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CrI.A.No.528 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2025

DELIVERED ON : 16.05.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.528 of 2021

S.Deivaraj

... Appellant/Complainant

Versus

1.M.Nisha

2.P.Shanmugam

... Respondents/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the order of acquittal dated 10.10.2019 made in S.T.C.No.182 of 2016 on the file of the Judicial Magistrate (FTC) at Tiruchengode.

For Petitioner : Ms.C.B.Geeth Sanchitha
for Mr.M.Guruprasad

For Respondents : Mr.S.Viswanathan
for M/s.Dass and Viswa Associates



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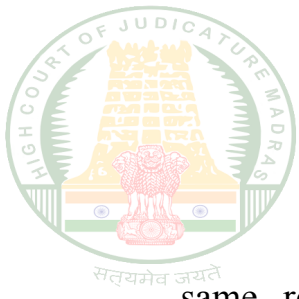
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JUDGMENT

The petitioner as complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondents in S.T.C.No.182 of 2016. The trial Court by judgment dated 10.10.2019 dismissed the complaint and discharged the accused/respondents, against which, the present appeal is filed.

2.For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

3.The case of the complainant is that both the respondents jointly borrowed a sum of Rs.3,00,000/- from the complainant for their urgent needs on 28.06.2015. To discharge their existing liability, both of them issued a signed cheque bearing No.009848 dated 28.09.2015 for Rs.3,00,000/- drawn on Axis Bank Ltd., Kanhangad, Kerala branch in favour of the complainant. On instructions of the respondents, the appellant presented the said cheque with his bank, namely, ICICI Bank, Tiruchengode on 26.10.2015 and the



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same returned with an endorsement 'Account Closed' on 28.10.2015.

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Thereafter statutory notice issued on 17.11.2015 demanding the cheque amount. The notice was taken to the address known to the complainant and the same returned with an endorsement 'Addressee Left' with seal dated 24.11.2015. Thereafter following statutory conditions complaint filed. During trial complainant examined himself as PW1 and marked 5 documents Exs.P1 to P5. On the side of the defence, DW1/Hand writing expert examined and through him Ex.D1/Hand writing report marked. On conclusion of the trial, the trial Court dismissed the complaint against which, the present appeal.

4.The contention of the complainant is that on 28.06.2015, the respondents approached the complainant and for their urgent needs took a loan of Rs.3,00,000/- from the complainant and promised to repay the same within three months and in discharge of the said liability they issued a cheque dated 28.09.2015 drawn on Axis Bank, Kerala branch for a sum of



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Rs.3,00,000/-. The cheque was filled up and signed by both the respondents.

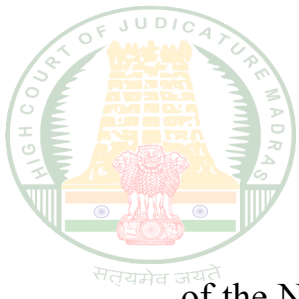
On the request of the respondents the cheque was presented on 26.10.2015 with the complainant bank, namely, ICICI Bank, Tiruchengode branch and it was returned for the reason 'Account Closed'. Thereafter, on 17.11.2015, statutory notice sent but it was returned on 24.11.2015 with an endorsement 'Addressee Left'. Hence complaint filed. The complainant also deposed to this effect. The complainant was cross examined in detail and in the cross examination complainant's real estate business and his income were questioned. The complainant deposed he was owning around 12 acres of land and having agricultural income of Rs.1,00,000/-. Further, he is in the real estate business and he is earning around Rs.10,00,000/- from the business. He is doing finance, lending money on interest. The complainant specifically denied running of any chit, first respondent known to complainant for four years and the second respondent for more than 20 years and due to this relationship, he had given loan amount of Rs.3,00,000/-.



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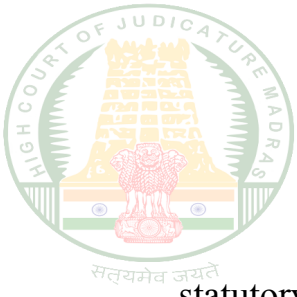
5.The complainant was also questioned with regard to filing of Income Tax returns, which admitted and agreed to produce but thereafter no steps taken by the respondents. The variance in the signature questioned and explained. The specific answer of the complainant is that the details in the cheque was filled up and both respondents 1 and 2, signed the cheque in his presence and the complainant had no objection to submit the cheque/Ex.P1 for examination by hand writing expert and cross examination estopped at that stage. Thereafter, the specimen signatures/S1 to S10, admitted signatures/A1 to A5, photostate copies/A6 to A9 of the respondent and the cheque/Ex.P1 sent to the hand writing expert to verify the signature of the first respondent, which was marked as Q. Since the hand writing expert gave a report that Q does not tally with A1 to A9 and S1 to S10 and variance found in signature of first respondent, the trial Court found that the case against first respondent not proved. Further found statutory provisions under Section 138



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of the Negotiable Instruments Act not complied, since no separate notice sent to the second respondent. The trial Court failed to consider that both first and second respondents are wife and husband living together. Second respondent neither disputed nor questioned his signature in Ex.P1/cheque. It is the joint account cheque handed over by both respondents. The first respondent in a deceitful manner, manipulated her signature in Ex.P1, questions put to DW1/hand writing expert, who admits it is possible. In such circumstances, merely because signature of first respondent not tallied and no separate notice sent to second respondent, dismissing the complaint is not proper. The statutory Notice/Ex.P3 addressed to both respondents and both are residing in the same address. In such circumstances giving a finding that separate notice not sent to second respondent, is not proper on the facts of the case. The respondents not denied the issuance of cheque but took a stand that cheque was given long back for chit transaction and it is a security cheque. Once the issuance of the cheque is not disputed, the trial Court failed to consider the



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statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act proved starrng against the respondents. Hence, acquitting respondents without proper material and explanation, is not proper. Hence, prayed for setting aside the impugned order.

6.The learned counsel for respondents/accused strongly opposed the complainant's contention and submitted that the specific case of the accused is that complainant was running a chit business, the accused previously subscribed to the chit. During chit transaction, cheques and pronotes received as security, which is misused, filled up. To implicate second respondent's wife as accused, her signature was forged. Further submitted that in this case the statutory notice/Ex.P3 addressed only to first respondent as could be seen from the returned cover/Ex.P4. The respondents/accused might be husband and wife but the requirement of the law is that notice to be given to the signatories separately. Hence, two separate notices to be given to the



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respondents 1 and 2. In this case, admittedly no notice given to second respondent. The complainant marked Exs.P1 to P5. Ex.P5 would demolish the case of the prosecution as false and probabalise the defence of the complainant.

7. Ex.P5 is the Insolvency Petition filed by the second respondent before the Subordinate Judge, Tiruchengode in I.P.No.2 of 2014, in which, the complainant Devaraj is the fifth respondent. The specific case of the first respondent/accused is that complainant/Devaraj running a chit business and the second respondent/accused became a successful bidder, the complainant, also running Balaji Finance, in Tiruchengode, received three cheques and two pro-notes. Ex.P5 marked through PW1, and it was not seriously disputed. Referring to Ex.P5 submitted that Insolvency Petition filed before the Sub Court, Tiruchengode on 03.01.2014, re-presented on 07.01.2014 and I.P.No.2 of 2014 assigned, case got periodically adjourned. On 03.04.2014, notice

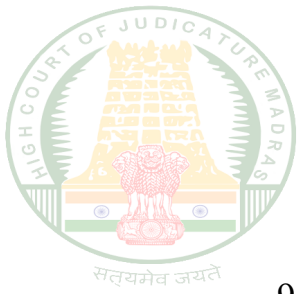


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served to fifth respondent, who is the complainant herein. Thereafter, complainant failed to appear and complainant/R5 was set *ex-parte*. This being so, the cheque projected in this case is dated 28.09.2015, i.e., Five months after complainant was set *ex-parte* and eight months after Insolvency Petition. The complainant's case is that the respondents took loan on 28.06.2015, which is highly improbable. No prudent person will give loan.

8.Added to it, in this case, the admitted position is that no notice issued to the second respondent, which is in clear violation of Section 138 of the Negotiable Instruments Act. The offence under Section 138 of N.I. Act is deemed offence and hence following the condition precedent before filing the complaint cannot be dispensed or violated. He further submitted hand writing expert/DW1 and report/Ex.D1 confirm signature of first respondent in Ex.P1/cheque was not of the first respondent. Hence, the trial Court considering all these aspects rightly dismissed the complaint.



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9. Considering the submissions made and on perusal of the material, it is seen that a statutory condition and procedure of sending notice to the drawee of the cheque/second respondent in this case, not complied. Though the first and second respondents are wife and husband, it is imperative that notice to be sent to them individually. Ex.P3 is the notice addressed to the first respondent alone and postal returned cover/Ex.P4 confirms the same. No notice to the second respondent taken independently. Hence, there is clear violation of the statutory condition. Added to it, Ex.P5/Insolvency Petition No.2 of 2014, the complainant shown as 5th respondent and as Proprietor of M/s.Balaji Finance, Tiruchengode, three cheques and two pro-notes were entrusted, to him. Deivaraj/complainant received notice in IP proceedings on 03.04.2014 for appearance, failed to appear and he was set *ex-parte* on the same day. In this case, the loan availed by the respondents on 28.06.2015 and thereafter in discharge of the liability, cheque dated 28.09.2015 be given. A person, who already filed Insolvency Petition and the Insolvency Petition

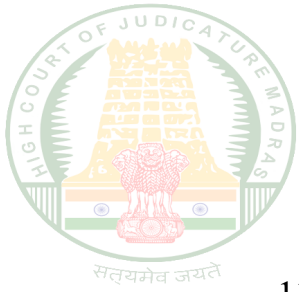


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notice served to the complainant and thereafter complainant extending the loan highly improbable.

10.Added to it, DW1/Hand writing expert confirms that specimen signatures, S1 to S10, admitted signatures A1 to A9, of first respondent received compared with signature 'Q' in Ex.P1 cheque. His report Ex.D1 dated 26.12.2017 confirms the person, who wrote the red enclosed signatures stamped and marked as A1 to A5, Xerox A6 to A9 and S1 to S10 did not write the red enclosed signature similarly stamped and marked 'Q', in the cheque. Thus the signature of first respondent is not proved. Added to it, the specific case of the complainant is that both respondents 1 & 2 signed cheque Ex.P1 in his presence. The trial Court considering all these aspects rightly dismissed the complaint.



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11.This Court finds the reasoning of the trial Court is proper and there is no reason to interfere with the findings. Hence, this Criminal Appeal is dismissed.

16.05.2025

Index : Yes / No

Neutral citation : Yes / No

Speaking / Non-speaking order
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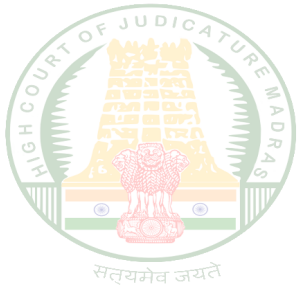


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To

- 1.The Judicial Magistrate,
Fast Track Court, Tiruchengode.
- 2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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**Pre-delivery judgment in
Crl.A.No.528 of 2021**

16.05.2025