IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.965 of 2025

S.Mohan Kumar ... Appellant

Vs

1.M/s.Real Value Promoters (Pvt) Ltd.,
Rep. by its Director,
Mr.Suresh,
Amarasri, 455, Anna Salai,
Teynampet,
Chennai – 600 018.

2.Suresh,
Director M/s.Real Value Promoters (Pvt) Ltd.,
Amarasri, 455, Anna Salai,
Teynampet, Chennai – 600 018. ... Respondents

Prayer: Criminal Appeal filed under Section 419(4) of B.N.S.S., pleased to set aside the order passed by the learned XXVI Metropolitan Magistrate, Egmore, Chennai in S.T.C.No.5259 of 2021 by an order dated 06.02.2025 that the accused in not found guilty under section 138 of NI Act.

For Appellant : Mr.M.Vignesh Babu

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JUDGMENT

This Criminal Appeal has been preferred as against the judgment dated 06.02.2025 passed by the learned XXVI Metropolitan Magistrate, Egmore, Chennai in S.T.C.No.5259 of 2021, thereby acquitting the respondents for the offence punishable u/s 138 of Negotiable Instruments Act (in short 'the NI Act').

2. The appellant has lodged a complaint against the respondents for the offence punishable u/s 138 of the NI Act alleging that on 20.10.2015, the 2nd respondent borrowed a sum of Rs.5,20,00,000/- as hand loan for improvement of the 1st respondent company's business and he promised to repay the same along with profit, however not repaid the same. After repeated request, in order to discharge the liability, the 2nd respondent in the capacity of Director of 1st respondent had issued two cheques bearing Nos.007625 and 007626, dated 18.08.2021 drawn on Indian Overseas Bank, Kodambakkam, Chennai Branch in favour of the appellant for a sum of Rs.5,20,00,000/- and Rs.6,59,75,000/- respectively. When the said cheques were presented for collection on 18.08.2021, the same were returned dishonoured for the reason “Funds Insufficient” on 19.08.2021. After causing the statutory notice, the appellant filed a complaint u/s 138

of the NI Act.

3. On the side of the appellant, he examined himself as P.W.1 and Ex.P1 to Ex.P7 were marked. On the side of the respondents, the 2nd respondent was examined himself as D.W.1 and Ex.D1 to Ex.D12 were marked. On perusal of the oral and documentary evidence, the Trial Court found the respondents not guilty and acquitted the respondents of the charges u/s 138 of NI Act. Aggrieved by the same, the present appeal is filed.

4. The learned counsel for the appellant would submit that the respondent did not deny the issuance of cheque and the signature found in the cheque. Further, he submitted that only on the strength of the cross-examination of P.W.1, the Trial Court acquitted the respondents. The appellant was examined as P.W.1, who deposed that after borrowal of amount, he received a portion of the loan amount. However, the respondent categorically admitted about the borrowal of the amount. Therefore, the appellant had discharged his initial burden as contemplated u/s 138 of NI Act, however, the respondent failed to rebut the presumption. Even then, the Trial Court mechanically acquitted the

respondents, which is *per se* unsustainable. Accordingly, he prays for allowing this appeal.

5. Heard the learned counsel appearing for the appellant and also perused the materials available on record.

6. On a perusal of records, it was revealed that in the cross-examination of P.W.1, he categorically admitted that after issuance of cheque, there were repayment of portion of loan amount. In fact, the appellant had categorically admitted in the complaint itself that the properties, which are mortgaged by the respondents were sold out and realized in cash. Further, on a perusal of the documents which are marked as Ex.D.1 to Ex.D.8, it was revealed that the properties were mortgaged in favour of the appellant and the same were sold out for valid consideration. That apart, one of the property was sold out and its sale deed was marked as Ex.D.3, from which, it is seen that the property was sold for a sale consideration of Rs.1 crore, however its market value was Rs.4 crores. Further, it is seen that after issuance of cheque, the respondents have repaid a portion of the loan amount. Without deducting the said part payment, the appellant had presented the cheque for

collection, which is *per se* unsustainable. Therefore, the respondent had categorically rebutted the presumption arise u/s 118 and 139 of NI Act. However, the appellant failed to prove that the cheque was issued for legally enforceable debt. Therefore, no offence u/s 138 of NI Act is made out against the respondent. Hence, the Trial Court rightly acquitted the respondent for the offence punishable u/s 138 of NI Act.

7. In view of the above, this Court finds no infirmity or illegality in the Judgment dated 06.02.2025 made in S.T.C.No.5259 of 2021 on the file of the learned XXVI Metropolitan Magistrate, Egmore, Chennai.

8. Accordingly, this Criminal Appeal stands dismissed.

16.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The XXVI Metropolitan Magistrate, Egmore, Chennai.

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