IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-06-2025

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL A No. 659 of 2025
AND CRL A NO. 660 OF 2025

1. B.Mala
W/o.Baskar, residing at No.50/4,
Vanniyar, 1st Lane, Choolaimedu,
Chennai - 600 094.

Appellant(s)

Vs

1. N.Neelakandan
S/o.Muthusamy, Door No.33, Otha
Vadai Street, Mummuni, Vandavasi -
604408, Thiruvannamalai District.

Respondent(s)

CRL A No. 660 of 2025

1. B.Mala
W/o.Baskar, residing at No.50/4,
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Chennai - 600 094.

Appellant(s)

Vs

1. N.Neelakandan
S/o.Muthusamy, Door No.33, Otha Vadai Street, Mummuni, Vandavasi - 604408, Thiruvannamalai District.

Respondent(s)

CRL A No. 659 of 2025

<u>PRAYER:</u> Criminal Appeal under Section 419 BNSS to set aside the Judgement dated 29.01.2025 and made in S.T.C.No.3810 of 2022 on the file of the Learned XXVII Metropolitan Magistrate (Fast Track Court) at Saidapet, Chennai and thus render justice.

CRL A No. 660 of 2025

<u>PRAYER:</u> Criminal Appeal under Section 419 BNSS to set aside the Judgement dated 29.01.2025 and made in S.T.C.No.3811 of 2022 on the file of the Learned XXVII Metropolitan Magistrate, (Fast Track Court), at Saidapet, Chennai and thus render justice.

For Appellant(s): Mr.R.Vijayasarathy

COMMON ORDER

These Criminal Original Petitions are filed as against the order dated

29.01.2025 made in STC No.3810 & 3811 of 2022 on the file of the learned XXVII Metropolitan Magistrate, (Fast Track Court), Saidapet, Chennai, thereby acquitting the respondent for the offence under Section 138 of NI Act.

2. The appellant is the complainant and the respondent is the accused in a complaint lodged by the appellant for the offences under Section 138 of NI Act alleging that the respondent borrowed a sum of Rs.18,25,000/- on various occasions. In order to refund the same the respondent issued a cheque and it was presented for collection. However, it was returned dishonoured for the reason "funds insufficient". After causing statutory notice, lodged complaint.

3. In order to prove his complaint, the appellant had examined P.W.1 and marked Exs.P1 to P5. On the side of the respondent no one was examined and no documents were marked. On perusal of the oral and documentary evidence the trial Court acquitted the respondent for the offence punishable under Section 138 NI Act.

4. The learned counsel for the appellant would submit that the appellant had discharged her initial burden as contemplated under Section 138 NI Act. Though the respondents failed to rebut the presumption, the trial Court acquitted the respondent. In order to prove the complaint, the appellant also marked pro note which was executed by the respondent. He further submitted that in so far

as the principal amount is concerned, the respondent had issued a blank cheque for a sum of Rs.17,50,000/- and in so far as interest is concerned the respondent had issued a sum of Rs.13,52,192/-. Both the cheques were presented for collection, however, both were returned for the reason "funds insufficient". The statutory notice was also duly received by the respondent. Even then the respondent failed to reply in order to rebut the presumption.

5. Heard both sides and perused the materials available on record.

6. The appellant filed two complaints as against the respondents. The specific case of the appellant was that the respondent borrowed the amount to the tune of Rs.18,25,000/- from 04.07.2016 to 20.07.2018. That apart the respondent also borrowed 4½ sovereign jewels and further a sum of Rs.75,000/- from the appellant. Therefore the respondent is liable to pay a sum of Rs.19,00,000.

7. The appellant was examined as P.W.1. The deposition of P.W.1 reveals that the appellant is working as a Cook and she earned only a sum of Rs.17,000/- per month. His son was working in TVS Company and drawing salary of Rs.15,000/- as monthly salary. Further, P.W.1 categorically admitted that he borrowed money from his brother and advanced loan to the respondent. In order to prove the same the appellant did not examine her brother. Therefore

the appellant failed to prove that he had lent loan to the tune of Rs.19,00,000/- in favour of the respondent, that too on various dates. No prudent man will offer a new loan without ensuring the previous one is being repaid consistently.

8. Though the appellant had discharged her initial burden, it is a rebuttable one and the degree of proof for the rebuttable of such presumption is not comparable with that of the burden of the prosecution to prove the charge. Accordingly, the respondent rebutted the presumption by cross-examining the appellant and through the existing materials on record. Even according to the appellant, the entire transaction was cash transaction and absolutely there was no proof for the same except the cheque. Therefore, the appellant hasd neither established the loan lent by her nor established the fact that there was legally enforcible debt payable by the respondent for issuance of the cheque. Therefore, the appellant failed to prove the charge and the trial Court has rightly acquitted the respondent in both the cases. Hence, this Court finds no illegality or infirmity in the order passed by the trial Court.

9. Accordingly, these Criminal Original Petitions are dismissed.

19-06-2025

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G.K.ILANTHIRAIYAN J.

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To

1. The XXVII Metropolitan Magistrate

(Fast Track Court), Saidapet, Chennai.
S/o.Muthusamy, Door No.33, Otha
Vadai Street, Mummuni, Vandavasi -
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