IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2025

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 219 of 2021

1. M.Latha
W/o.Murugan,
No.3/84, Pavadi North Street,
Chithalandur Post,
Tiruchengode Taluk,
Namakkal District.

Appellant(s)

Vs

1. K.Dhanapal @ Sekar
S/o.Karuppannan,
81, Arunthathiar Street,
Kondarasampalayam Post,
Sithampoondi Village,
Paramathi Velur Taluk,
Namakkal District.

Respondent(s)

PRAYER

This appeal has been filed to set aside the order of acquittal by a judgment dated 05.02.2021 made in STC No.149 of 2018 on the file of Judicial Magistrate

Court, Fast Track Court at Tiruchengode by allowing the Criminal Appeal.

For Appellant(s): M/s.T.L.Thirumalaisamy

For Respondent(s): Mr.J.Ranjithkumar - Legal Aid Counsel for Respondent (vide Order Dated 25.10.2025)

ORDER

This appeal filed to set aside the order of acquittal dated 05.02.2021 made in STC No.149 of 2018 by the Judicial Magistrate Court, Fast Track Court at Tiruchengode by allowing the present Criminal Appeal.

2.The appellant/complainant filed a private complaint in STC No.149 of 2018 under Section 138 of the Negotiable Instruments Act against the respondent. During the trial, the appellant examined herself as PW1 and marked 4 documents viz., Exs.P1 to P4. The accused not examined any witness nor marked any documents. The trial Court, after completion of the trial, dismissed the complaint by judgment dated 05.02.2021. Against which, the present appeal.

3.The learned counsel for the appellant submitted that the respondent herein had borrowed money on various dates since 2013 for his business to develop his workshop at Thiruchengodu. The father of the respondent is known to the appellant and they had good relationship, ever since he constructed the complainant's house.

4. Considering the request of the respondent for money for business development, the appellant paid a sum of Rs.1 lakh, Rs.30,000/-, Rs.25,000/-, and Rs.2,00,000/- over a period of time and lastly Rs.85,000/- and in total he gave a sum of Rs.4,40,000/- to the respondent as loan. Calculating the interest in discharge of the said liability, the respondent issued a cheque bearing no.058563 for Rs.5 lakhs drawn on Federal Bank, Karuveppampatti Branch on 30.12.2017. On the request of the respondent, the complainant presented the cheque during middle of February, 2018, but the cheque returned for the reason "insufficient funds" by the Indian Oversees Bank, Chithalandur branch on 22.02.2018. Thereafter, statutory notice issued on 02.03.2028, received by the respondent on 06.03.2018. The respondent neither paid the cheque amount nor

sent any reply. Thereafter, complaint filed.

5.The respondent not denied the cheque and his signature found in Ex.P1. The trial Court failed to consider that signature and issuance of cheque admitted, Sections 118 and 139 of the N.I. Act come into play and presumption is that cheque issued in discharge of the liability. The respondent makes a claim that signed blank cheque issued and it has been filled up, as per Section 20 of the N.I. Act, the holder of the cheque has right to fill up the signed blank cheque. In this case, the respondent neither paid the cheque amount nor sent any reply, for the first time during the trial, he takes a defence that he had issued some blank cheques, which have been mis-used. The trial Court on its own had given a finding that the complainant admit payment of loan in part on various dates. The complainant not specified the dates and how rate of interest calculated and for which period. Nothing is mentioned in the statutory notice or in the complaint or during the evidence and hence, giving benefit of doubt to the respondent and dismissed the complaint, which is not proper.

6.The learned counsel for the respondent referring to the evidence of the complainant, submitted that in this case, the complainant admits that initial loan was given is a sum of Rs.1,00,000/- and Rs.30,000/- in the year 2013 with an understanding that the loan would be repaid within a period of six months. He further submitted that the admitted case of the appellant is that thereafter, he had paid the respondent a sum of Rs.25,000/-, Rs.2,00,000/- and Rs.85,000/- in total Rs.4,40,000/- during the period between 2013 to 2017 i.e., for a period of 4 years. When the initial understanding of repayment of loan within a period of six months not complied by the respondent, no prudent person will give further loans. The trial Court rightly found that there is no details about the period of loan, rate of interest and how the principal amount of Rs.4,40,000/- and the interest amount of Rs.60,000/- calculated. According to the respondent, cheque which was given for a earlier transaction in the year 2016 for Rs.1,40,000/- misused, even this amount of Rs.1,40,000/- repaid and cheque retained by the appellant for this earlier transaction later filled up and a false case projected. He further submitted Ex.P1 is not given in discharge of any liability.

7.The trial Court considered the evidence and the materials and following the judgment of the Hon'ble Apex Court in the case of *Basalingappa Vs. Mudibasappa* reported in 2019(1) MWN(Cr) DCC page 145(SC), wherein, it is held that the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof. Further, it is not necessary in all cases, the respondent/accused to issue reply notice or to get into the box and to discharge the statutory presumption. The defence of the respondent can be seen from the cross-examination of the complainant. In this case, the trial Court found that the respondent rightly probablized his defence and dismissed the petition filed by the appellant which needs no interference.

8.Considering the submissions made and on perusal of the materials available on record, it is seen that the appellant admits that the respondent sought a loan to develop his workshop in the year 2013, initially, an amount of Rs.1,00,000/- and thereafter, Rs.30,000/- paid in the year 2013 and thereafter, a sum of Rs.25000/-, Rs.2,00,000/- and finally Rs.85,000/- in total Rs.4,40,000/-

given as loan, and the loan was given in part over a period of time on several dates. . It is admitted by the appellant that the payments were made from the year 2013-17 for a period of 4 years. Further, the appellant admits that initial loan was given on an understanding that the respondent to repay the loan within a period of six months. The respondent not repaid even the initial loan but the appellant continues to give loan over a period of four years. No prudent person will continue to give loan, when the initial loan not repaid, that too over a period of four years. The trial Court rightly held that how the interest of Rs.60,000/- worked out, and what is the period, no details given. The respondent by cross-examination rightly probabalised his defence. The trial Court, considering these facts, dismissed the complaint.

9.This Court on perusal of the materials found there is no reason to interfere with the judgment of the trial Court. Hence the appeal is dismissed confirming the judgment of the trial Court.

10.This Court places its appreciation for effective and efficacious arguments advanced by Mr.J.Ranjith Kumar, Legal Aid Counsel for the respondent. The State Legal Services Authority is directed to pay the remuneration to him as per the Rules.

10-11-2025

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Index:Yes/No
Neutral Citation:Yes/No

To

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M.NIRMAL KUMAR, J.

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