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CRL RC 671, 672 & 673 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRL RC 671, 672 & 673 of 2025

Bhuvaneshwari

Petitioner/A3 in
Crl.R.C.No.671 of 2025

M/s. Land Mark Housing Projects
Chennai Pvt. Ltd.
Rep. By its Managing Director
P.Udayakumar

Petitioner/A1 in
Crl.R.C.No.672 of 2025

P.Udayakumar

Petitioner/A2 in
Crl.R.C.No.673 of 2025

Vs

N.Rajiv Naidu

Respondent in
all Crl.R.C.s

PRAYER

To set aside the common judgment passed in Crl.A. Nos. 811, 812 and 813 of 2023 dated 28.03.2025 on the file of XVII Addl. Judge, City Civil Court, Chennai confirming the conviction and sentence imposed in C.C.No.121 of 2018 dated 02.12.2023 on the file of III Fast Track Court, Metropolitan Magistrate, Saidapet, Chennai and to allow the above Crl.R.C.s

**In all Crl.R.C.s**

For Petitioner: Mr.G.Karthikeyan
Senior Advocate for
Mr.S.Sathish Rajan

For Respondent: Mr. J. Ravindran
Senior Advocate for
Mr.Nithesh R.Venkatesh

COMMON ORDER

Challenging the findings of concurrent findings of the courts below in common judgment passed in Crl.A. Nos. 811, 812 and 813 of 2023 dated 28.03.2025 on the file of XVII Addl. Judge, City Civil Court, Chennai confirming the conviction and sentence imposed in C.C.No.121 of 2018 dated 02.12.2023 on the file of III Fast Track Court, Metropolitan Magistrate, Saidapet, Chennai, the petitioners/Accused 1 to 3 have preferred these Criminal Revision Cases.

2. The petitioner in Crl.R.C.No.672 of 2024 is the company viz., M/s.Landmark Housing Projects Chennai Pvt. Ltd. and other Revision Petitioners are the Director and Managing Director of A1 company respectively. A3 Bhuvaneswari is wife of A2.



3. Brief facts of the complaint is as follows :-

The complainant, his mother Savithri Naidu, his brother Vikram Naidu and M/s. Match Point Tennis Academy India Pvt. Ltd. have entered into a Memorandum of Understanding dated 23.07.2004 with the Accused 1 to 3 in their capacity as joint owners of the property measuring 9.08 acres of land in their capacity as joint owners of the property measuring 9.08 acres of land situated at Sholinganallur Village. The original Memorandum of Understanding has been retained by the advocate of accused and the same was not handed over by the advocate of the accused. Hence, the complainant filed the photo copy of the said Memorandum of Understanding. It is his further case that A1 company agreed to pay a sum of Rs.73,50,00,000/- to the complainant and towards their partial liability, the accused company had issued 6 cheques for a sum of Rs.20,01,66,000/-. Subsequently, in discharge of their further liability, the 1st accused company had issued a cheque for a sum of Rs.30,23,34,000/- vide Cheque bearing No. 004730 dated 25.09.2017 drawn on Axis Bank, Teynampet Branch. When the same was returned/dishonoured with an endorsement “account closed”, the complainant had issued a statutory notice on 25.10.2017 and filed the present complaint.

4. On issuance of summons, the accused 1 to 3 appeared and they have denied the charges and pleaded not guilty. Thereafter, the case was posted for



trial. On the side of complainant, witnesses P.W.1 and P.W.2 were examined and documents Ex.P1 to Ex.P30 were marked. On the side of accused, no witness was examined, but the document Ex.D1 sale deed was marked through P.W.1.

On completion of prosecution witnesses, the accused were questioned under Sec.313 of Cr.P.C. for the incriminating materials against them. For that, the accused 1 to 3 totally denied the case of prosecution and submitted no witness on their side nor marked any document. Thereafter, on considering both side submissions, the trial judge finally held that the offence as against accused 1 to 3, the complainant proved all the ingredients under Sec.138 of Negotiable Instruments Act and proved the said offence against A1 to A3. In the result, the accused 1 to 3 were found guilty and convicted. Accordingly, accused 2 and 3 sentenced to undergo simple imprisonment under Sec.255(2) of Cr.P.C. The A1 company was ordered to pay the cheque amount as compensation to the complainant with 6% interest, in default, to undergo simple imprisonment for one month. Aggrieved with the said findings, the accused 1 to 3 have preferred appeals in Crl.A.Nos. 811, 812 and 813 of 2023 before the XVII Addl. Judge, City Civil Court, Chennai. All the appeals were considered by the first appellate court and pronounced a common judgment in all the three appeals. On analysing the oral and documentary evidence, the first appellate judge finally concluded that the accused 1 to 3 have failed to rebut the presumption on preponderance of probability under Sec.118 and 139 of Negotiable Instruments



Act and they have not proved their defence about the alleged repayment of loan amount, on the other hand, the complainant discharged his initial burden as to the liability of the accused towards the complainant and issuance of Ex.P7 cheque to him, thereby the trial court rightly concludes that the presumption under Sec.118 of Negotiable Instruments Act shall be drawn in favour of complainant and also appreciated the arbitration award Ex.B11 in ARB. No. 1 of 2018 between the parties, in which also the liability towards disputed cheque has been decided. Therefore, the defence of accused 1 to 3 that they have discharged the entire amount was not been proved with any material evidence, thereby confirmed the findings of trial judge and dismissed the appeals. Aggrieved over the concurrent findings of courts below, these Criminal Revision Cases have been preferred.

5. The learned senior counsel for petitioners argue that the first accused company issued a subject cheque as security to the respondent/complainant for sale consideration and the same was misused by the complainant after completion of sale and inspite of the request made on the side of accused, the respondent/complainant refused to hand over the cheque and presented the same for collection with ulterior motive, besides already A1 company initiated insolvency proceedings before the National Claims Law Tribunal. However, there is no legally enforceable debt between the accused and the complainant on the date of presentation of the cheque, but the same was not been properly



appreciated by the courts below and erroneously held that there is legally enforceable liability. Based on that, the courts below convicted the accused as such is illegal and liable to be set aside. The learned senior counsel also pointed out that before the trial court, the respondent/complainant not produced the original Memorandum of Understanding dated 23.07.2014, through which he claimed legally enforceable debt, but he had produced only the xerox copy of Memorandum of understanding, which is not permissible under law. On that ground also, the accused are entitled for acquittal, but the courts below failed to take note that the xerox copy of document M.O.U. Ex.P1 had no evidentiary value, but the same was erroneously appreciated by the trial court as such is illegal and liable to be set aside. He would further submit that had rebutted the presumption in his favour by raising a probable defence that the impugned cheque was given as security cheque before the execution of the sale deed dated 12.11.2014. Further, the learned senior counsel would also submit that the courts below erred to consider that accused 1 to 3 have rebutted the presumption in their favour by raising a probable defence that the impugned cheque was given as a security before the execution of the sale deed dated 12.11.2014 and not to discharge any legally enforceable debt, but the respondent did not return the impugned cheque after the execution of sale deed dated 12.11.2014 and misused the said impugned cheque. The learned senior counsel would argues that the lower court erred to consider that the respondent had presented the



impugned cheque for collection despite the fact that the appellant had given a communication vide Electronic mail dated 18.03.2016 the respondent as in to return the said impugned cheque. The learned senior counsel would also argues that the courts below failed to consider that the cheque was not issued in discharge of legally enforceable debt or liability, which is apparent from the deposition made by P.W.1 Rajiv Naidu, it can be easily arrayed that the cheque was issued in the month of August or October 2014 and pursuant to the issuance of cheque Ex.P7, the respondent and the other parties had executed the sale deed dated 12.11.2014 in favour of appellant. The learned senior counsel also contended that inspite of e-mail communication dated 18.03.2016, wherein they have requested to return the impugned cheque, but on receipt of the same, the respondent/complainant presented the cheque for collection on 25.09.2017 as such has not been properly appreciated by the court below.

6. Furthermore, the learned senior counsel for petitioners would also submit that the court below erroneously passed a judgment of conviction and compensation against this appellant company after passing of resolution plan under Insolvency and Bankruptcy Code, 2016 by National Company Law Tribunal. He would argues that the courts below erroneously arrived a conclusion that Ex.P11 indeed a supportive evidence for the respondent and Ex.P11 is binding on parties, the petitioner company has admitted the execution of Ex.P1 Memorandum of Understanding dated 23.07.2014 in the arbitral



proceedings. When the said Memorandum of Understanding was not produced in original and produced in duplicate as a photo copy that too by piece meal by not producing the entire document, the finding of the learned Magistrate that the admission of MoU in Arbitration Proceedings is not enough to rely on the said incomplete photo copies of the MoU marked by the complainant. As per the law laid in Apex Court in ***Kishan Singh (D) through LRs. Vs. Gurpal Singh and others CDJ 2010 SC 697 and Rajaram (deceased) through Lrs. vs. Maruthachalam (deceased) through LRs. CDJ 2023 SC 043.*** The findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice-versa. But, in this present case, the respondent did not even relied upon the findings of civil court (civil court is bound by evidence act in recording the statements and marking of Exhibits), the respondent are relied only upon the findings in arbitral tribunal proceedings. He would also argue that the lower court on the date of passing the judgment had conducted the questioning of the appellant under Sec.313 (1) under Cr.P.C. through questionnaire and not through examination. The learned senior counsel also contended that during Sec.313(1) questioning proceedings, the petitioners were not given proper appreciation only they were insisted them to answer it as No and they were insisted to fill in the answer by using pencil and later it was erased and answer of the said questionnaire was written by some other person not by this appellant, thereby they have disputed the questionnaire under



Sec.313(1) of CrI.P.C. Further, he would also submit that the first appellate court has not given any opportunity to adduce further evidence. So, the findings rendered by the courts below is against law, weight of evidence and suffered with material irregularity and the facts also not been properly appreciated. Hence, he prayed to set aside the findings of courts below.

7. By way of reply, learned senior counsel for respondent/complainant would argue that A1 company to discharge the outstanding liability arising out of Ex.A1 Memorandum of Understanding had issued a cheque bearing No.004730 dated 25.09.2017 for a sum of Rs.30,23,34,000/- (Ex.P7) drawn on Axis Bank, Teynampet, Chennai in favour of complainant and authorised the respondent/complainant Rajiv Naidu to deposit the cheque given by A1 company. To that effect, relevant documents were produced before the trial court. The learned senior counsel would submit that on presentation of cheque, the same was returned as 'account closed' on 25.09.2017 thereafter, he issued a notice Ex.P9 to repay the amount within 15 days. All the three accused received the same, but they have not sent any reply nor they have not paid any amount. Therefore, the complaint was lodged as contemplated under Sec.138 of Negotiable Instruments Act and also on the side of respondent/complainant, witnesses P.W.1 and 2 were examined and documents Ex.P1 to Ex.P30 were marked. On the side of defence witness, Ex.D1 Sale deed dated 12.11.2014 was

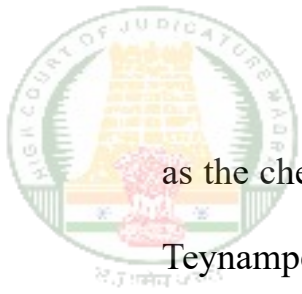


marked. Based on the evidence on record, the courts below rightly held that the respondent/complainant proved the issuance of cheque as well as existing liability of the accused, on the other hand, accused 1 to 3 have failed to prove their defence of repayment of loan nor produced any relevant materials. Therefore, the courts below rightly appreciated the evidence on record and convicted the accused, which requires no interference. Further, he would also pointed out that after filing of appeals, again there was Memorandum of compromise was entered between appellants and respondent on 04.08.2024 and as per the terms of the said compromise arrived between the parties, the accused/appellants inclined to pay total sum of Rs.45 crores within 60 days from the date of the said Memorandum of Compromise as one time settlement and as a part of compromise, the other Criminal Original Petition, Criminal Appeals arising out of C.C.No. 121 of 2018 shall be closed and time to pay the amount was fixed as 60 days from the date of Memorandum of Compromise. Terms arrived for the amount of Rs.45 crores, both parties agreed that if they violates any of the terms, the default clause would operate in its entirety and also liable to pay arbitration award amount with 18% interest. Thereafter also, the accused have failed to comply the terms of the said Memorandum of Compromise dated 04.08.2024. Before this court, both the appellant and respondent appeared and submitted that they are inclined to arrive a settlement. Thereafter, as per the Memorandum of Compromise, the Criminal Original



Petition and Criminal Appeals were adjourned on 04.10.2024 for reporting compliance of second Memorandum of Compromise. Thereafter, the case was adjourned to 14.10.2024 for recording compromise and for argument. But, on that day, as pointed out by the learned counsel for respondent, the Managing Director of A1 company through his counsel submitted before this court that the said Memorandum of Compromise was entered without the consent of Resolution personnel, thereby this court had observed that conduct of this appellant not honoured the Memorandum of Compromise. On the contrary, they are taking out a plea that they are not legally competent to enter into compromise, therefore, this court initiated contempt proceedings by submitting the facts arisen subsequent to the filing of the said Criminal Appeals. Learned counsel for respondent contended that from the review, the appellant/accused taking inconsistent plea that though they have not denied the issuance of cheque nor their signature, the courts below rightly held that the respondent/complainant, who impleaded as required under Sec.138 of Negotiable Instruments Act, which requires no interference. Hence, he prayed to dismiss these Criminal Revision Cases as no merit.

8. Considering both side submissions, the complainant initiated the proceedings under Sec.138 of Negotiable Instruments Act against the petitioners/accused 1 to 3, A1 company and its Managing Director and Director,



as the cheque Ex.P7 bearing No.004730 dated 25.09.2017 drawn on Axis Bank, Teynampet Branch, Chennai for a sum of Rs.30,23,34,000/- issued by A1 company to discharge the outstanding liability arise under Ex.P1 Memorandum of Understanding and the same was returned as 'account closed'. Therefore, he issued statutory notice Ex.P9 within 30 days, but though A1 to A3 have received notice, they have not sent any reply within a stipulated period. Hence, the complaint was lodged. To prove the legally enforceable liability, on the side of respondent/complainant, Ex.P1 Memorandum of Understanding, xerox copy was produced. According to them, the original was with the accused company. So, after issuance of the proceedings, the respondent/complainant requested the accused company to produce the original Memorandum of Understanding through the A1 company, for the accused replied to ask the Advocate Venkataraman, to that effect, a communications were marked as Ex.P2 to Ex.P6. Even though the accused contended that xerox copy of Memorandum of Understanding was not a valid document, but they have not denied the execution of Memorandum of Understanding Ex.P1 even before the Arbitral Tribunal and it was admitted by them. Since the original is with the accused, the respondent/complainant produced xerox copy of Memorandum of Understanding after giving due notice to accused and the same was rightly accepted by the trial court, which requires no interference.

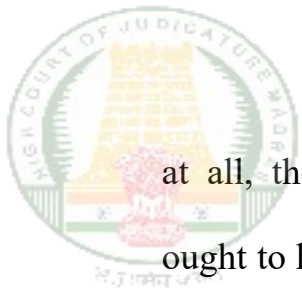


9. As per the terms of Memorandum of Understanding, to discharge the liability, subject cheque was issued by the A1 company on behalf of accused 2 and 3. On presentation of cheque, it was dishonoured. So, the courts below rightly drawn presumption in favour of respondent/complainant. As per the defence of accused, the cheque was issued as security for execution of sale deed and after execution of sale deed (Ex.D1), the respondent/complainant refused to hand over the cheque, however, they have sent an e-mail to the respondent/complainant, through which they denied the sale deed Ex.D1. Admittedly, the sale deed was executed on 12.11.2014, but the Memorandum of Understanding relied on by the respondent/complainant was dated long before it i.e. on 23.07.2014, three months prior to the alleged sale. Therefore, the cheque was issued as security for the sale was not proved by the accused by adducing material evidence. Furthermore, the issuance of cheque as well as signature has not been denied by A2, who is Managing Director of A1 company. Though the 3rd accused contended that she is house-wife, not a money-lender, but she being a Director, she had also took part in day-to-day affairs of the company. Even during the 313 Cr.P.C. questioning proceedings, the accused have stated that they have paid the full amount and the amount was repaid. Accordingly, they have claimed that the cheque amount was settled if so, the accused bound to rebut the presumption by producing defence witness, but except the allegation,



no amount was repaid by the accused. Furthermore, on seeing the conduct of accused from the beginning, they have denied the Memorandum of Understanding Ex.P1, but they have not adduced any evidence to disprove the Memorandum of Understanding.

10. Furthermore the accused have also contended that during the 313 Cr.P.C. questioning, the trial court had obtained the answer from them forcibly and their answers was written in pencil, thereafter, it was erased. Therefore, they have disputed 313 Cr.P.C. questioning. Apart from that, pending proceedings, there was another Memorandum of Compromise executed on 04.08.2024 and the same was reported before this court by both parties personally in other proceedings pending before this court. But subsequently, the accused contended that the Resolution Personnel of A1 company is the competent person and not these petitioners. On considering the said conduct, this court initiated contempt proceedings against the accused. Therefore, the conduct of accused even assuming that the first Memorandum of Understanding was obtained under coercion and all these years, the accused have not taken any steps to lodge the complaint against the respondent/complainant. The defence of the accused that they have already repaid the entire sale consideration and the sale deed was also executed. The alleged cheque, which was given as a security for the sale was demanded back by the petitioners/accused, but the respondent/complainant with ill-motive retained the said cheque and initiated the complaint. To that effect, if



at all, the cheque was misused by the respondent/complainant, the accused ought to have given a complaint before the police, but no such action was taken against him. If really, the Memorandum of Understanding was obtained forcibly or the cheque was obtained forcibly or subsequent Memorandum of Compromise was also obtained forcibly, they are entitled to take action against the respondent/complainant, but as on date, no such action was taken and there is no rebuttable evidence on the side of petitioners to disprove the complainant's contentions. Therefore, sufficient opportunity was given before the trial court, but they have not adduced any evidence to rebut the presumption and the conduct of accused also clearly reveals that they simply denied all the execution of documents after due execution and not inclined to disprove the Memorandum of Understanding as well as issuance of cheque through lawful action. Nearly about 10 years, the issue is pending between the parties, even in the arbitral proceedings, the petitioners/accused have admitted the liability, but later refused to comply even as per the terms of Memorandum of Compromise. Therefore, the conduct of Petitioners also reveal that they have not approached the court with clean hands. The respondent/complainant had proved the issuance of cheque for legally enforceable debt. So also, the issuance of cheque is not denied by the petitioners/accused. Therefore, both the courts below rightly held the findings against the petitioners/accused, which requires no interference.



11. In the result, all the Criminal Revision Cases are dismissed and the findings of the trial court in C.C.No. 121 of 2018 is confirmed. Liberty is granted to the respondent/complainant to secure the petitioners/accused as per manner known to law.

28.11.2025

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

1. XVII Addl. Judge, City Civil Court, Chennai.
2. Fast Track Court-III, Metropolitan Magistrate, Saidapet, Chennai.



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T.V.THAMILSELVI J.

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