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CRL A No. 801 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-11-2025

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 801 of 2012

1. S.K.Elumalai

Appellant(s)

Vs

1. K.Madhu Srinivas
S/o.K.Vishnu Vartha Rao No.20/9
Natesan Nagar Fifth Main Road,
Virugambakkam, Chennai

Respondent(s)

For Appellant : Mr.C.Rishi
for Mr.R.Balachandran

For Respondent : Ms.M.Sumii Arnica
Legal Aid Counsel

ORDER

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



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CRL A No. 801 of 2012

M.NIRMAL KUMAR, J.

rsi

2.The learned Counsel for the appellant submits that though this Court dismissed the appeal on 07.10.2025, the exact disposal of the case not mentioned in the order. Hence, seeks clarification.

3.On perusal of the order it is seen that the result portion of the order has not been mentioned. Hence, the last line of paragraph No.5 substituted to read as under:

“5. Hence this Court finds no reason to interfere with the findings of the Trial Court and the Criminal Appeal stands dismissed.”

4.The Registry is directed to incorporate the above in the order dated 07.10.2025 and issue fresh copy of the order dated 07.10.2025.

5.The issue is clarified, accordingly.

11.11.2025

rsi

CRL A No. 801 of 2012



WEB COPY



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DATED: 07.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.801 of 2012

S.K.Elumalai
... Appellant

Vs.

K.Madhu Srinivas
... Respondent

Prayer: Criminal Appeal filed under Section 375 of Cr.P.C., to set aside the order of acquittal in C.C.No.5260 of 2006 on the file of the Fast Track Magistrate-III, Saidapet, Chennai and punish the accused under Section 138 of the Negotiable Instruments Act for issuing the cheque bearing No.928158 dated 10.01.2006 drawn on ICICI Bank, Kilpauk Branch without sufficient funds.

For Appellant	:	Mr.C.Rishi	
		for	
Mr.R.Balachandran			
For Respondent	:	Ms.Sumi Arnica	
		Legal	Aid
Counsel			



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CRL A No. 801 of 2012

JUDGMENT

The appellant as complainant filed a private complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as “NI Act”) against the respondent in C.C.No.5260 of 2006. The learned Fast Track Magistrate-III, Saidapet, Chennai by judgment dated 10.07.2012 dismissed the complaint. Against which, the present appeal filed.

2.The gist of the complaint is that the complainant received a cheque for Rs.6,70,000/- bearing No.928158 dated 10.01.2006 drawn on ICICI Bank, Kilpauk Branch issued by the respondent towards legally enforceable debt. At the time of issuing the cheque, the respondent informed the appellant that sufficient funds available in the bank account maintained by him in ICICI bank, Kilpauk Branch. The complainant presented the cheque for collection through Indian Bank, Sholinganallur Branch on 12.01.2006, but the cheque was returned for the reason "Payment stopped by the drawer". Thereafter, the appellant questioned the respondent and the respondent requested the appellant not to initiate any legal proceedings for dishonour of cheque and once again requested to present the cheque for



CRL A No. 801 of 2012

collection in the month of March. Hence on 15.03.2006, the cheque was again presented, but again, it was returned for the reason "payment stopped by the drawer." Thereafter, statutory notice issued on 21.03.2006 which was served on the respondent and thereafter following the statutory procedures, the complaint was filed. During trial, the complainant examined himself as P.W.1 and marked five documents Ex.P1 to Ex.P5. On the side of the respondent, one Ranjith Kumar was examined as D.W.1 and through him Ex.D1 marked. On conclusion of trial, the Trial Court dismissed the complaint.

3.The contention of the learned counsel for the appellant is that the respondent not denied the issuance of cheque, his signature in the cheque but takes a stand that the cheque was issued as security. Once the drawer of the cheque admits his signature and issuance of the cheque, statutory presumption under Sections 118 and 139 of the NI Act comes into play. The respondent failed to get into the dock and probabilise his case, on the other hand, one Ranjith Kumar claiming to be a known person to both the appellant and the respondent was examined and through him Ex.D1/Sale deed entered between Indirani and Jegadeesan, wife and son of Rathina



CRL A No. 801 of 2012

Naicker with M/s.Zillion Estates Private Limited with regard to the land of 78 cents in Shollinganallur Village. The respondent is a party to the document as Confirming Party. The appellant is the relative of the said Indirani and Jegadeesan. The respondent as an agent of M/s.Zillion Estates Private Limited approached the appellant and the appellant, a relative of the vendors to the property negotiated and the price was fixed. It was agreed that the appellant would be given Rs.10,000/- as brokerage for each cent. Thus it was agreed to pay Rs.7,80,000/- and as part payment Rs.6,70,000/- was paid. The Trial Court given a finding that this fact has not been disclosed either in the statutory notice or in the complaint and for the first time such a stand taken by the complainant in the proof affidavit and during trial. The appellant submit that D.W.1 admits he acted as a broker to the land deal and received commission. When D.W.1 admits the sale and acting as a broker for the sale and receiving brokerage, it is natural that the appellant who is also a real estate agent and relative of the vendor was agreed to be paid his commission. This fact not considered by the Trial Court but on its own gives an explanation that when the property was purchased fixing the rate at Rs.30,000/- for each cent, brokerage of Rs.10,000/- for each cent is abnormal and for a consideration of Rs.28,08,000/- the amount of Rs.6,70,000/-



CRL A No. 801 of 2012

claimed as a legal brokerage is abnormal and the explanation of the respondent that the cheque was issued as a security is acceptable is without any basis of evidence. The commission in real estate business is fixed on the convenience and necessity of parties.

4.The learned counsel for the respondent submitted that the appellant admits that except for identifying the vendors to the property, namely, Indirani and Jegadeesan, relatives of appellant, thereafter he had not taken any active part thereafter. Merely for identifying the vendor for the property, a person will not be paid such a huge amount as brokerage. The respondent earlier entered an agreement with the appellant and the respondent/Confirming Party for the sale. Since the purchaser Company is in Secunderabad, they appointed the respondent as local agent to negotiate and he negotiated the deal for for the property and entered into an agreement with appellant, at that time, as security cheque was issued. Even before the date of the cheque, sale deed was executed on 07.01.2006 between vendor and buyer Company and the respondent as Confirming party but the cheque is dated 10.01.2006. Further the appellant had come with a different version at each stage and he had not disclosed acting as a broker and receiving



CRL A No. 801 of 2012

commission neither in the statutory notice nor in the complaint. On the other hand, the respondent had probalised his defence by examining D.W.1 who is also a broker involved in the transaction and through him, Ex.D1 marked. The appellant could not give any answer to Ex.D1. The Trial Court considering all these aspects had rightly dismissed the complaint. Hence, prayed for dismissal of the appeal.

5.Considering the submissions made and on perusal of the materials, it is seen that the cheque/Ex.P1 is dated 10.01.2006, it was presented for encashment earlier during the month of January 2006 and returned for the reason “Payment Stopped by the drawer of the cheque” and it was again presented for encashment during March 2006 which was returned for the reason “Payment Stopped by the drawer of the cheque”. Statutory notice was issued on 21.03.2006 and thereafter, complaint filed. The appellant neither in his statutory notice/Ex.P2 nor in his complaint made any reference as commission agent. According to the complainant, he only identified the vendors, namely, Indirani and Jegadeesan to the respondent who acted as an agent to M/s.Zillion Estates Private Limited. It is seen that the appellant though relative to the vendor of the property suppressed the



CRL A No. 801 of 2012

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true fact that the vendors are second wife and son of Rathina Naicker. The first wife and sons of Rathina Naicker immediately after the sale deed objected for the sale and taken to legal recourse. In this case, the sale deed was executed on 07.01.2006 and the cheque is dated 10.01.2006 and if at all there is agreed commission, it ought to have been before conclusion of the sale. It is seen that the appellant is neither a signatory nor witness and he has nothing to do with the sale deed executed between the vendors and the purchaser. The appellant himself admits that he only identified the vendors to the property and nothing more, to identify the owners of the property, no one could agree to give commission of Rs.10,000 for each cent, which is abnormal and unbelievable when the sale cost for each cent is fixed at Rs.30,000/-. The Trial Court considering all these aspects and considering the provision of Indian Contract Act and finding the respondent probalised his defence by cross examination of complainant and examination of defence witness and marking defence exhibits, rightly dismissed the complaint. Hence this Court finds no reason to interfere with the findings of the Trial Court.

6.This Court appreciates Ms.M.Sumii Arnica, Legal Aid Counsel



CRL A No. 801 of 2012

for the respondent for her strenuous efforts in doing research and putting forth the case of the respondent effectively. The Legal Services Authority to pay the remuneration to the Legal Aid Counsel as per Rules.

07.10.2025

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

cse

To

The Fast Track Magistrate-III,
Saidapet, Chennai.



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CRL A No. 801 of 2012

M.NIRMAL KUMAR, J.

cse

Crl.A.No.801 of 2012

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