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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-11-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.NO.468 of 2016

Gobichettypalayam Agricultural
Producers Co-operative Marketing Society,
No.K 544,
Gobichettypalayam,
Rep. By Secretary R.Karthivel. ….Appellant

Vs

A.Rangaraju
By Its Proprietor,
R.Aiyelraju,
No.10, Krishnan Street,
Erode-638 003. ….Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to set aside the order of acquittal dated 03.02.2016 made in C.C.No.677 of 2004 on the file of the Judicial Magistrate – II, Erode.

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For Appellant : Mr.L.P.Shanmugasundaram
Assisted by
Mr.Thirumoorthy
Ms.A.Jasline

For Respondent : Mr.R.Nalliyappan

ORDER

This criminal appeal is filed against the judgment of the Judicial Magistrate No.2, Erode, dated 03.02.2016 made in C.C.No.677 of 2004. By the said judgment dated 03.02.2016, the trial Court acquitted the respondent/accused from the offence under Section 138 of the Negotiable Instruments Act, 1881.

2.This is a private complaint filed by the appellant under Section 200 of the Code of Criminal Procedure complaining the offence under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the complainant is a cooperative society registered under the Tamil Nadu Cooperative Societies Act and is indulged in the business of facilitating its members/farmers marketing and

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trading turmeric. The said agricultural produces will be auctioned to the prospective purchasers and they have to pay the money.

3.While so, the respondent/accused is one of the purchasers who participated in the tender. He participated in the tender and lifted the turmeric. However, he did not pay the amount due as per the tender and in discharge of his balance liability due, the accused issued the following cheques for the amount mentioned thereunder.

S.No	***Cheque No.***	***Date***	***Amount in Rs.***	***Drawn on***
1	152576	09.02.2004	9,49,149.00	Tamil Nadu Mercantile Bank Limited, Erode
2	152578	10.02.2004	4,64,868.00	Tamil Nadu Mercantile Bank Limited, Erode
3	152592	19.02.2004	8,93,865.00	Tamil Nadu Mercantile Bank Limited, Erode

4.However, the accused was also starting to pay some amounts by way of cash as mentioned hereunder:

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S.No	Date	Amount in Rs.
1	25.02.2004	1,00,000.00
2	01.03.2004	50,000.00
3	03.03.2004	50,000.00
4	17.03.2004	40,000.00
5	23.03.2004	50,000.00

5.However, the accused did not discharge the entire liability and as such, all the cheques were presented on 19.04.2004 and the same were returned dishonored with an endorsement "funds insufficient". Thereafter, a statutory notice was issued on 05.05.2004, to which, a reply containing false particulars was issued on 17.05.2004 and hence, the private complaint was filed.

6.Upon recording sworn statement, the case was taken on file as C.C.No.677 of 2004. Upon issue of summons and furnishing of copies and questioning, the accused denied the allegations and stood trial. In order to bring home charges, one

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R.Kadirvel, Secretary of the Society was examined as P.W.1 and Exhibits P1 to P16 were marked. During the cross-examination, Exhibits D1 and D2 were marked on behalf of the defence. Upon being questioned under Section 313 of the Code of Criminal Procedure about the material evidence on record, the accused denied the same. Thereafter, no oral evidence was let in on behalf of the defence.

7.The trial Court considered the case of the parties. The trial Court, firstly concluded that originally when one Sekar, Secretary of the cooperative society presented the complaint, the same is not substantiated by proper documents enabling him to present the complaint and therefore, accepted the version of the defence that the procedure adopted by the complainant was incorrect and therefore, the complaint itself is not filed by appropriate person. Secondly, the trial Court took into consideration the fact that subsequent to the alleged non payment, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, was initiated on behalf of the society and surcharge proceedings and action was also

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taken as against several of the employees, including the said Sekar who presented the complaint.

8.Therefore, the trial Court came to the conclusion that when action for misappropriation is taken with reference to the employees and when action is also taken as against the complainant, only to wriggle out of the criminal and other actions, the complaint was filed and the cooperative society failed to prove that it is the accused who had participated in the auction and did not repay the amount. In the absence of the relevant account books and other records of the society being produced as evidence, the trial Court held that the liability is also not proved and acquitted the accused as against which, the present appeal is filed.

9.Mr.L.P.Shanmugasundaram, Mr.Thirumoorthy and Ms.A.Jasline appearing on behalf of the appellant cooperative society, by producing a separate communication that is issued to them, would submit that it is a fact that the

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accused is only the tenderer and the total amount due to the cooperative society with reference to the price of the turmeric is Rs.23,07,882/- and it can be seen, as discussed in the judgment of the trial Court, some amounts were paid even before the presentation of the cheques and some amounts were paid pending the trial and also further amounts were paid as follows;

Date	***Amount in Rs.***
03.05.2004	2,00,000.00
07.05.2004	50,000.00
04.08.2004	2,00,000.00
02.03.2005	10,50,000.00

in all totalling to a sum of Rs.18,40,000/-. Therefore, a balance of Rs.4,67,902/- is still recoverable from the accused.

10.The learned counsel for the appellant would further submit that the findings of the trial court are erroneous in law. The secretary, being the executive officer of the cooperative society is entitled to file the complaint as per the bylaws

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and the findings in this regard are erroneous. Secondly, the action was taken as against the officers of the cooperative society because it was incumbent on the officers of the cooperative societies not to release further turmeric when the purchaser of one lot fails to pay the amount due to the said lot. As the authorities also colluded with the tenderer and allowed the loads to be taken away without receiving the payment, the action was taken against them and there are also other commissions and omissions with respect to the employees and therefore, the surcharge action, criminal action etc., were taken against them that will not in any manner absolve the liability of the accused who was only the tenderer. Towards the discharge of the liability, to pay the amount due, the accused has issued the cheques and when the cheques were duly presented and the signature was admitted, the presumption under the Negotiable Instruments Act operates in favour of the appellant/cooperative society. Merely because the appellant is a cooperative society, the trial Court has completely given a go by to the presumption that is available under the Negotiable Instruments Act and insisted upon the complainant

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to prove every aspect of the transaction. It is enough for the complainant to prove the case by producing the cheques and also by deposing that the cheques were issued only in discharge of the part liability still the trial Court should have convicted the accused. Even now, this Court can consider if the accused pays the balance due of Rs.4,67,902/-, the cooperative society is being defrauded the said amount.

11.Per contra, Mr.R.Nalliappan, learned counsel appearing on behalf the respondent/accused would submit that even admittedly as per the version of the cooperative society, the entire sum for which the cheques were issued, as on 19.04.2004 were not due, as the accused started repaying the amounts even by 25.02.2004, well before the presentation of the cheques. Thus, it is clear that the entire amount due under the cheques were not due even as on date of the presentation. When the entire amount as alleged was not due then the cheques which were admittedly left to the custody of the society by way of security could

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not have been presented for the entire value and therefore, on that ground, when a legally enforceable liability was not existent to the entire extent, the trial Court was right in acquitting the accused. Further, it can be seen that the deceased Sekar was not properly authorized to file the complaint and therefore, on that ground also the trial Court acquitted the accused. The cooperative society should have produced the accounts and the other books to prove that the amount was due and the liability should have been proved in the manner known to law especially through the cross-examination of P.W.1 and by marking Exhibits D1 and D2, the accused has rebutted the presumption.

12.I have considered the rival submissions and perused the material records of the case.

13.At the outset, the plea relating to the presentation of the complaint is a hypertechnical plea especially considering the fact that the complaint is filed on

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behalf of the Secretary of the cooperative society. By a combined reading of the Cooperative Societies Act and the Rules made thereunder, it can be seen that the Secretary is in a position to represent the cooperative society and therefore, when the cheques are being presented by the Secretary and thereafter, the complaint is filed, the findings in this regard by the trial Court are without taking into account the relevant provisions and therefore, I am not in agreement with the same. Be that as it may, even with reference to the second point, as rightly contended by the learned counsel for the appellant, once the cheque is presented and the signature is admitted, the presumption under Section 139 of the Negotiable Instruments Act operates in favour of the complainant/cooperative society and at the outset itself it is not incumbent on the cooperative society to prove the liability. To that extent, the findings of the trial Court may be erroneous.

14.However, it can be seen that even P.W.1 Kadirvel who is the succeeding Secretary was cross-examined on behalf of the accused. The accused has raised a

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plea that the entire liability was not on behalf of the accused but is also on account of misappropriation of the officials. In that view of the matter, when the presumption is ought to be rebutted by the cross-examination, at least at that stage, the complainant should have produced the accounts book to prove the balance amount due and in the absence of the same, the finding of the trial Court that it is not known whether it was due from the accused or from the other officials cannot be said to be a perverse finding so as to be interfered in an appeal against acquittal.

15.The learned counsel for the appellant would now produce a letter of the accused dated 22.01.2005 whereby the liability is admitted and one time settlement was sought by the accused. The recovery of the sum due under the provisions of the Cooperative Societies Act is totally a different question and the accused admitting the liability are all within the realm of the authorities to recover the amount due in the manner known to law. This case is only with reference to the offence under Section 138 of the Negotiable Instruments Act that is said to have

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been committed by the accused.

16.It can also be seen that the majority of the amounts *viz.,* Rs.18,40,000/- has also been paid by the accused. Therefore, nobody prevents the cooperative society from taking further action in the manner known to law if they are so empowered under the Act in recovering the balance amount that is said to be due from the accused. However, when the trial Court has given a finding that the cooperative society fell short of evidence to prove the liability in the manner known to law beyond any reasonable doubt in the instant case the said finding cannot be interfered with unless this Court comes to the conclusion the same is perverse or an impossible view in an appeal against acquittal. As such I find no merits in this appeal and accordingly, this appeal stands dismissed with liberty to the appellant cooperative society to take such steps to recover the balance due as alleged by the society in the manner known to law.

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To

1. The Judicial Magistrate-II, Erode.

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

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D.BHARATHA CHAKRAVARTHY,J.,

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