WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 11-11-2025**

CORAM

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

**CRL A No. 365 of 2012**

1. V.Babu

Appellant(s)

Vs

1. P.Thiyagarajan
S/o.Ponnusamy Mo745, Tnhb Taj
Nagar, Spb Colony Post, Erode

Respondent(s)

For Appellant : Ms.T.Harshan
Legal Aid Counsel

For Respondent : Mr.M.Ganesh
for Mr.N.Manokaran

**ORDER**

Today, the matter is listed under the caption “For Being Mentioned” at the instance of the learned Legal Aid Counsel for the appellant.



https://www.mhc.tn.gov.in/judis

WEB COPY



2.The learned Legal Aid Counsel for the appellant submitted that she has been appointed as Legal Aid Counsel by this Court vide order dated 24.09.2025 to represent the appellant. But in the order dated 22.10.2025, there is no mention about her preparation and strenuous argument and the payment of fee to the Legal Aid Counsel.

3.It is seen that Ms.T.Harshana has been appointed as Legal Aid Counsel on behalf of the appellant by this Court. In the order dated 22.10.2025, the payment payable to the Legal Aid Counsel has been omitted to be mentioned. Hence, Tamil Nadu State Legal Services Authority, High Court, Madras is directed to pay the fee to the Legal Aid Counsel as per the existing rules.

4.The Registry is directed to incorporate the above in the order dated 22.10.2025 and issue fresh copy of the order dated 22.10.2025.

5.The issue is clarified, accordingly.

**11.11.2025**

rsi



https://www.mhc.tn.gov.in/judis

WEB COPY



To

1.The Tami Nadu State Legal Services Authority,
High Court, Madras.

2.The Public Prosecutor,
High Court, Madras.



https://www.mhc.tn.gov.in/judis

WEB COPY



**M.NIRMAL KUMAR, J.**

rsi

**CRL A No. 365 of 2012**

**11.11.2025**



https://www.mhc.tn.gov.in/judis

WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 22-10-2025**

CORAM

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

**CRL A No. 365 of 2012**

1.V.Babu Appellant(s)

Vs

1.P.Thiyagarajan
S/o.Ponnusamy Mo745, T.N.H.B.,
Taj Nagar, SPB Colony [Post],
Erode-10. ....Respondent(s)

**PRAYER**: Criminal Appeal filed under Section 378(4) of Cr.P.C. praying to set aside the judgment passed by Chief Judicial Magistrate, Erode in C.C.No.158 of 2011 on 23.12.2011 acquitting the respondent/accused from the charges U/s.138 Negotiable Instruments Act and acquitting them under Section 255(1) I.P.C and re trial the complaint.

For Appellant : Ms.Harshana.T, Legal-Aid-Counsel

For Respondent :Mr.N.Manokaran

**********



https://www.mhc.tn.gov.in/judis

WEB COPY



**J U D G M E N T**

This Court, on 26.09.2025, had passed the following order:

The appellant as complainant filed a private complaint against the respondent under Section 138 of the Negotiable Instruments Act in C.C.No.158 of 2011 before the learned Chief Judicial Magistrate, Erode. The trial Court, by the judgment dated 23.12.2011, dismissed the complaint, discharged the accused, against which, the present appeal is filed.

2. The learned counsel for the appellant submitted that the appellant and the respondent are known to each other for quiet some time. The respondent borrowed a sum of Rs.2,00,000/- on 25.02.2007 for urgent family expenses. To discharge the said liability, the respondent issued the cheque dated 30.03.2007 drawn on IndusInd Bank, Erode branch bearing cheque No.070329 for a sum of Rs.2,00,000/-. On instructions from the respondent, the cheque was presented on 02.04.2007 and the same was returned with an endorsement 'Funds Insufficient' on 03.04.2007. The appellant had sent a statutory notice on 13.04.2007, which was returned on 18.04.2007 with an endorsement as 'not claimed'. Thereafter, filed the complaint.



https://www.mhc.tn.gov.in/judis

WEB COPY



3.During trial, the appellant examined himself as PW1 and marked Exs.P1 to P5. On the side of the defence, three witnesses examined including the respondent and marked Exs.D1 and D2.

4.The learned counsel for the appellant submitted that the primary ground on which the complaint was dismissed is that Ex.P3/statutory notice was sent on 13.04.2007 and the postal receipt is marked as Ex.P4 and the returned postal cover is marked as Ex.P5. In the address portion, there is some correction in the name and confusion arose as to whether the addressee is P.Thiyagarajan or Thangarajan. According to the appellant, it is clear that in the postal returned cover/Ex.P5 the name of the respondent written as P.Thiyagarajan, S/o.Ponnusamy and the postal cover has been returned as not claimed. But the trial Court took a different view that DW1-Postman had given evidence that he knew the accused/respondent for fifteen years and Ex.P3 was addressed to Thangarajan not Thiyagarajan and some correction has been made and Ex.P3/notice was not sent to the correct address. As per Section 27 of General Clauses Act, it is confirmed once notice has been taken to the address known to the complainant



https://www.mhc.tn.gov.in/judis

WEB COPY



and it was despatched, then it has to be presumed that the complainant had sent notice with due diligence to the addressee in proper form. Further submitted that there is no reason for any such correction referred on Ex.P3/Notice. In Ex.P3-Notice the respondent name P.Thiyagarajan, S/o.Ponnusamy, M 745, T.N.H.B., Taj Nagar, SPB Colony (PO), Erode-10 has been clearly mentioned. If that is the case, there is no necessity for any mistake committed in the postal cover. The respondent created a defence with a known postman and known persons in his locality and projected as though notice has not been served. The trial Court not gone into other facts as to why cheque has been handed over by the respondent to the appellant/complainant and no explanation given for the same. When the respondent not denied the cheque, presumption under Section 139 of N.I. Act comes into play, which he has not dislodged except for taking a technical plea.

5.The learned counsel for the respondent/accused strongly opposed the appellant's contention submitting that the appellant's contention of presumption under Section 139 of N.I. Act comes into play will not be proper. Once the respondent denied the receipt of notice and the corrections made in the postal cover and non receipt of notice has been proved by



https://www.mhc.tn.gov.in/judis

WEB COPY



examining three witnesses including postman and respondent himself as DW3, the appellant not taken any steps to refute the probabilities made by the respondent. He further referred to the judgment passed in Crl.A.No.339 of 2010 dated 01.08.2024, wherein this Court held that in the statutory notice if the name of the addressee is wrongly mentioned and the postal cover returned as no such addressee, then it would confirm that Section 138(b) of N.I. Act not complied. He further relied upon the judgment in Crl.A.No.806 of 2009 for the same point.

6.At this stage, this Court finds that the records not received from the Lower Court. A perusal of the record would clarify as to whether there is any correction and what was the explanation given by the respondent by himself and through the other witnesses.

7.In view of the same, the learned Chief Judicial Magistrate, Erode is directed to submit the records in C.C.No.158 of 2011 to this Court before 15.10.2025.

8.List the case on 15.10.2025.

**2.** In continuation and conjunction with the earlier order passed by this Court on 15.10.2025, and upon perusal of the records, it is observed that Ex.P5 is the returned postal cover, while Ex.P4 is the postal receipt. The



https://www.mhc.tn.gov.in/judis

WEB COPY



serial number on the postal receipt is 5558, and the same number is endorsed on the postal cover, dated 13.04.2007.

**3.** Upon examining the postal cover, it is evident that there is some overwriting and correction in the name of Mr. P. Thiyagarajan, S/o Ponnusamy, SPB Colony Post, Erode, which appears to have been struck out. On the reverse side of the cover, there are further markings indicating "no such person" and thereafter an endorsement of "not claimed."

**4.** From the evidence of the appellant (P.W.1), it is seen that during cross-examination, a specific question was posed regarding the correction on the postal cover, which P.W.1 denied. Furthermore, it was brought out that the respondent’s father and the appellant’s father were acquainted with each other and had financial transactions between them. It was during this time that a cheque was allegedly given as security. The respondent’s father died in the year 2004. The appellant’s specific case is that the cheque was filled out in 2005 and the case was filed thereafter.

**5.** The respondent examined one Mr. Krishnan, the area postman, who confirmed that he was familiar with delivering letters to the respondent named P. Thiyagarajan. However, Ex.P5 was addressed to "P. Thangarajan",



https://www.mhc.tn.gov.in/judis

WEB COPY



and therefore, he was unable to deliver the cover to the intended recipient. Accordingly, Ex.D1 and the relevant enquiry particulars were submitted by him.

**6.** D.W.2, the Public Relations Officer of the postal department, confirmed through Ex.D2 that Registered Article No. 5558 was addressed to one "P. Thangarajan", and due to the name discrepancy, the letter could not be delivered and was returned. Ex.D2, the enquiry report submitted by the Public Relations Officer, confirms that Ex.P5 was originally addressed to "Thangarajan" and not to the respondent, "Thiyagarajan". Hence, it is evident that Ex.P5 contains a material correction, which has been substantiated by the respondent. Based on the evidence of D.W.1 and D.W.2, Exs.D1 and D2, the Trial Court rightly came to conclusion, statutory notice marked as Ex.B5 was not properly addressed and not served and dismissed the complaint.

**7.** This Court finds no reason to interfere with the judgment of the Trial Court, which is well-reasoned one. Accordingly, the **Criminal Appeal is dismissed**.

**22.10.2025**

nvi

11/13

https://www.mhc.tn.gov.in/judis

WEB COPY



**To**

1. Chief Judicial Magistrate, Erode

2.The Public Prosecutor
High Court, Madras.

**M.NIRMAL KUMAR,J.,**

nvi



https://www.mhc.tn.gov.in/judis

WEB COPY



22.10.2025



https://www.mhc.tn.gov.in/judis