



WEB COPY

CRLA No. 500 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 29-10-2025**

CORAM

**THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**CRLA No. 500 of 2022**

Gunasundari  
W/o A.Shankar,  
No.96/2, Mahaveer Street, Mogappair  
Street, Sathiya Nagar, Padi,  
Chennai-50

Appellant(s)

Vs

1.M/s.Sree Durga Industries,  
Represented by its Proprietor,  
R.Kumar,  
No.18/5B, Telephone Exchange,  
Tass Industrial Estate,  
Pattarawakkam,  
Chennai – 98.

2.R.Kumar  
S/o Rengasamy,  
No.44, 1<sup>st</sup> Main Road,  
Sathya Nagar, Padi, Chennai-50.

Respondent(s)



Prayer: This Criminal Appeal has been filed under Section 378(4) of the Criminal Procedure Code, to set aside the Judgment of acquittal passed in Judgements in C.C.No.276 of 2019 dated 23.02.2022 by the learned Judicial Magistrate, Fast Track Court(Magisterial Level), Ambattur.

For Petitioner(s): Mr.R.Vivekananthan  
for M/s.S.Senthil Murugan  
For Respondent (s): Mr.M.Ravichandran

### **ORDER**

This Appeal is filed against the Judgment of the learned Judicial magistrate, Fast Track Court (Magisterial Level), Ambattur, dated 23.02.2022 made in CC.No.276 of 2019. By the said judgment, the learned trial court had acquitted the respondent/accused of the offence under Section 138 of the Negotiable Instruments Act.

2.This is a private complaint filed by the appellant/complainant for an offence under Section 138 of the Negotiable Instruments Act. When the matter was taken up for consideration, by the judgement dated 23.02.2022, the trial Court found that even though complainant examined herself as PW1, was never present thereafter and did not subject herself to cross examination and in view



thereof, the evidence of the complainant could not be taken into account and accordingly, the accused was acquitted.

3.Mr.R.Vivekananthan, learned counsel for the appellant, by pointing out to the adjudication, would submit that after the chief examination of the complainant, it can be seen that due to COVID-19 the physical hearing was suspended and the matter then proceeded on video conferencing basis and when the matter was again called, no opportunity was given to the complainant and the matter was proceeded further.

4.The learned counsel appearing on behalf of the respondent would oppose the same and submit that the trial court was right inasmuch as the complainant did not subject herself for cross examination. In the absence of no evidence, the trial court has got no other go than to acquit the accused.

5.I have considered the rival submissions made on either side and perused the material records of the case.



6. It can be seen that the chief examination of the complainant was over on 21.04.2021 and without posting the matter further for cross-examination, from the judgement of trial court it can be seen that the mistake was also on the part of the learned counsel for the complainant, wherein, he has made an endorsement that there is no further evidence, without pointing out to the fact that the matter was not posted for cross examination.

7. Be that as it may, one opportunity can be granted to the complainant to prove the offence on merits and it is always advisable for the parties to contest the case on merits rather than bringing the case to an end on a hypertechnical issue and the same would prejudice the complainant, who is claiming a legally enforceable liability. On the other hand, the opportunity of the accused to prove his innocence is not taken away as once again opportunity is being given to the accused for cross examining the complainant and both parties will also be entitled to let in such evidence, as may be permissible under law.



8. In view thereof, this Criminal Appeal is disposed on the following terms;

- 1) the Order of the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur dated 23.02.2022 made in CC No.276 of 2019 is set aside and the case is restored to the file of the Judicial Magistrate (Fast Track Court) Magisterial Level, Ambattur and the case will continue from the stage of PW1 cross.
- 2) The complainant/PW1 shall be present before the learned Magistrate on 12.11.2025 and would subject herself for cross-examination and the learned counsel for the accused can cross examine the complainant on the same day or some other day or as may be permitted by the trial court. Thereafter, if the complainant wants, she may be permitted to let in further evidence also or upon closure of the complaint, further proceedings, in accordance with law, will be made in the case.



WEB COPY

9. The Criminal Appeal is disposed of in the above terms.

**29-10-2025**

Tsg

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Judicial Magistrate,  
Fast Track Court(Magisterial Level),  
Ambattur.

2. The Public Prosecutor,  
Madras High Court,  
Chennai.



WEB COPY

CRLA No. 500 of 2022



**D.BHARATHA  
CHAKRAVARTHY J.**

Tsg

**CRLA No. 500 of 2022**

**29-10-2025**