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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2025

CORAM

THE HONOURABLE MR.JUSTICE D. BHARATHA CHAKRAVARTHY

Criminal Appeal No. 376 of 2018

1. K.Rathinasamy, aged 43 Years,
Son of Kuppusamy, Proprietor Of
Shanthi Knit Garments, No.12/124,
Chinnappa Layout, 1st Street, Near
Kodikampam, Kongu Main Road,
Tirupur.

...Appellant

Vs

1. M/s G.K. Fashions,
Represented By Its Partner, Mr.
M.S.Ganesan, Door No. 27/5, Lakshmi
Nagar, 50 Feet Road,
Tirupur Taluk and District.

2.M.S.Ganesan,
Partner Of G.K. Fashions, Door No,
27/5, Lakshmi Nagar, 50 Feet Road,
Tirupur Taluk and District.

3.G.Tamilselvi,
Wife Of M.S.Ganesan,
Partner of G.K.Fashions, Door No.
27/5, Lakshmi Nagar, 50 Feet Road,
Tirupur Taluk And District.

...Respondent(s)

**PRAYER**

The Criminal Appeal is filed under Section 378 of Cr.P.C. to set aside and revise the judgment and order of acquittal passed on 14.11.2017 by the learned I Additional District and Sessions Judge, Tiruppur, in C.A.No.71 of 2016.

For Appellant(s): Mr. Deepanuday

For Respondent(s): Ms.C.B.Geesh Sanchitha
for M/s.M.Guruprasad

JUDGMENT

In a private complaint filed by the appellant alleging offence under Section 138 of the Negotiable Instruments Act, by a judgment dated 03.05.2016, the learned Judicial Magistrate No.1, Tiruppur, made in C.C.No. 524 of 2012 found all the three accused guilty of the offences and sentenced them to undergo one year Rigorous Imprisonment and also to pay the sum of Rs. 2,37,785/- being the cheque amount as compensation along with additional amounts. All the three accused filed C.A.No.71 of 2016 and by a judgement dated 14.11.2017 on the file of the I Additional District and Session Judge, Tiruppur, the Appellate Court reversed the finding, gave the benefit of doubt to the accused and acquitted them. Aggrieved by the same, the present appeal is filed.



2. The case of the complainant is that on behalf of the accused, one Triune placed an order for supply of about 6000 pieces of Bijamas of export quality and the order was placed on 01.07.2011 on behalf of the first accused partnership firm represented by the second and third accused. Accordingly, after following the due process of getting the approval of the samples, design, etc, the production was made and in that regard, when the goods were supplied to the accused and the accused had in turn exported the same and got themselves the benefit. The total amount due to the complainant stands at Rs.24,20,542/-. In discharge of part of the liability of the said sum, the accused issued cheque dated 15.03.2022 for a sum of Rs.37,785/- and another cheque dated 22.03.2022 for a sum of Rs.2,00,000/-. Upon the cheques being presented by the complainant for collection, the same were returned with an endorsement “funds insufficient”. Accordingly, the complainant issued Statutory Notice and no reply whatsoever was given within the period and no amount was repaid. Accordingly, the complaint was filed.

3. The trial Court took the complaint on file upon recording the sworn statement and issued summons to the accused. Upon appearance and furnishing of copies, the accused denied the charge and stood trial. In order to bring home the charge, the complainant examined himself as P.W.1 and one Swaminathan was examined as P.W.2 and one Mani @ Meenakshisundaram was examined as P.W.3 and Ex.P1 to Ex.P22 were marked. Upon being questioned under Section 313 of the Code of Criminal Procedure about the material evidence and



incriminating circumstances on record, the accused denied the same as false.

Thereafter, the second accused Ganesan, who is also representing the first accused as its partner, examined himself as D.W.1 and Ex.D.1 to Ex.D.25 were marked. The trial Court considered the case of the parties and found that the cheques were issued in discharge of the legally enforceable debt and rejected the defence of the accused and convicted them as aforesaid. Aggrieved thereby, an appeal was preferred and in the appeal, the learned District and Sessions Judge, reappraised the evidence and found that the complainant has not discharged the initial burden that Triune placed orders only on them and that they raised the invoices Ex.P4 and Ex.P5 on the accused and gave the benefit of doubt to the accused and acquitted, as against which, the present appeal is filed.

4. Mr. Deepanuday, learned counsel appearing on behalf of the appellant, by taking the Court through the voluminous evidence that is presented by the party would submit that the complainant has discharged his initial liability by marking the cheque. The signature in the cheque is not denied by the accused. Further, the invoices were marked as Ex.P4 and Ex.P5. For delivering the goods, Ex.P2 and Ex.P3, delivery notes were duly marked. The order that is placed by Triune is also marked as Ex.P1. Therefore, the complainant has duly discharged his liability to prove that the accused had issued cheque and that, it is issued for a legally enforceable liability and that, it was duly presented by the complainant and it was dishonoured. Once the same is done, the presumption under the Negotiable Instruments Act arises in favour of the complainant and



the trial Court has rightly convicted the accused. It should be noted that there is absolutely no defence whatsoever for the accused with reference to the subject matter cheques. Even though, it is pleaded by them in the defence evidence that these cheques were given as a part of the transactions relating to execution of power of attorney and borrowal of loan, etc., the learned counsel would specifically take this Court through Ex.D.24 and Ex.D.9. Ex.D9 is the belated letter written by the accused five months after the Statutory Notice. In that letter, absolutely nothing is whispered relating to the handing over of the cheques in blank form, etc. The same would falsify the case of the accused. Further, a perusal of Ex.D.24, which is the complaint that is lodged by the accused as against the third party creditors namely, one Kadhiresan and another, would show that not even the name of the complainant is whispered that this complainant only took the accused to the said financiers and got additional amount and cheated the accused. Therefore, the accused's own documents disproved their case and the mere fact that the accused could not come up with any valid defence relating to the cheque by itself categorically proves that it was issued in discharge of the liability. In an offence under Section 138 of the Negotiable Instruments Act, when the presumption operates in favour of the complainant and when the complainant has proved beyond the level of preponderance of probability about the existence of the debt, especially when the trial Court has found favour in the case of the complainant, the Appellate Court ought not to have interfered with the findings and the findings of the Lower Appellate Court are perverse in nature and therefore, this Court should



interfere with the appeal against the acquittal and restore the finding of the guilt as made by the trial Court.

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5. Per contra, the learned counsel appearing on behalf of the respondent/accused would submit that the accused has categorically let in evidence in the form of Ex.D12 to Ex.D16 that it is only the accused, who has purchased all the raw materials such as cloth, yarn, etc. for the production of the Bijamas. The accused has also produced the invoice that is placed by Triune on them and they have also placed on record the further correspondence from the foreign buyers, which is addressed only to them. As a matter of fact, evidence is let in that they only made the shipment to the third party and they are the beneficiaries. What is done, is only a job work and the complainant is making a false claim. Therefore, she should pray that this Court need not interfere with the findings of the Lower Appellate Court and prays for dismissal of the appeal.

6. I have considered the rivals submissions made and perused the evidence on record.

7. At the outset, the contention of the learned counsel appearing on behalf the appellant as to the weakness of the defence or the very fact that no reply was issued to the statutory notice within time by itself will not be the conclusive factors to determine the issue one way or the other. It is for the complainant to prove the ingredients of the offence and more specifically, the fact that the



cheques were issued towards a legally enforceable debt. Hence, the onus is on the complainant to initially discharge the burden so as to invoke the presumption. In this case, the parties have let in detailed evidence and cross examined the other side in detail and several documents are marked on behalf of both sides.

8. Firstly, with reference to the fact that the complainant had only produced the Bijamas out of the materials procured by the complainant itself, it can be seen that Ex.P1, order by Triune is not specifically addressed either to the complainant or to the accused. Secondly, the delivery notes Ex.P2 and Ex.P3 cannot take either of the parties anywhere because admittedly, the complainant only made the garments and delivered through the vehicle. As far as Ex.P5 invoice is concerned, it is a computer printout that is marked, absolutely, no pleading or material is placed that whether it is sent by post or handedover in person or sent by E-mail, etc. There is no counter signature of the accused for receiving such an invoice. Similarly, with reference to Ex.P6, which is said to be the running accounts maintained by the complainant Company, the same is again a computer generated print out. Neither it is mentioned that it was sent by mail duly intimating the closing balance to the accused nor it is a copy of any Ledger extract duly counter signed by the party to whom, the goods are supplied on credit. In Ex.P7, there is one sentence, which is in favour of the complainant, where the accused states that 'start the bulk production' and it does not say start the job work.



9. But, however, on a perusal of the cheques, it can be seen that the cheques were printed before 2010 and the year 2012 itself is overwritten on both the cheques. As far as the accused is concerned, they have also produced the same invoice that is placed by Triune, which is again not addressed to them specifically. But, however, a communication in the form of Ex.D3 is produced, which is specifically addressed to them and which is relating to the instant contract mentioning about the letter of credit also. With reference to Ex.D12 to Ex.D16, the accused had marked these documents in evidence of procuring the materials such as cloth, yarn and other materials, which are required for the production of these Biyamas. The accused was cross examined in detail on behalf of the complainant. It can be seen that some favourable answers were also elicited by the complainant in the cross examination that is in the normal course for the job work, an invoice would have also been specifically raised by mentioning the amount, but, in this case, the accused states that because the complainant is a relative, he did not indulge in such a procedure. But however, with reference to Ex.P16 to Ex.P20, when the complainant has tried to point out that this could have been with reference to some other lot and in respective some other document, the accused pointed out in the cross examination that the same clearly mentioned the order number, etc. Therefore, there are some answers, which are in favour of the accused and some answers are in favour of the complainant.



10. When this Court considered the evidence on the whole let in by both parties, it could be found that both parties have produced their self serving documents without any proof of serving it on the other side. They are coming up with their own invoices, bills, etc. and absolutely in the voluminous evidence neither in the chief examination, they have mentioned that how they have sent these documents to the other side nor there is cross examination regarding the same. Upon perusing the entire evidence, the case hangs on thin balance back and forth in between the complainant and the accused. In such a case, being a criminal case, naturally benefit of doubt has to be given to the accused and accordingly, the ultimate finding reached by the Appellate Court cannot be said to be an impossible finding or perverse finding for the Court to upturn in an appeal against acquittal and accordingly, the Criminal Appeal stands dismissed.

28-10-2025

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Index : Yes
Speaking Order : Yes
Internet : Yes
Neutral Citation : Yes



To

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Tiruppur,

2. M/s G.K. Fashions,
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D. BHARATHA CHAKRAVARTHY, J.

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