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Crl.R.C.No.364 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.364 of 2021

and

Crl.M.P.No.14139 of 2025

K.S.Pandurangan

... Petitioner/Accused

Versus

C.Mahalingam

... Respondent/Complainant

PRAYER : Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. praying to call for the records in respect of the impugned order dated 18.03.2021 of the learned III Additional District and Sessions Court, Tiruvallur at Poonamallee in Crl.A.No.167 of 2018 dismissing the appeal and consequently confirming the judgment dated 19.06.2018 of learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur in S.T.C.No.384 of 2016 and set aside the same and allow the revision petition.

For Petitioner : Mr.A.Thirumaran

For Respondent : Mr.T.R.Ravi



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ORDER

The petitioner/Accused in S.T.C.No.384 of 2016 was convicted by the trial Court by the judgment dated 19.06.2018 on the complaint filed by the respondent for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and directed to pay the cheque amount of Rs.20,00,000/- as compensation within a period of two months, in default, to undergo further period of one month simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal in Crl.A.No.167 of 2018 before the III Additional District and Sessions Judge, Poonamallee. The learned Sessions Judge, by the judgment dated 18.03.2021, dismissed the appeal confirming the conviction and sentence of the trial Court, against which, the present revision is filed.

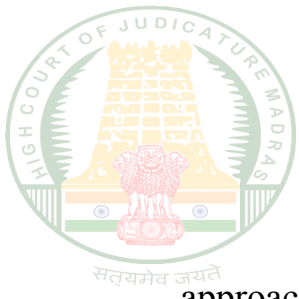
2.For the sake of convenience, the parties are referred as per their litigative status before the trial Court.



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3.The case of the complainant is that the accused is the owner of the property in Survey No.553 /8D, 548/3B at village No.34, Chittur Village, Walajabad, Sriperumpudur Taluk, Kancheepuram District in Patta No.499 to an extent of 1 acre 71 cents of agricultural land. The accused approached the complainant on 01.11.2015 to sell the above land and the complainant showed interest and agreed to purchase the property. After deliberations, sale consideration for the land fixed at Rs.40,000/- per cent and for 1 acre and 71 cents, total consideration was fixed at Rs.68,40,000/-. The accused insisted for direct registration. To confirm commitment to purchase, on 10.11.2015, accused received a sum of Rs.20,00,000/- as advance, refused to enter into any agreement of sale, but handed over the original title deeds of the property as confirmation and security. Further, the accused insisted the complainant to pay the balance sale consideration within two months and to get the sale deed executed in favour of the complainant without delay. The complainant was ready with the cash and willing to perform his part of the contract and



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approached the accused on several occasions along with the balance sale amount and requested to execute the sale deed. The accused was avoiding and evading to execute the sale deed. When the complainant insisted for repayment of advance amount, the accused issued two cheques viz., cheque bearing No.977499 dated 01.07.2016 for a sum of Rs.10,00,000/- and cheque bearing No.977500 dated 08.07.2016 for a sum of Rs.10,00,000/- in favour of the complainant drawn on State Bank of India, Ambattur Branch, Chennai and assured the complainant that the cheques would be honoured on the date of its presentation. Thereafter, on 14.07.2016, cheques were presented, but the same returned with a bank return memo dated 15.07.2016 for the reason “Funds Insufficient”. The complainant sent statutory legal notice on 29.07.2016 calling upon the accused to pay the amount of Rs.20,00,000/- covered by two cheques. The accused received notice on 06.08.2016, belatedly sent a reply notice on 29.08.2016 with false averments, which was ignored and complaint filed.

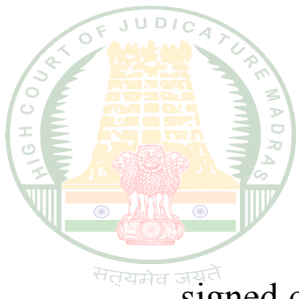


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4. During trial, the complainant examined himself as PW1 and marked Exs.P1 to P9. The accused examined himself as DW1 and other two witnesses as DW2 and DW3 and no documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. The Lower Appellate Court confirmed the same, against which, the present revision.

5. The contention of the learned counsel for petitioner/accused is that the accused not agreed for any sale of his property and also not received Rs.20,00,000/- as advance. In this case there is no sale agreement or pro-note or any other contemporary document produced to show that a huge amount of Rs.20,00,000/- received as advance except for the two cheques. The accused during initial questioning stated that he mortgaged his land and obtained Rs.7,50,000/-, at that time, he gave two cheques and according to the accused he owes only Rs.7,50,000/-. The accused in his reply notice/Ex.P6 gives reason that one of the employee of the accused took several documents and

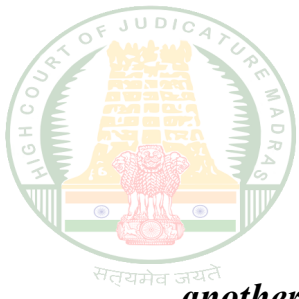


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signed cheque leaves available in his office, which landed in the hands of the complainant, who projected a false case as though the accused issued two cheques for Rs.10,00,000/- each in discharge of his liability. The trial Court observation that during initial questioning the accused gave one explanation but during cross examination and questioning under Section 313 Cr.P.C., the accused took a different stand. Hence, giving undue importance to the contradictions and convicting the accused is not proper. It is settled position of law that accused can take any number of defence, which might not be inconsistent. For taking contra defence, it cannot be presumed and concluded that accused committed the offence. The contradictions in the statement of the accused under Sections 251 and 313 Cr.P.C. would not amount to substantial proof and merely based on these contradictions conviction cannot be passed.

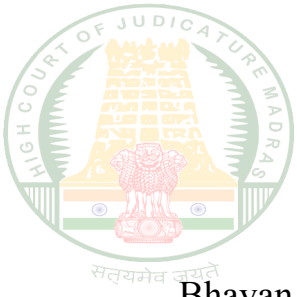
6.In support of his contention, the accused relied upon the judgment of the Hon'ble Apex Court in the case of *Mohan Singh vs. Prem Singh and*



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another reported in **AIR 2002 SC 3582**, wherein the Apex Court held that statement made under Section 313 of Cr.P.C. is not a substantive piece of evidence. Further, statement without oath recorded, cannot be taken as evidence as contemplated under Section 3 of the Indian Evidence Act. The petitioner further relied upon the judgment in **Dehal Singh vs. State of H.P.**, reported in **AIR 2010 SC 3594**. In this case, though the complainant admits that he has got Profit and Loss account statement, the same not produced. In this case the accused examined defence witnesses to probabalise his defence to show that from DW2, accused borrowed only Rs.7,50,000/-, which was completely ignored by the trial Court as well as Lower Appellate Court. The complainant though admits that the deal with the accused was through a broker, he is unable to give any further details. Further, the complainant admits that he is not aware as to who filled up the cheques and there is clear variance in the inks in the writing and signature found in the cheques. The complainant produced Ex.P7/Trading, Profit and Loss Account of Raja

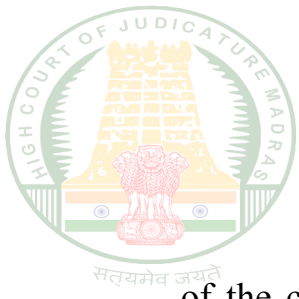


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Bhavan Sweets. How it is relevant to the complainant case, no reason given.

Further, in Ex.P7, there is no mention about the transaction between the complainant and the accused. The complainant admits that one common friend Uthamarajan was present when the amount was paid, the said Uthamarajan not examined as witness. The accused examined DW2/Jebamanickam and DW3/Marimuthu to prove the fact that accused had transaction with Jebamanickam and not with the complainant. The accused borrowed from DW2/Jebamanickam, who admits that he gave the cheque of the accused to the complainant for his borrowing. Hence, there is no direct liability between the accused and complainant. The complainant misused the cheque of the accused, which is confirmed and clarified by DW2.

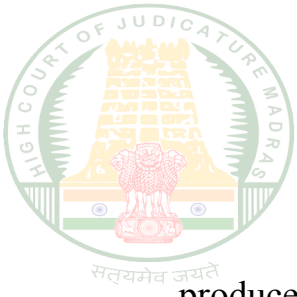
7.In this case, to attract statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, the complainant by oral and documentary evidence has to prove that the accused issued cheques in favour



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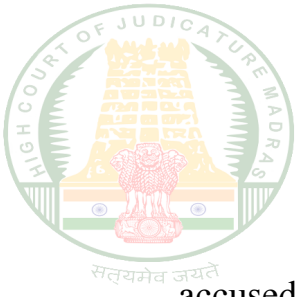
of the complainant in discharge of liability thereafter only the presumption follows. The cheques were issued to Jebamanickam/DW2 not to the complainant, the said Jebamanickam/DW2 examined in this regard. The accused examined himself as DW1, gave all details and probalised his defence. But the Courts below not considered the same. The trial Court merely gone by the different answers given during the trial at different stage and for the contra reply notice/Ex.P6. He further submitted that accused questioned the source of income of the complainant how he could pay a huge amount of Rs.20,00,000/- as advance, for which, the complainant filed Ex.P7/Profit and Loss account, which is of a Sweet Stall and not of the complainant. Further such huge amount of Rs.20,00,000/- is said to have been given in cash, which is against Section 269SS of the Income Tax Act. DW3 confirms handing over title documents and two signed blank cheques to DW2 by the accused. Hence, by cogent evidence and explanation the accused probalised his defence but the trial Court not considered the evidence



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produced by the accused, merely gone by the different answers given at the different stage of the case and concluded, accused committed offence and held accused liable to pay the cheque amount of Rs.20,00,000/- to the complainant, which is not proper.

8.He further submitted that it is explicit that signature and writing in the cheques are in different inks and writings differs. Further submitted that complainant admits that in Ex.P2 series, Mrs.Vijayakumari P.K. name printed and not in the name of the accused. Complainant admits that he knew the accused only through a broker and the amount of Rs.20,00,000/- given in presence of one Uthamarajan. Neither the broker nor the said Uthamarajan examined as witness to substantiate the complainant's claim. The specific case of the accused is that he had taken loan from Jebamanickam. To substantiate the same, he examined said Jebamanickam as DW2. Further submitted that Ex.P1/sale deed Document No.2327 of 2005 is between the

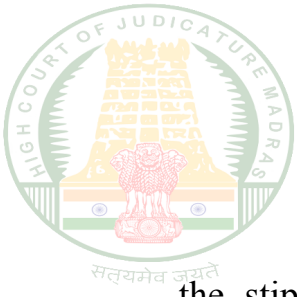


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accused and one V.Vijaya. Thus the accused probablised his defence. Both the trial Court as well as the Lower Appellate Court failed to consider the same. Hence, praying to set aside the judgment of both the Courts below and to acquit the accused from the above case.

9.The learned counsel for complainant strongly denies the contention of the accused. The accused not denied his signature in Ex.P2 series and issuance of two cheques. Likewise, not denied handing over of the original of sale deed Doc.No.2327 of 2005. The said document is the title document of the suit property for which, the complainant entered into an understanding and agreed to purchase the same by fixing the value of Rs.40,000/- per cent and for 1 acre and 71 cents, total consideration was Rs.68,40,000/-. The accused in a tactful manner deceived the complainant by stating he is not inclined to enter any sale agreement, since encumbrance will be created to the property, if the complainant fails to pay the balance sale consideration within



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the stipulated period on the agreed terms. Further accused to show his genuineness to conclude the sale within stipulated period to pay balance agreed amount within two months, then accused will not negotiate with others for the property till then and received amount of Rs.20,00,000/- which was paid in cash. The accused accepted, received the advance amount, for receipt of advance amount, two cheques/Ex.P2 series handed over. Further, accused handed over the original title deed of the property. Thereafter, the accused evaded to execute sale deed by giving one reason or other. Thereafter, finding accused deliberately avoiding to execute sale deed, despite complainant ready with the balance sale consideration, the complainant after informing the accused, presented cheques for encashment, which got dishonoured, following the statutory conditions complaint filed.

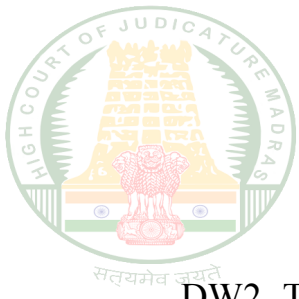
10.The complainant examined himself as PW1 and marked Exs.P1 to P9. The accused cross examined the complainant in detail, but could not dent



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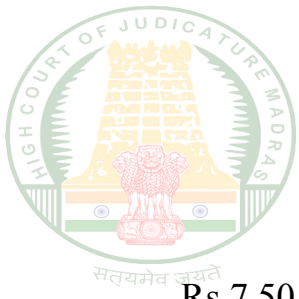
the evidence of PW1, unable to extract any favourable answer. The accused took a stand that there is variation in writings and difference in the ink, further in the cheque leaf, name of Mrs.Vijayakumari is printed. It is a joint account of the accused with Vijayakumari. The cheques were returned for insufficient funds and not for any other reason. The accused took different stand at each stage. For the statutory notice he sent a reply notice/Ex.P6 alleging statutory notice without any details as to when and where the sum of Rs.20,00,000/- given, further denied land dealing and receipt of Rs.20,00,000/- but gives explanation that he misplaced original documents and signed cheque leaves in his office and one of his employee took away their documents, which is misused by the complainant. This reply is a bald reply without any particulars and details. Further the accused examined himself as DW1, where he takes a contra stand that documents and cheques given to one Jebamanickam/DW2 and not to the complainant. DW2 gives a version, he handed over the cheques to the complainant, DW3 corroborates



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DW2. The accused/DW1 admits contradictions in his evidence, and accused unable to give details about his employee or person, who took away documents and cheques from his office. The accused not taken any steps to retrieve the missing documents and cheques, lodged any police complaint for missing of documents. He admits reply notice is bereft of any details. The accused admits that during initial questioning under Section 251 Cr.P.C. he answered that he mortgaged the land and took loan of Rs.7,50,000/- and at that time he handed over two signed cheques to Jebamanickam, who he examined as DW2, but DW2 failed to give any details. DW2 admits accused not repaid Rs.7,50,000/- to him till date and DW2 not taken any steps to call upon accused to repay this loan amount. Further accused not taken any steps against DW2 for misuse of cheques and documents by the complainant, which only exposes collusion of DW1 and DW2. The evidence of DW3 is to the limited extent of DW1 handing over blank signed cheques and property document of Sunguvachatram to DW2 at the time of taking loan of



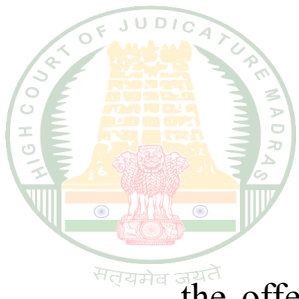
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Rs.7,50,000/-. The Courts below clearly found the prevaricate stand taken by the accused contrary to the evidence and materials available and held complainant proved the case beyond all reasonable doubt rightly convicted the accused.

11.Though very many grounds have been raised by the petitioner and stoutly denied by the respondent, now the petitioner/accused and the respondent/complainant had come to an understanding to give a quietus to the issue.

12.Today, the learned counsel for petitioner as well as respondent filed a petition under Section 147 of the Negotiable Instruments Act, 1881 in Crl.M.P.No.14139 of 2025 for compounding the offence, which was signed by the petitioner and the respondent and by their respective counsel.

13. In view of the compromise arrived at between the parties and considering the petition under Section 147 of the Negotiable Instruments Act,



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the offence under Section 138 of the Negotiable Instruments Act in S.T.C.

No.384 of 2016 is compounded.

14. In view of the same, the Joint Memo of Compromise dated 17.06.2025 is taken on file. The Criminal Revision Case is allowed in terms of the Joint Memo of Compromise dated 17.06.2025. The conviction and sentence imposed on the petitioner vide judgment dated 18.03.2021 made in Crl.A.No.167 of 2018 on the file of the learned III Additional District and Sessions Judge, Poonamallee, confirming the judgment dated 19.06.2018 made in S.T.C.No.384 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, is set aside and the revision petitioner is acquitted of the offence under Section 138 of the Negotiable Instruments Act and from all charges.

10.07.2025

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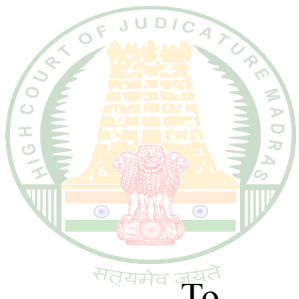
Index : Yes / No

Neutral citation : Yes / No

Internet : Yes/No

Speaking / Non-speaking order

16/18



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To
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- 1.The III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.
- 2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Ambattur, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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