



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2025

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRLA No. 718 of 2021

G.Kumar
S/o. Ganesan,
No.15/1, Kamarajar Street,
Kakkaopalaym Main Road,
Attaiyampatty Post, Salem District.

Appellant(s)

Vs

Kannadhsan
S/o. Ponnambalam,
Devadhanam (kudi) Street,
Kulithalai Post, Karur District.

Respondent(s)

PRAYER: The criminal appeal filed under Section 378 of Cr.P.C. to set aside the judgment of acquittal of accused made in S.T.C.No.100 of 2019 passed by the Judicial Magistrate, Tiruchengode, dated 12.02.2021 and allow the appeal.

For Appellant(s): Mr.A.K. Kumarasamy
Senior Counsel
for Mr.S.Kaithamalai Kumaran

For Respondent(s): Mr.Kumaran
for Mr.A.S.Balaji

JUDGMENT

The appellant/complainant filed a 138 private complaint against the respondent/accused in STC.No.100 of 2019. The trial Court by judgment dated 12.02.2021 dismissed the private complaint, against which, the present appeal.



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2.The case of the appellant is that the appellant is a trader and doing trading business of banana-grove in Attaiampatty and Salem area. The respondent is in the same business as a mediator and also having a farm. The appellant and the respondent having good relationship for more than 10 years, during May, 2018, the respondent borrowed a sum of Rs.6,20,000/- for developing of his banana cultivation and for family expenses. In discharge of the said liability, the respondent issued cheque Ex.P1 dated 20.11.2018. When the cheque was presented, the same was returned on 03.01.2019. Thereafter, statutory notice on 07.01.2019 issued. The respondent sent a reply with false allegations on 28.01.2019 and thereafter, ignoring the same, complaint was filed.

3.During trial, the complainant examined himself as PW1 and marked six documents as Exs.P1 to P6. On the side of the defence, no witnesses examined and no documents marked.

4.The contention of the appellant is that the respondent, in his reply notice Ex.P6, admitted the relationship and the banana business transaction between them for more than a decade. His defence is that taking advantage of the relationship, cheque Ex.P1 came in possession of the appellant and he



fraudulently filled up the cheque, signed and presented the same for collection.

Further, the respondent cautioned the appellant not to proceed further, otherwise, appropriate legal steps would be taken in law and also advised to return the cheque.

5.The learned Senior Counsel for the appellant submitted that in the statutory notice, it has been clearly mentioned that the appellant is doing banana trading business and the respondent is having a banana grove and used to sell bananas to the appellant for more than 10 years and that, they had good relationship and on the request of the respondent, a sum of Rs.6,20,000/- was given during last week of May, 2018 for the development of banana farming and family expenses. Thereafter, since the respondent failed to supply any bananas for the amount received, nor repaid the loan amount, the appellant requested for repayment and the respondent given a cheque Ex.P1 during the month of November, 2018.

6.The learned Senior Counsel further submitted that the appellant, being a rustic villager and not conversant with English, admitted statutory notice was in English and it was prepared by his advocate, hence, naturally, there would be some contradictions in the evidence and statutory notice. But, the trial Court on its own gives reasoning that no person, who gave loan in the month of May



would give a cheque in the month of November and that to after travelling more than 100 kilometres and handing over the cheque.

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7. In this case, he further submitted that the trial Court failed to look into the fact that the respondent admitted the relationship and issuance of Ex.P6 cheque and took a stand that how cheque came in possession of the appellant, which was signed and filled up. But, in the judgment, the trial Court gives explanation that the signed cheque came in possession of the appellant and that he filled up the same.

8. Further, the respondent had not taken any action even after the statutory notice. Further, he not examined himself nor produced any materials to probabalise his defence. No doubt, by way of cross examination, his defence can be put forth but even in cross examination, the respondent admit the relationship and not denied either the cheque or his signature. Further, the trial Court gave undue importance to minor contradictions and found that the appellant had not proved his case and dismissed as not proper.

9. The learned senior counsel for the respondent refuted stating after receipt of notice which is proved by Ex.P6 sending a reply notice and as per Section 138 b, there is no specific format and how a notice to be given, the only



requirement is that the respondent has to be put on notice about the dishonour of the cheque which has been complied with.

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10. The learned counsel for the respondent, at the outset, submitted that though he had appeared earlier, on getting instructions from the respondent, for the past two hearings, when he contacted the respondent, he was unable to reach him. The learned counsel proceeded to discharge his legal obligations and advanced his arguments based on the instructions so far received and with available materials. The appellant admitted that in Ex.P4 statutory notice, neither the appellant's signature nor his counsel's signature was found. Hence, notice is not as per 138(b) of the NI Act. Referring to the evidence of PW1, he submitted that PW1 admitted that he has got no employment and that, though he claimed income, not produced any document to show that he is an income tax assessee. PW1 further admitted that the statutory notice was in English and it was prepared by his advocate and that he was not aware about the contents of the notice and the complaint. It was projected that the respondent had taken a loan in May, 2018 and in discharge of the liability, he gave a post-dated cheque. But in evidence, appellant gives a contradictory version stating that the respondent, who hails from Kulithalai, travelled 100 kilometres to Salem, handed over the cheque Ex.P1. Further stated that after five months, the appellant taken pronote but not produced. Thus, the appellant was unable to



show that he was a man of means and that the cheque was issued for discharge of liability. By way of cross examination and the admission of the appellant, the respondent had probalised his defence, which was rightly considered by the trial Court and dismissed the complaint.

11.Considering the submissions and on perusal of the materials available on record, it is seen that in this case, the appellant was cross examined in detail. The reasoning of the trial Court that the appellant had given two versions with regard to the issuance of the cheque by the respondent: one stating that it was a post-dated cheque and another stating that the respondent travelled from Kulithalai to Salem and handed over the cheque and treating the same as a major contradiction is not proper. Likewise, the trial Court failed to look into the fact that the respondent not denied the business relationship with appellant for more than 10 years and both of them are into banana business. In the reply notice, the respondent takes a stand that the appellant had taken away a cheque, filled it up, signed it and presented the same. But during cross examination, his defence is that a signed cheque removed by the appellant filled up and presented the cheque, and refused for the reason “insufficient funds” and not for difference in signatures. If the respondent denies his signature, he should have sent the cheque Ex.P1, for examination by handwriting expert not taken any such steps. Further, during the cross examination as well as in the reply notice,



the respondent admit business relationship with the appellant. Thus, from the evidence and materials on record, it is seen that the respondent not probalised his defence but the trial Court, on a wrong notion and appreciation of evidence, given a finding that the appellant had not proved the case.

12.In view of the above, the judgment of the trial Court dated 12.02.2021 passed in S.T.C.No.100 of 2019 by the Judicial Magistrate (Fast Track Court) at Tiruchengode, is hereby set aside and the matter is remitted back to the trial Court. The trial Court to issue summons to hear the arguments of both the appellant and the respondent and reconsider the evidence and materials afresh and thereafter, to take the case to its logical end. Accordingly, the criminal appeal is allowed with the above direction.

10-12-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
sms
To
1.The Judicial Magistrate,
Tiruchengode,

2.Kannadhsan
S/o. Ponnambalam,
Devadhanam (kudi) Street,
Kulithalai Post, Karur District.



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M.NIRMAL KUMAR J.

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