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Crl.A.No.78 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2025

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.NO.78 of 2022

R.Subramaniam

....Appellant

Vs

C.Samraj

....Respondent

Prayer:Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to set aside the order dated 20.07.2021 in C.A.No.2 of 2021 passed by Additional District and Sessions Judge, Dharmapuri and to revise the order of the Judicial Magistrate Fast Track Court (ML), Dharmapuri in C.C.No.77 of 2017 dated 03.12.2020.

For Appellant : Mr.B.Jaikumar

For Respondent : Mr.M. Appaji Charles Kamalesh

ORDER

This appeal is filed against the judgment dated 20.07.2021 of the learned Additional District and Sessions Judge, Dharmapuri made in Crl.A.No.2 of 2021. By the said judgment, the appellate Court reversed the judgment dated 03.12.2020 passed by the learned Judicial Magistrate Fast Track Court (ML), Dharmapuri in

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C.C.No.77 of 2017 whereby the trial Court found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act,1881.

2.The case of the complainant is that he is a landlord and also owned lorries previously. The accused was running a departmental store in the name and style of “Sri Jayam Departmental Store” and was also conducting chits. The complainant is one of the members of the chit which was conducted by the accused. For no reason, suddenly, the accused has closed the chit and informed the complainant about the same and issued two cheques of Rs.5,00,000/- each to settle the balance due which were dated 17.04.2017 and 21.04.2017. The cheques were given on 10.04.2017. Upon presenting the cheques for collection, the same returned dishonoured with an endorsement “account closed”. Thereafter, a statutory notice was issued on 06.05.2017. Though the same was received on 08.05.2017, no amount was paid. However, a reply notice was issued on 25.02.2017 with false particulars. Therefore, the present complaint was filed.

3.Upon recording sworn statement, the same was taken on file as C.C.No.77 of 2017. Upon issue of summons and furnishing of copies and questioning, the accused denied the allegations and stood trial. In order to bring home the charges,

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the complainant was examined as P.W.1 and Murugesan, Vadivelan and Madesh were examined as P.W.2 to P.W.4 and the cheques were marked as Exhibits P1 and P2 and the return memos were marked as Exhibits P3 and P4. The legal notice and the acknowledgement card were marked as Exhibits P5 and P6. The reply issued by the accused was marked as Exhibit P7, the bank statement of the accused was marked as Exhibit P8 and the chit fund notebook given to the complainant was marked as Exhibit P9 and the chit fund notebook given to Murugesan was marked as Exhibit P10.

4.The trial Court considered the case of the parties. The trial Court held that the accused was running a chit transaction and therefore, the amount was due and he has duly issued the cheques and found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to pay a fine of Rs.10,00,000/- and in default, to undergo simple imprisonment for six months. Aggrieved by the same, the accused preferred a criminal appeal in Crl.A.No.2 of 2021. The learned appellate Judge, after re-appreciating the evidences, found that by the cross-examination of the complainant as well as the other witnesses, the accused has put forth a probable defence and considering the contradictions in the case of the complainant, gave the benefit of doubt to the accused and reversed the



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finding of the trial Court and acquitted the accused, as against which, the present appeal is filed.

5. Mr.B.Jaikumar, the learned counsel appearing on behalf of the complainant would submit that the complainant has established that the cheques were issued towards legally enforceable debt even though it is mentioned in the complaint that the accused has stopped chit transaction that was also true and in respect of several persons, the accused has issued cheques and was also convicted and subsequently, orders have been passed by the Courts against the accused. The complainant, in the cross-examination, has only given the details that he had taken the chit in the 18th month and that the amount is due in respect of the same. Exhibit P9 would prove that in the 18th month, the complainant has taken the chit amount which was totally for a sum of Rs.20,00,000/- and that the entire amount was not paid on the same day or in the subsequent days and the accused kept dilly-dallying the complainant and paid the amounts in installments and on the whole, a sum of Rs.15,00,000/- was due and the accused issued these two cheques in the year 2017 for a sum of Rs.10,00,000/- in discharge of part of liability. Therefore, the trial Court rightly considered all the above and when the cheques were issued for a legally enforceable debt and when the presumption is also there in favour of the



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complainant and the signature in the cheques having been admitted, the trial Court rightly convicted the accused.

6.He further contended that the appellate Court could not have believed the case of the accused at all. It is a very lame excuse that is given by the respondent/accused as if he had readily kept the signed cheque leaves in his provision store for the complainant to steal the same and present them for collection. The complainant has given due evidence that he is a landlord and was also in possession of lorries and absolutely, no complaint or any other evidence was let in by the accused to even suggest that the cheques were stolen. The entire findings of the appellate Court are perverse and therefore, this Court has to interfere with the same and restore the conviction and sentence that was imposed by the trial Court.

7.In support of his contentions, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in Rangappa vs Sri Mohan reported in (2010) 6 SCR 507 whereby the scheme of the law relating to the offence under Section 138 of the Negotiable Instruments Act was elucidated and the manner in which the presumption that arises under the Negotiable Instruments Act has to be

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rebutted. The accused has not done anything in this case to rebut the presumption.

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8.The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in the case of Kishan Rao vs Shankargouda (Crl.A.No.803 of 2018) decided on 02.07.2018 for the proposition that the appellate Court ought not to have dislodged the findings of the trial Court and substituted its own views especially when the views of the trial Court were after due appreciation of evidences and in the light of the presumption, a mere denial of the liability, by itself, cannot be held to be throwing a doubt in the case of the complainant. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in Bir Singh vs Mukesh Kumar (Crl.A.Nos.230-231 of 2019) decided on 06.02.2019 for the proposition that unless the Court concludes that the accused has rebutted the presumption under exceptional ground by considering the cogent evidence that is let in by the accused, the presumption should not be dislodged merely for the pleading of the accused.

9.The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in Uttam Ram vs Devinder Singh Hudan (Crl.A.No.1545 of 2019) decided on 17.10.2019 to contend that merely by pleading the

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discrepancies in the accounts, etc., the entire liability will not remain absolved and once the basic liability is there and the cheques were issued, the Court should convict the drawer of the cheques for the offence under Section 138 of the Negotiable Instruments Act. The learned counsel would also rely upon the judgment of Karnataka High Court in Muniraju vs G.Nagaraju in Crl.A.No.309 of 2011 decided on 10.08.2021 to once again bring home the question of presumption and the level of evidence that is required from the accused to rebut the presumption. For all the above reasons, the learned counsel for the appellant would pray that this Court should reverse the findings of the appellate Court.

10.Per contra, Mr.M.Appaji Charles Kamalesh, learned counsel appearing on behalf of the respondent/accused would submit that the accused has not admitted Exhibit P9 - chit book. It is the case of the complainant that a particular person being the Manager of the chit has been signing and making the entries in the book and giving it to the complainant. In Exhibit P9, neither the name of the complainant is mentioned nor the person who is said to have made the entries was examined. Merely because the accused was alleged to have been running a chit, the complainant has presented the cheques and claiming the liability which is non-existent. No proof has been let in by the complainant with reference to the liability

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of Rs.10,00,00/-. By due cross-examination of P.W.1 and cross-examination of P.W.2 Murugesan, the accused has rebutted the presumption to the level of preponderance of probability and in the absence of corroborative evidence and proper plea on the part of the complainant as to how much is the amount due, when was the amount due, what was the amount due, etc., the accused cannot be found guilty.

11.I have considered the rival submissions made on either side and perused the material records of the case.

12.It is true that unlike other offence, on mere raising of doubt, the accused cannot be acquitted in a case under Section 138 of the Negotiable Instruments Act. Once the signature in the cheque is admitted, then, the presumption arises in favour of the complainant and any rebuttal should be in the level of preponderance of probability by letting in cogent evidence. The complainant should come up with a specific case as to the purpose for which the cheque is issued and that the liability existed as on date of the issue of cheque and once the said evidence is let in by the complainant and cheque is marked, then, certainly, the presumption arises in favour of the complainant which cannot be dislodged for the mere questions raised of the

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accused but, only by letting in cogent evidence.

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13. In this case, the case of the complainant in the statutory notice as well as in the complaint is that the complainant was a subscriber of the chit and suddenly, the accused closed the chit and in discharge of his liability, issued the said cheques. The same case was reiterated in the sworn statement as well as in the chief-examination of the complainant. However, in the cross-examination, the complainant changed his version that he was the subscriber of the chit and he has taken the chit in the 18th month. Even then, though Ex.P9 was produced in support thereof, absolutely no averment was made even while marking Ex.P9 that how much was the amount for which the complainant took the auction for the chit and if it is going by Ex.P9, it must be seen that the complainant should have been paid the amount in October 2015 and if the amount is not paid on the same day or even the next day after calculations and taking the commission of the conductor of the chit, etc., it is hard to believe that the complainant did not take any steps immediately. It is the case of the complainant that the amount was paid in installments up to the year 2017 and thereafter, the cheques were issued. It is, in this context, the complainant's case which was originally mentioned that the accused suddenly stopped the chit and in discharge of his liability issued the

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cheques, differs from the case in the cross-examination.

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In view thereof, when the complainant himself comes up with different versions and considering all the above, the lower appellate Court has granted the benefit of doubt to the accused, which cannot be said to be an impossible view or perverse view so as to interfere in an appeal against acquittal. As such finding no merits, the appeal stands dismissed.

11.11.2025

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To

- 1.The Additional District and Sessions Judge,
Dharmapuri.
- 2.The Judicial Magistrate Fast Track Court (ML),
Dharmapuri.
3. The Public Prosecutor,
Madras High Court,
Chennai.

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D.BHARATHA CHAKRAVARTHY,J.,

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