IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.605 of 2022

M/s.Imperial Tea Company Private Ltd.,
Rep by its Chairman and Authorised Signatory,
R.B.Subramani,
S/o.Raju Bettan,
138, Grace Hill, Coonoor,
Nilgris District. ….Appellant

Vs

K.R.Srinivasan ….Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to set aside the judgment in C.A.No.59 of 2019 dated 17.03.2022 on the file of the learned District and Sessions Judge, Nilgiris, Udhagamandalam.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.B.Vijayakumar

JUDGMENT

This appeal is filed against the judgment dated 17.03.2022 made in Crl.A.No.59 of 2019 by the learned District and Sessions Judge, Nilgiris, Udhagamandalam. By the said judgment, the appellate Court allowed the appeal and set aside the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Coonoor, on 25.10.2019 in C.C.No.58 of 2013.

2.This is a private complaint filed by the appellant for an offence under Section 138 of the Negotiable Instruments Act, 1881. The case of the complainant is that the accused is liable to pay a sum of Rs.50,04,393/- to the complainant company and the accused has promised to repay the same at the earliest. When the complainant demanded for the repayment of the said amount, the accused had issued a cheque on 10.10.2011 in favour of the complainant by dating the same as 10.10.2011 for the said sum. In addition to the cheque, the accused had also executed an undertaking admitting the liability and also issuance of the cheque.

3.However, before the complainant could present the cheque on 10.11.2011, on 31.10.2011, the accused went back and issued a baseless notice as if the cheque was entrusted with the complainant long back as security and the complainant is contemplating to misuse the said cheque and attempting to wriggle out of the liability. The complainant also issued a due reply dated 10.11.2011. Thereafter, on 11.11.2011, the cheque was presented for encashment. However, the same returned dishonoured with an endorsement "funds insufficient". Thereafter, a statutory notice was issued on 15.11.2011 to which, the accused has also issued a reply notice on 25.11.2011 to which a rejoinder notice was issued on 05.12.2011 and as such, the complaint was filed.

4.After recording sworn statement, the complaint was taken on file as S.T.C.No.152 of 2012. Upon issuance of summons, furnishing of copies and questioning, the accused denied the allegations and stood trial. In order to bring home the charge, one R.B.Subramanian. Director of the complainant company was examined as P.W.1 and Exs.P1 to P14 were marked on behalf of the complainant. Upon being questioned as to the incriminating evidence on record, the accused denied the same as false. Thereafter, the Bank Manager of the Central Bank of India was examined as D.W.1. The accused examined himself as D.W.2 and Exs.D1 to D6 were also marked on behalf of the defence.

5.The trial Court considered the case of the parties. The trial Court considered the fact that the accused had admitted the signature in the cheque and admitted the signature in the letter of undertaking that was marked as Ex.P3. When the accused has admitted the balance outstanding and also as to the issuance of the cheque, the trial Court held that the complainant had discharged his onus and the presumption also arises in favour of the complainant and when there is a legally enforceable debt as the parties had business transactions, found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay the cheque amount as compensation to the complainant and in default of payment of compensation, to take action as per Section 421 and 431 of Cr.P.C. Aggrieved by the same, the accused preferred Crl.A.No.59 of 2019.

6.The Lower Appellate Court firstly considered the case that there was no explanation with reference to the non production of original of Ex.P3 and therefore, held that in the absence of any evidence to satisfy the production of the secondary evidence, Ex.P3 cannot be taken into account. In the absence of Ex.P3, the appellate Court held that the complainant, in his complaint, has simply stated that the accused is liable to pay the amount due and has neither produced books of accounts nor produced any evidence in respect of the balance amount due. Under the said background, when the cheque amount is as huge as Rs.50,04,393/-, the Lower Appellate Court held that by due cross-examination and by letting in evidence, the accused has rebutted the presumption and in the absence of any further proof, held that the complainant failed to prove that there existed the liability to the tune of Rs.50,04,393/- and gave the benefit of doubt and acquitted the accused. Thereagainst, the instant appeal arises.

7.Mr.R.Karthikeyan, learned counsel appearing on behalf of the appellant, would submit that in this case, except for the technical submission, it can be seen after visiting the complainant and checking the accounts, that Ex.P3 was duly issued by the accused and the cheque was also given. It must be seen that suddenly out of the blue, on 31.10.2011, the notice was issued by the accused to wriggle out of the liability. If the case of the accused is true that the business transactions ended long ago, no steps whatsoever was taken by the accused to get back the cheque which was alleged to be given as security. It must be further seen that the timing of the notice given by the accused ie., on 10.10.2011, he reconciles the account and executes the letter of undertaking and after giving the post dated cheque by dating it as 10.11.2011, he issued a notice on 31.10.2011 which would itself adumbrate the attempt of the accused to cheat the complainant.

8. He further contended that the accused has not produced any material evidence for discharge of the liability. It must be seen that the complainant company is an auctioneer and the accused used to supply tea leaves for auction. The said transactions are admitted even by D.W.2 and it was further admitted that the complainant used to give money in advance with reference to the said transactions. Therefore, when the money is given as advance and the same remains outstanding when the accused issued cheque, the lower Appellate Court out not to have acquitted the accused. Further, when the trial Court has properly appreciated the evidence and convicted the accused, the lower Appellate Court, without any reasons substituted its own view and its view is untenable and as such, it is a fit case for this Court to interfere in the judgment.

9.Per contra, Mr.B.Vijayakumar, learned counsel appearing on behalf of the respondent/accused would submit that in this case, it is the specific evidence of the accused that except the signature in the cheque, the other handwriting does not belong to him. The said averment is not even challenged in the cross-examination done by the complainant. If the undertaking in Ex.P.3 was given at the time as mentioned by the complainant and the cheque was given, there was no occasion for any third party to fill up the cheque. This part of the transactions would expose the complainant. Further, Ex.P3 is only a photocopy and absolutely, no explanation was given by the complainant with reference to not producing the original. The very execution of Ex.P3 is challenged by the accused. Therefore, the lower appellate Court has rightly rejected the case of the accused and acquitted the accused.

10.I have heard the rival submissions and perused the materials of this case on record.

11.Before going into the admissibility of Ex.P3, it must be seen that in the complaint, the complainant did not plead any details as to how the liability arose. From the examination in chief and the cross-examination, it turns out that the complainant company is an auctioneer to which the tea growers such as the accused would supply their tea leaves for auctioning and apart from handing over the amount paid by the producers in respect of tea leaves, advance amount will also be given by the auctioneer. It was the case of the complainant that the accused has taken the amount as advance and therefore, the amount is due. Even with reference to the same, there is absolutely no averment forthcoming as to whether amounts were advanced in installments and if so, how many installments and if after taking the advance amount, the accused has not supplied the tea leaves, why the complainant kept on advancing further amount to the accused, *etc.* Therefore, the very nature of the transactions itself requires some kind of further averments and production of the evidence on the part of the complainant so as to consider the initial discharge of onus itself. Especially, in this case, the complainant did not even specify that it is the advance amount which was taken by the accused which was not repaid by him and the transactions relating to the auction, supply of tea leaves, etc., are not at all mentioned. It is least expected of the complainant to, at least, make averments in the complaint as to what is the nature of the liability and on what date, legally enforceable debt was advanced to the accused in the sense that when the liability to repay the amount arose, etc., more so in a case like this, when the complainant is claiming a huge amount of Rs.50,04,393/-.

12.In that view of the matter, leaving alone the case of the accused, whether Ex.P3 was executed or not and whether it is admissible or not, even to raise the presumption, there must a clear cut averment as to what nature of debt for which the cheque is issued and the particulars thereof which are all missing and even after the chief-examination and cross-examination of the complainant, nothing worth the name has been brought on record and in the absence of all the above, especially when the complainant is the company and when initiating the supply of tea leaves, etc., are said to be done by the partnership firm and thereafter, the cheque is said to have been issued as a proprietorship company by the accused, etc., unless *prima facie* some kind of clear cut pleading or oral and documentary evidences are let in, the ultimate finding of the lower appellate Court giving benefit of doubt to the accused cannot be said to be a perverse finding or an impossible view. As such I find no merits, and accordingly, this appeal stands dismissed.

12.11.2025

Neutral Citation : No
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To

1. The District and Sessions Judge,
   Nilgiris, Udhagamandalam.

2. The Judicial Magistrate,
   Fast Track Court,
   Coonoor.

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

D.BHARATHA CHAKRAVARTHY,J.,

ssa

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