IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Criminal Appeal No.883 of 2023

Dr.S.K.Aroraa ... Appellant/complainant

Vs

Mohan ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C., praying tocall for the records in C.C.No.128 of 2017 on the file of Fast Track Judicial Magistrate-II, Coimbatore and set aside the order of acquittal dated 24.03.2023 thereby convicting the accused and to order payment of compensation under Section 357 of Cr.P.C.

For Appellant(s): Mr E.Chandrasekaran

For Respondent(s): Mr.L.Mouli

JUDGMENT

Challenging the findings and the order dated 24.03.2023 passed in C.C.No.128 of 2017 by the Fast Track Judicial Magistrate-II, Coimbatore, the defacto complainant has preferred this appeal.

2. Before the trial court, the defacto complainant has filed a complaint under Section 138 of the Negotiable Instruments Act for the dishonour of the cheque issued by the respondent/accused. The Trial Court had taken cognizance of the case and taken it on file in C.C.No.128 of 2017 and on issuance of summons, the accused appeared before the trial court and copies served to him and on questioning the charges framed against him, he denied the offence. He pleaded not guilty and claimed for trial.

3. The complainant examined himself as P.W.1 and on his side, Exhibits P.1 to P.9 documents were marked. On the side of the accused, none examined but Ex.D.1 sale deed stands in the name of his mother was marked and P.W.1 was put to cross examination.

4. On hearing both sides, the trial Judge held that the defacto complainant proved that there is legally enforceable debt between him and the accused and the complainant filed the case as company's Managing Director, but without authorisation from the company, he presented the complaint, as such, the complaint is not maintainable. Being a Director of the Company, he is not entitled to file the present complaint in his individual capacity and the presumption attached with the Negotiable Instruments Act also been rebutted by the accused through relevant circumstances and thus material discrepancies not

been properly explained by the complainant by giving plausible explanation thereby held that the complainant failed to prove the case. Thus the complaint was dismissed and the accused was acquitted. Challenging the said findings, the complainant has preferred this Criminal Appeal.

5. (a) The learned counsel for the appellant/complainant submits that the court below failed to presume the complaint in favour of the complainant in consonance with Chapter XVII Section 139. Presumption in favour of holder- “It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability”.

(b) The learned counsel also submits that the court below failed to take notice of the fact that the accused has not denied the handing over/authenticity of the cheque drawn by him which was marked as Ex.P.3 nor he denied his signature; inspite of that, the trial court has lost sight of the benevolent provision of Section 20 of the Negotiable Instruments Act.

(c) The court below failed to appreciate the loan application which was marked as Ex.P.7 through which, the accused demanded the loan and through the letter Ex.P.8, he also prayed time to pay the amount by admitting the legal liability and the same also not been properly appreciated by the court below which itself is sufficient to conclude that there is a legally enforceable debt between the complainant and the accused. Therefore, the findings rendered by the court below is perverse and the same is liable to be set aside.

(d) Learned counsel further pointed out that the complainant lodged a complaint as a Managing Director for M/s.Aroshree Shelter Private Limited and not in individual capacity and to lodge the complaint, there is a Board Resolution dated 30.09.2015 authorising the complainant to file case and to appear on behalf of the company viz., Aroshree Shelters Private Ltd before the competent court of law. Based on that only, the complaint was lodged. But the court below erroneously concluded that the complainant filed petition in his individual capacity and based on that, the complaint was dismissed which is unsustainable in law. As per the proposition laid down by the Supreme Court in ***Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and Another dated 10.11.2021***, notice was issued on behalf the company but the respondent who was in receipt of the notice not given any reply nor he denied the averments in the complaint even at the time of questioning him. Without considering the same, the trial court dismissed the complaint, as such, it is erroneous and it is liable to be set aside.

(e) Learned counsel also pointed out that as per the notice issued by the accused dated 29.03.2015 marked as Ex.P.8, the borrowal of the loan was admitted by him and admission is the best evidence which requires no further proof and inspite of all the above, the complaint was dismissed by the trial court holding that there is no legally enforceable debt. As such, it is perverse and is liable to be set aside.

6. By way of reply, the learned counsel for the respondent submits that the loan was borrowed by one Mrs.Kali Chandran for urgent financial need and as a security, mortgaged certain property. Further, towards the said loan, blank cheque was given to the complainant.

7. The case of the complainant is that the accused availed financial assistance from the complainant for his urgent financial needs on 30.12.2013 by borrowing a sum of Rs.15,72,133/- and by mortgaging properties at Kotagiri, and promised to repay the loan amount. But, thereafter, the accused committed default on 01.06.2016. Thereafter, towards the loan amount with interest accrued i.e., Rs.25,56,547, the complainant issued a notice on 15.06.2016. On receipt of the same, the accused met the complainant on 23.06.2016. After deliberations, the accused agreed to repay the loan with interest amounting to

Rs.24,50,678/- in two installments and issued a cheque No.453171 dated 23.06.2016 drawn on Indian Bank, Kothagiri for a sum of Rs.12,25,339/-. When it was presented for collection with ICICI Bank, Sundrapuram Branch, Coimbatore, it was returned as "Funds Insufficient". Immediately, he sent notice and the same was returned. The accused neither remitted the amount nor given reply, hence, the complainant filed the complaint under Section 138 of the Negotiable Instruments Act.

8. Before the trial court, as the accused pleaded not guilty, trial was commenced. On the side of the complainant, oral and documentary evidence was filed; on the side of the accused, no oral evidence but documentary evidence was filed.

9. Initial burden is on the complainant to prove his legally enforceable debt and issuance of cheque. As per the evidence of P.W.1, the cheque was issued by the respondent in order to repay the loan amount borrowed from M/s.Auro Shelters Private Limited and as a Managing Director of the said company, the complainant has presented the complaint before the court. However, the Board Resolution authorising the complainant to file cases on behalf of the company was not produced before the trial court.

10. During the arguments, the Board Resolution dated 30.09.2015 was produced before this court. It shows that the company authorised the petitioner to take all proceedings on behalf of the company. The said resolution was passed on 30.05.2019 by the Board of Directors of M/s.Auroshree Shelters Private Limited. So the complainant was authorised by the Board resolution to file cases. Further more, even if the company was not added as party, the Managing Director can file private complaint. To that effect, the proposition laid down by the Supreme Court in Criminal Appeal No.1105 of 2021 [***Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and another***] was relied on by the appellant and the said decision is also squarely applicable to the facts of the case. The relevant portion in paragraph No.23 is extracted as under:-

> "23. It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the trial court by the Company, affirming to the factum of authorisation in favour of the Managing Director. A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion. It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified. "

11. Though authorisation by the Company was not marked as document on the side of the complainant, the said authorisation dated 30.09.2015 was produced before this Court which shows the said authorisation was prior to the filing of the complaint which clearly speaks that complainant was sufficiently authorised by the company to file a complaint against the accused. Therefore, the court below wrongly concluded that the company has not authorised the company to file complaint, as such, the said finding and judgment is liable to be set aside.

12. P.W.1 stated that the respondent had borrowed a loan and towards repayment, he issued a cheque bearing No.453171 initially towards part payment of Rs.24,50,678 in respect of the total claim of Rs.26,20,460/-. But the same was returned as "Funds Insufficient".

13. The issuance of the cheque and the signature in the cheque was not disputed. The cheque was drawn from the account of the accused and signature found in the cheque has not been denied by the accused.

14. Admittedly, holder of the cheque i.e., the complainant presented the cheque for collection. Therefore, presumption under Section 118 and 139 of the N.I.Act drawn in favour of the complainant, until contrary is proved, the

accused has not at all rebutted the said presumption.

15. Before the trial court, the accused has not adduced any oral evidence and on the contrary, as per the letter issued by the accused dated 29.03.2015, he admits that he was not able to repay the amount and requested time till 30.04.2018 and also promised to repay the dues. The said letter was marked on the side of the complainant as Ex.P.8.

16. Admittedly, Ex.P.8 was written by his own handwriting by the accused. Ex.P.8 was not denied by the accused. It is the mother of the accused also gave her property. Even though the same is marked by the accused, both mother and son not repaid the amount. Earlier, notice was also issued against the mother of the accused on 15.06.2016 and thereafter, on 08.07.2016, notice was issued to this respondent/accused. Even though he admitted to settle the loan, he failed to comply with the same. Therefore, before lodging the complaint, after dishonour of the cheque, the complainant issued a notice on behalf of the M/s.Auroshree Shelters Private Limited company. The admission on the part of the accused for the borrowal of the loan itself is sufficient to conclude that there is legally enforceable debt between the complainant and the accused. But the court below failed to appreciate those documents marked on the side of the complainant and given a finding that the complainant has not

proved his legally enforceable debt, which finding is nothing but perverse and the same is liable to be set aside.

17. Further, there is no material evidence on the side of the accused to rebut the presumption in favour of the complainant, contrarily based on the assumptions, the learned Judge had drawn some presumptions and held that there are material discrepancies in the complainant's side evidence and dismissed the complaint, which conclusion is illegal and is liable to be set aside.

18. When the accused has not chosen to furnish sufficient evidence to rebut the presumption, the complainant is entitled to get the benefits from the beneficial legislation under Section 138 and 139 of the Negotiable Instruments Act and in such circumstances, material discrepancy pointed out by the trial Judge is unsustainable. Therefore, the legally enforceable debt as well as issuance of cheque and the dishonour is undisputed. Therefore, the complainant as such proved his claim. Accordingly, the findings of the trial court are set aside.

19. In the light of the above discussions, this Court holds that the appellant/complainant is entitled for compensation. Accordingly, the cheque amount of Rs.15,72,133/- [Rupees Fifteen Lakhs seventy two thousand one

hundred and thirty three] is awarded as compensation. The punishment prescribed for the offence under Section 138 of the NI Act is imprisonment for a term of one year and with fine. Therefore, the respondent/accused is directed to pay the compensation within two months from the date of receipt of a copy of this judgment. Further, the respondent/accused should be sentenced with imprisonment for a term of one year.

20. This Criminal Appeal is allowed on the above terms.

10-11-2025

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Neutral Citation:Yes/No

To
1. The Fast Track Judicial Magistrate-II, Coimbatore.

T.V.THAMILSELVI J.

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