IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL A No. 479 of 2015

M/s.Eagle Star Exim India Pvt. Ltd.,
Represented by its Director
Mr.K.Manoharan,
Door No.47, Room No.3, 1st Floor,
Armenian Street, Parrys,
Chennai 600 001.

Appellant(s)

Vs

K.Sureshbabu
Proprietor,
Khandan Minerals,
K.K.Garden, Plot No.47, 2nd Street,
Sumithra Nagar, Poonamallee, Chennai
600 056.

Respondent(s)

PRAYER: This appeal has been filed under Section 378(4) of the Code of Criminal Procedure, 1973, against the order of acquittal dated 08.05.2015 made in C.C.No.1439 of 2014 on the file of the Court of Metropolitan Magistrate (Fast Track Court No.4), George Town, Chennai 1 on the private complaint for the offence under 138 of the file of the Court of Metropolitan Magistrate (Fast Track Court No.4), George Town, Chennai.

For Appellant(s):	Mr.K.Kishore Kumar For Mr.N.S.Sivakumar
For Respondent(s):	Mr.M.Karthik Legal Aid Counsel For Respondent

ORDER

This is an appeal against the judgment of the learned Metropolitan Magistrate No.IV, George Town, Chennai, dated 08.05.2015 made in C.C.No.1439 of 2014.

2. The case is the private complaint filed by the appellant herein complaining an offence under Section 138 of Negotiable Instruments Act.

3. The case of the complainant is that one Advocate by name Vamshi S. Dixit, wanted to invest a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) in any profitable venture, he availed the service of one K.Manoharan, Managing Director of the

Complainant Company and upon advice of the said Managing Director of the Complainant Company, the said Advocate Vamshi S. Dixit has handed over a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the Managing Director and after receipt of the said sum, the said money was invested with the accused as directed by the accused. The money was credited to one of the sister concern of the accused namely, one M/s.Anjali Granites. As a matter of fact, the money was transferred through Banking transactions to M/s. Anjali granites from the sister concern of the Managing Director of the Complainant Company namely M/s.Vinayaga Exports.

4. Though the money was received by the accused and utilised for his business, he did not pay any returns to the said Advocate Vamshi S. Dixit, in turn, the Advocate required the return of money and after the repeated correspondence, the accused has agreed to repay the amount and the said Advocate requested that the cheque to be issued in the name of the Complainant Company itself. Accordingly, the accused issued two cheques, one cheque dated 11.11.2013 for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) and on another cheque dated 11.12.2013 for a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) in all totalling to Rs.5,00,000/- (Rupees Five Lakhs

Only). Upon the cheques being presented for collection, the same was returned with an endorsement "Funds insufficient". Thereafter, a demand notice was issued, for which, also neither any reply nor any payment made and therefore, the complaint was filed.

5. The complaint was taken on file after recording the sworn statement on behalf of the complainant and when summons was issued and the copies were furnished, the accused appeared and denied the allegations levelled against him. In order to prove the charge, the complainant was examined as PW1 and Exs.P1 to P9 were marked on the behalf of the complainant. Upon being questioned under Section 313 of the Code of Criminal Procedure regarding the material evidence and incriminating circumstances on record, the accused denied them as false. No evidence was let in on the behalf of the defense.

6. The trial Court considered the case of the parties and found fault with the complainant for not examining the said Advocate as witness. Consequently, it held that no co-gent evidence has been let in, with reference to the liability that the

complainant paid the amount through its sister concern and the accused is liable to return the said amount to the complainant and thus held that the complainant failed to discharge the initial onus of proving that the cheques were issued for discharge of the legally enforceable debt and granted the benefit of doubt to the accused and acquitted the accused. Aggrieved, the present appeal is filed.

7. Heard Mr.K.Kishore Kumar, learned counsel on behalf of the complainant.

8. Firstly, the learned counsel for the appellant submitted that when a statutory notice was issued, not even any reply was filed by the accused.

9. Secondly, no proper explanation was given by the accused in the form of any evidence, as to why the accused issued the cheques in favour of the complainant.

10. Thirdly, even with reference to the liability, a reading of Ex.P1- e-mail correspondence, it would be clear that the accused had basically acknowledged the liability that is the receipt of a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) and

only in discharge of the said liability, the cheques were issued. According to the learned counsel for the complainant, even if the liability is to the third party, so long as the cheques were issued in discharge of the legally enforceable liability, especially when the amount is advanced through the Banking channels, the trial Court ought not to have acquitted the accused and ought to gave agreed with the case of the complainant and convicted the accused.

11. Per contra, learned counsel for the respondent/accused would submit that in this case, the complainant is a corporate entity. It has only pleaded that its Managing Director has lent it services to an Advocate for investment. Further, pleading is that one M/s.Vinayaga Exports is the sister concern of the said Managing Director. Through the said M/s.Vinayaga Exports, a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) is said to have been paid to one M/s.Anjali Granties. It is the further pleading of the complainant that the said M/s.Anjali granites is the sister concern of the accused. The complainant ought to have proven all the above by letting in cogent evidence and only after discharge of the said initial onus of the complainant, it is expected the accused to let in any further evidence with reference to his innocence or

otherwise.

12. I have considered the rival submissions and perused the materials available on record.

13. Mere non-issue of reply to the statutory notice alone will not fasten the liability of the accused. In this case, the case of the complainant was extracted supra.

14. The contention of the learned counsel for the appellant is that the e-mail transactions would prove the said liability. In that regard, series of e-mails were marked as Ex.P1, the first mail is written by the accused to the complainant requesting to make arrangements for LC openings etc., in respect of some of the granites. Once again the second e-mail is also requesting for LC opening in respect of the same. The third mail is forwarding M/s.Vinayaka Exports as a beneficiary to the invoice and the account details of M/s.Vinayaka Exports is also given. The fourth mail is by the complainant to the accused to remove the number blocks and the 5th mail is also relating to the business and stating that they will inform to the buyers not

to mention of the blocks that is returned by the accused. Thereafter, in the 6th e-mail dated 24.05.2011, it is stated that pursuant to the discussion on 23.05.2011, remitting an advance of Rs.2,00,000/- to M/s.Anjali Granites, Khamman, as per the directions, on account of SS32 Granites around 30 m 3 rough blocks to the complainant for onward shipment to Xiamen. Thus, the e-mails suggest different kind of business transactions rather than one which is projected by the complainant as the money of the Advocate being invested for returns by way of profit or interest.

15. Similarly, the next mail also states remittance of Rs.5,00,000/- to M/s.Anjali Granites and it is further mentions to the accused that nothing has moved on for the past two months and requested the accused to do the needful to get out of the issue and the issue is troubling the complainant. Thus, I am not able to find out that the materials are supporting the case as projected by the complainant. On the contrary, it projects as if the complainant also ventured with the accused with reference to export of granites. In such scenario, the finding of the trial court that the complainant has categorically not discharged its onus by not adducing a proper co-gent evidence as to what is the liability, why the money is paid, by whom and it is

returnable under what terms etc., and thus the grant of benefit of doubt to the accused cannot be said to be a perverse finding or a finding that is not at all possible. In an appeal against acquittal, I am unable to upturn the said finding. Accordingly, finding no merit, the appeal stands dismissed.

28-10-2025

Jd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

D.BHARATHA CHAKRAVARTHY J.

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To

1. The Metropolitan Magistrate (Fast Track Court No.4),
George Town, Chennai 1.
2. The Public Prosecutor,
Madras High Court, Chennai.

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