 139 of Negotiable Instruments Act, 1881 mandates the existence of legal debt or liability. The accused contention is that he never borrowed any loan from the complainant and issued any cheque favouring the complainant. He further contended that the complainant came in possession of the cheque in question (Ex.P1) from one Perumal with whom, accused had a chit transaction in the year 2008. The chit transaction was completed with Perumal in the year 2012 and, when the accused asked for return of the security cheque, Perumal informed that the cheque misplaced. This contention was exposed as false during the trial. The learned counsel further submitted that the accused disputed the signature in the cheque (Ex.P1). However, in this case, PW2, Bank Manager of Karur Vysya Bank where the accused maintains his account, confirmed signature found in the cheque (Ex.P1) is that of the accused, the accused not



cross examined the Bank Manager/PW2. Further, both the trial Court and the lower appellate Court gave a clear finding that the signature found in the cheque (Ex.P1), the signature of the accused in 313 Cr.P.C questioning and the signature of the accused (DW1) in the deposition all similar, which clearly exposed the falsity of the accused's claim.

6.He further submitted the accused failed to examine Perumal though he said to have moved his residence from Bhavani to Vijayamangalam. The accused sent a reply notice (Ex.P5) but such defence taken even in Ex.D2, the alleged complaint marked with objection, there is no such contention further there is no proof to show that Ex.D2 was handed over to the Police. Thus, the contention of the accused that the cheque (Ex.P1) was given to Perumal in the year 2008 misused by the complainant in the year 2012 is without any substance. In this case, yet another defence is that the cheque bearing No.909286 dated 06.11.2008 and the cheque bearing No.909288 dated 11.11.2008 which are the preceding and following cheques of the cheque (Ex.P1), both transacted during 2008, hence probablize the defence that the cheque (Ex.P1) bearing No.909287 was given as security to Perumal in the year 2008 misused. To prove the same, the accused marked his bank



passbook (Ex.D1). On this point alone, the lower appellate Court allowed the appeal setting aside the conviction of the trial Court, is perverse and unsustainable. In this case, PW2 is the Bank Manager of Karur Vysya Bank, Bhavani Branch, where the accused maintains his account and, through him, Ex.P6, the bank statement of accused marked. PW2 confirmed the signature found in the cheque (Ex.P1) is that of the accused and the cheque (Ex.P1) was returned for the reason "Funds Insufficient". But the accused neither cross examined PW2 nor confronted Ex.P1 and the signature.

7.He further submitted that as per Section 118 of N.I Act, the cheque is presumed to be drawn on the date mentioned in the cheque, unless there is any contrary evidence or materials and as per Section 139 of N.I. Act, the cheque to be presumed to issue in discharge of liability. In this case, the accused failed to produce any material or dispute the cheque (Ex.P1). On the other hand, the accused's contention that the signature has variations, clearly exposed the accused's culpability and criminality. The financial status of the complainant was questioned, but to substantiate the same, no



materials produced. The complainant admitted that he runs a dyeing industry and he has sufficient source of income to lend the loan amount.

Once the accused took the defence of questioning the complainant's financial capability, it had to be substantiated with materials. In this case, except for bald allegations, no other materials produced. The trial Court, by a well reasoned judgment, rightly convicted the accused. On the contrary, the lower appellate Court, merely on surmises and conjectures, without any materials on its own gave an interpretation contrary to the evidence and materials in the case, by setting aside the judgment of the trial Court. This perverse finding to be set aside. In support of his submissions, the learned counsel for the petitioner relied on decision of the Hon'ble Apex Court in ***Bir Singh v. Mukesh Kumar*** reported in ***(2019) 4 SCC 197*** wherein it had held that “*even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.*”

8.Further, he placed reliance on the decision of the Hon'ble Apex



Court in **Rajesh Jain v. Ajay Singh** reported in **(2023) 10 SCC 148** wherein it had held that *“the case of the complainant has been consistent throughout as can be noticed from a perusal of the complainant, demand notice and affidavit evidence. In fact, the signature on the cheque having not been disputed, and the presumption under Sections 118 and 139 having taken effect, the complainant's case stood satisfied every ingredient necessary for sustaining a conviction under Section 138. The case of the defence was limited only to the issue as to whether the cheque had been issued in discharge of a debt/liability. The accused having miserably failed to discharge his evidential burden, that fact will have to be taken to be proved by force of the presumption, without requiring anything more from the complainant.”*

9.The learned counsel for the accused submitted that the contention of the complainant that he and the accused are friends for the past 10 years and due to the relationship, the complainant gave a loan of Rs.7,00,000/- is not correct. The specific case of the accused is that the accused was a Subscriber to the chit conducted by Perumal of Bhavani in the year 2008, at that time, the cheque (Ex.P1) was given as security to Perumal and the chit



was only for Rs.5,00,000/-. The cheque given to Perumal filled up by the complainant and projected as though the complainant gave a loan of Rs.7,00,000/- in the year 2012 to the accused. To probablize his defence, the accused examined himself as DW1 and marked his bank passbook Ex.D1 and the complaint given to the District Crime Branch Ex.D2 against the complainant and Perumal. From the passbook (Ex.D1), it is proved the cheques bearing Nos.909286 & 909288, which are the preceding and following cheques to the cheque (Ex.P1), both transacted on 06.11.2008 and 11.11.2008 respectively, which probablizes that the cheque (Ex.P1) ought to have been issued in the year 2008. Five years thereafter, the cheque (Ex.P1) misused and projected as if it had been given in discharge of a loan liability of Rs.7,00,000/-.

10.He further submitted that only after receipt of the statutory notice (Ex.P3), accused came to know the misuse of cheque (Ex.P1). The accused sent a reply (Ex.P5) informing complainant that he is a total stranger and the cheque (Ex.P1) was not given in discharge of any liability to the complainant. Further, the accused forwarded a complaint to the District Crime Branch against Perumal and complainant on 12.04.2013 and marked



the same as Ex.D2. The complainant failed to respond and appear before the District Crime Branch, instead he filed the above complaint under Section 138 of N.I Act. The trial Court not considered the defence probablized by the accused, proving that the cheque of the year 2008 had been misused by the complainant, who was a total stranger. Merely invoking statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881, convicted the accused. The accused filed an appeal before the lower appellate Court and the lower appellate Court found that the complainant is not a man of means to extend such huge amount of Rs.7,00,000/- as loan and allowed the appeal setting aside the conviction.

11.He further submitted that the Hon'ble Apex Court as well as this Court held in a plethora of judgments that in cases of appeal against acquittal, finding of the lower Court, acquitting the accused not to be disturbed though the appellate Court might take a different view unless the finding is perverse and unsustainable. The lower appellate Court by a well reasoned judgment set aside the conviction, needs no interference by this Court, hence, he prayed for dismissal of the appeal.



12.This Court considered the rival submissions and perused the materials available on record.

13.The cheque (Ex.P1) is that of the accused is not disputed. The defence taken by the accused is that the accused was a Subscriber to an indigenous chit conducted by Perumal and the cheque (Ex.P1) issued to Perumal in the year 2008 as security. The accused admitting that the cheque was given as security to Perumal confirms no person would receive an unsigned blank cheque as security. The accused by his own admission confirms the cheque handed over to Perumal. The defence of the accused right from his reply notice (Ex.P5) is that he has not signed the cheque (Ex.P1), but the falsity of his claim clearly exposed, recorded by the trial Court and the lower appellate Court confirms that the signature in the cheque (Ex.P1), signature in 313 Cr.P.C questioning, the signature in the receipt filed by the complainant when he was directed to pay the cost to the Legal Services Authority on 27.07.2016 and the signature in the deposition of the accused as DW1, all are same. In the evidence of PW2, Bank Manager of Karur Vysya Bank, Bhavani Branch, he was specifically referred to the signature found in the cheque (Ex.P1), he confirms the



signature is that of the accused which is identical to the signature found in the bank records. PW2 produced the bank statement of account (Ex.P6) of the accused. The accused not disputed or cross examined PW2 in this aspect. The trial Court referring to the signature found in the cheque (Ex.P1) comparing it with other signatures in this case, confirms that the accused has signed the cheque (Ex.P1), and further the lower appellate Court confirms the signature of the accused in the cheque. Thus, Sections 118 & 139 of Negotiable Instruments Act, 1881 comes into play and the defence taken by the accused that the cheque (Ex.P1) given to Perumal in the year 2008 is nothing but an afterthought.

14.The other defence taken is that the complainant has got no financial capability to give loan of Rs.7,00,000/- to the accused. Merely raising a defence, without any supporting evidence or material, cannot be accepted. It is seen from the complaint Ex.D2 given to the District Crime Branch and in Ex.P5, reply notice, there is no dispute with regard to the complainant's capability of lending loan. The complaint (Ex.D2) was lodged on 12.04.2013 after receipt of the statutory notice (Ex.P3) dated 08.04.2013. The trial Court by a well reasoned judgment finding hollowness in the



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defence of the accused, had rightly convicted the accused.

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15.The only ground on which the appeal was allowed by the lower appellate Court is that the complainant failed to prove his financial capability of lending loan of Rs.7,00,000/- to the accused is without materials, further the presumption under Section 139 of Negotiable Instruments Act, 1881 is that the cheque issued for discharge of liability, in whole or in part, unless contrary is proved and the accused failed to probablize his defence by any cogent material or evidence. The lower appellate Court further justifies that the cheques bearing Nos.909286 & 909288 are the preceding and following cheques cleared by the bank on 06.11.2008 and 11.11.2008 respectively, hence, the complainant holding the cheque (Ex.P1) given by the accused to Perumal in the year 2008 and presenting for collection in the year 2012, is again on a wrong notion. As per Sections 20 & 118 of N.I. Act, it is to be presumed that the cheque was drawn on the date it bears and the cheque drawn for consideration unless it is proved the cheque obtained by fraudulent means. In this case, no contrary



evidence or material produced by the accused to substantiate his claim that the complainant misused the cheque (Ex.P1) given by the accused to Perumal. Further, PW2, the Bank Manager confirmed the cheque (Ex.P1) signed by the accused got dishonoured for the reason “Insufficient Funds” in the year 2013.

16.In view of the above, this Court finds that the cheque (Ex.P1) was given in discharge of liability by the accused to the complainant, which is proved by cogent evidence and materials produced in this case. The trial Court rightly convicted the accused, but the finding of the lower appellate Court is perverse and the lower appellate Court failed to consider the case in its totality, given a reason contrary to the evidence, materials and the law, hence, not sustainable.

17.In the result, the judgment dated 21.02.2018 in Crl.A.No.39 of 2017 passed by the learned Additional District Judge, Bhavani is set aside. Consequently, the judgment, dated 10.01.2017 in S.T.C.No.65 of 2015 passed by the learned II Additional District Munsif, Bhavani is restored and confirmed. Accordingly, this Criminal Appeal stands allowed.



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18.The trial Court is directed to secure the accused/respondent to undergo the period of conviction. It is made clear that in the interregnum, if the accused comes forward for settlement and discharge his liability, he can approach the complainant for compounding the offence which can be entertained even by the trial Court.

10.11.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

1.The II Additional District Munsif,
Bhavani.

2.The Additional District Judge,
Bhavani.



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M.NIRMAL KUMAR, J.

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