IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**Crl.A.No.310 of 2010**

S.P.Jaswant Kumar ... Appellant/Complainant

Versus

G.J.Maadhan ... Respondent/Accused

**PRAYER**: Criminal Appeal filed under Section 378(4) of Cr.P.C., against the judgment of acquittal of the respondent passed in C.C.No.157 of 2004 dated 18.11.2009 by the learned Judicial Magistrate, Kothagiri.

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| For Petitioner | : | Mr.C.Prabhakaran<br>for Mr.R.Rajadurai |
| For Respondent | : | Mr.R.Babu<br>for M/s.A.Booblie |

**ORDER**

The appellant, as complainant, filed a case in C.C.No.157 of 2004 for the offence under Section 138 of the Negotiable Instruments Act against the respondent/accused.

2. The complainant, a moneylender, lodged a complaint against the

respondent/accused. It is the case of the complainant that the respondent, having borrowed a loan, issued a cheque bearing No.009466 dated 13.12.2003, drawn on the Central Bank of India, Kotagiri Branch, in favour of the complainant for a sum of Rs.1,00,000/-. The said cheque, when presented by the complainant through the State Bank of India, Kotagiri Branch, on 18.02.2004, was returned unpaid on 19.02.2004 with the endorsement “Account Closed”. A statutory notice was thereafter issued on 11.03.2004, which was admittedly received by the respondent on 14.03.2004. However, the respondent neither complied with the demand nor issued any reply. Hence, the complaint was filed.

3. During the course of trial, the complainant examined himself as PW1 and marked Exs.P1 to P6. On the side of the defence, DW1 to DW3 were examined and Exs.D1 and D2 were marked.

4. On conclusion of trial, the learned Judicial Magistrate, by judgment dated 18.11.2009 in C.C.No.157 of 2004, dismissed the complaint. Aggrieved thereby, the present appeal has been preferred.

5. Learned counsel for the appellant submitted that the accused has not denied either the issuance of the cheque or the signature found therein. In

such circumstances, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act operates in favour of the complainant. It was further contended that the respondent had failed to rebut the said presumption by adducing cogent evidence. The Trial Court, while disbelieving the evidence of PW1, erroneously accepted the explanation of the respondent that the cheque had been issued as a signed blank cheque in the year 1996 for a loan of Rs.6,000/-, which was repaid, and that the said cheque was misused. It was further submitted that the Trial Court placed undue reliance on the fact that the complainant had not disclosed the loan transaction of Rs.1,00,000/- in his income tax returns, and that the payment was made in cash. The learned counsel argued that these circumstances cannot outweigh the statutory presumption arising in favour of the complainant once the issuance and signature on the cheque are admitted.

6. Per contra, learned counsel for the respondent contended that the complainant, being a moneylender, was bound to maintain proper accounts of transactions. In the present case, the complainant had failed to produce any contemporaneous records evidencing the advancement of Rs.1,00,000/- to the respondent. It was the specific defence that the complainant had also acted as a broker in a land transaction with one Charlie; however, the said transaction

ultimately failed and was not completed. According to the respondent, the cheque in question was originally issued in 1996 for a loan of Rs.6,000/-, which was discharged, and the said cheque has been misused after a lapse of seven years. The Trial Court, after examining the evidence of DW1 and DW2, both Bank Managers, rightly concluded that there were material corrections in the cheque and that the dishonour was specifically for the reason “Account Closed”. Furthermore, DW3, the Income Tax Officer, confirmed that the complainant had not disclosed the alleged loan of Rs.1,00,000/- in his returns. Considering the substantial nature of the amount, such non-disclosure is significant.

7. On consideration of the admitted facts, it is evident that the defence of the respondent is that the cheque was originally issued in 1996 for a loan of Rs.6,000/-, which was repaid, and that it has been misused subsequently in the context of a failed land transaction. The evidence of DW3, coupled with Exs.D1 and D2, strengthens the defence, as the alleged loan of Rs.1,00,000/- does not find place in the income tax returns of the complainant. Having regard to the nature of the transaction and the failure of the complainant to substantiate the advancement of such a substantial sum, the Trial Court rightly accepted the defence and dismissed the complaint.

8. In view of the foregoing discussion, this Court finds no reason to interfere with the judgment passed by the learned Judicial Magistrate, Kothagiri, in C.C.No.157 of 2004 dated 18.11.2009, and the same is hereby confirmed.

9. In the result, this criminal appeal stands dismissed.

**18.08.2025**

cda
Index : Yes/No
Neutral citation: Yes/No
Speaking order/Non-speaking order

**M.NIRMAL KUMAR, J.**

cda

To

The Judicial Magistrate, Kothagiri.

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