



WEB COPY



CrI.A.No.1044 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2025

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.A.No.1044 of 2023

S.Poornima

... Appellant

..Vs.

Senthilkumar

... Respondent

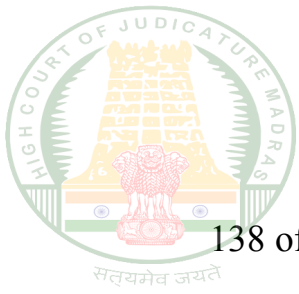
Prayer: This Criminal Appeal is filed under Section 378(4) of Criminal Procedure Code, to set aside the judgment of the Fast Track Judicial Magistrate No.I, Coimbatore in C.C No.207 of 2018 dated 07.07.2023 and to allow the Criminal Appeal and to convict the respondent/accused for an offence under Section 138 of Negotiable Instruments Act.

For Petitioner : Mr.S.Veeragahavan

For Respondent : Mr.R.Amardeep
for M/s.Tamizh Law Firm

ORDER

This criminal appeal has been filed as against the judgment passed in C.C No.207 of 2018 on the file of the Fast Track Judicial Magistrate No.I, Coimbatore, thereby dismissing the complaint filed under Section



CrI.A.No.1044 of 2023

138 of Negotiable Instruments Act.

WEB COPY

2. The appellant made a complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act, alleging that the respondent borrowed a sum of Rs.15,00,000/- from her and in order to repay the same, the respondent issued a cheque bearing No.001690 dated 20.01.2017, for a sum of Rs.15,00,000/- drawn on Karur Vysya Bank, Coimbatore Main Branch and when, it was presented by the appellant for collection on 21.01.2017 with the complainant banker Tamilnadu Mercantile Bank, Kumaraplayampudur Branch, Coimbatore, the said cheque was returned for the reason "funds insufficient". Hence the appellant filed a complaint against the accused. In order to prove the complaint, the appellant examined himself as PW1 and marked Ex.P1 to P6. On the side of the respondent, he examined himself as DW1 and marked Ex.D1. On perusal of oral and documentary evidence, the trial Court acquitted the respondent. Aggrieved by the same, present appeal is filed.

3. The learned counsel for the appellant would submit that admittedly, the appellant and her husband paid a sum of Rs.7,50,000/-



WEB COPY

each, by way of two cheques to the respondent and both the cheques were encashed by the respondent. In order to repay the said amount, the respondent issued a single cheque for a sum of Rs.15,00,000/-. In fact, the respondent had also executed a promissory note, by mentioning the cheque number. Though the appellant had claimed that she gave a cheque for a sum of Rs.7,50,000/- and her husband gave a cheque for a sum of Rs.7,50,000/-, both the cheques were encashed by the respondent on the same day. Thereafter, the respondent issued one cheque for a sum of Rs.15,00,000/-. The respondent admitted the borrowal and also the issuance of two cheques. Therefore, the appellant had discharged her initial burden as contemplated under Section 138 of Negotiable Instruments Act. Though the respondent failed to rebut the presumption, the appellate Court acquitted the respondent. The learned counsel further submits that after encashment of Rs.15,00,000/-, the said amount was transferred to one Manoharan and the said Manoharan is in no way connected with the appellant. If at all, the respondent had a specific defence that the amount was transferred to one Manoharan as instructed by the appellant and her husband, the respondent ought to have examined the said Manoharan to substantiate the same. But the respondent failed to examine any witness to substantiate the said defence. Therefore, the



Crl.A.No.1044 of 2023

respondent failed to rebut the presumption and he is liable to be punished for the offence under Section 138 of Negotiable Instruments Act.

4. Per contra, the learned counsel for the respondent would submit that admittedly, the appellant had lent only a sum of Rs.7,50,000/-. Though her husband had lent a sum of Rs.7,50,000/- by way of another cheque, the appellant cannot present a cheque for a sum of Rs.15,00,000/- , that too, it was given as security. Therefore, the cheque was not issued for any legally enforceable debt and hence, the trial Court had rightly acquitted the respondent. The respondent had also produced Ex.D1, statement of account during the relevant period. During the said period, the respondent received a sum of Rs.7,50,000/- from the appellant and another Rs.7,50,000/- from her husband. Both the amounts were returned to one Manoharan as instructed by the appellant. Therefore, the respondent never borrowed any loan from the appellant or her husband for his personal purpose.

5. Heard the learned counsel on either side and perused the materials available on record.



6. Admittedly, the appellant had lent a sum of Rs.7,50,000/-

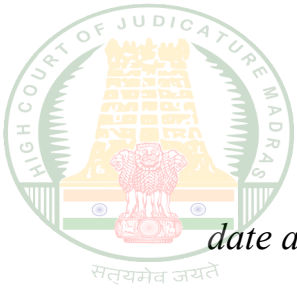
through a cheque as a loan to the respondent and her husband had lent a sum of Rs.7,50,000/- through a cheque to the respondent. But, the appellant deposed that the respondent borrowed a sum of Rs.15,00,000/- from her and in order to repay the said amount, he issued a cheque for a sum of Rs.15,00,000/-. During the course of cross examination, she categorically admitted that she had paid only a sum of Rs.7,50,000/- to the respondent and her husband had paid Rs.7,50,000/- to the respondent. Therefore, the cheque was not issued for any legally enforceable debt to the tune of Rs.15,00,000/-. Further, according to the appellant, the loan amount will be returned within a period of one year and executed a promissory note. But the cheque was presented nearly three years from the date of the alleged borrowal. There is no explanation from the appellant that why she had presented the cheque nearly three years from the date of the alleged borrowal. Further, the respondent produced Ex.D1 for the period from 01.06.2014 to 31.07.2014, which shows that the respondent received a sum of Rs.7,50,000/- from the appellant and another sum of Rs.7,50,000/- from her husband. Immediately on 27.06.2014, the said amount was transferred to the account of one Manoharan. According to the respondent, as instructed by the appellant



Crl.A.No.1044 of 2023

and her husband, the said cheques were deposited into his account and subsequently, transferred to the account of the said Manoharan. In fact, the respondent borrowed a sum of Rs.2,00,000/- from the said Manoharan. At that juncture, the appellant's husband was introduced to the respondent herein. Thereafter, the property belonged to the respondent was pledged with one Venkatanarayanan who is none other than the brother-in-law of the appellant's husband, in which the appellant's husband also stood as a witness. At the time of borrowal by mortgaging the property, the respondent had issued 4 blank signed cheques and 2 blank signed promissory notes for the security purpose. One of the blank cheques and one of the blank promissory note were misused by the appellant and thereby initiated the proceedings under Section 138 of Negotiable Instruments Act. Therefore, the respondent had categorically rebutted the presumption as contemplated under Section 118 and 139 of Negotiable Instruments Act.

7. The learned counsel for the appellant also relied upon the judgment of this Court in **Crl.R.C No.400 of 2020 dated 20.04.2023** in the case of **A.Subramanian v. P.Kannammal**, in which, it was held that *"there is a presumption unless contrary proof in respect of consideration,*



CrI.A.No.1044 of 2023

WEB COPY

date and time of occurrence, the time of acceptance and the holder in due course. While there is a statutory presumption regarding the consideration and the holder in due course and substantially there is an admission on the part of the accused that he has given a cheque as a security". In the case on hand, even according to the appellant, she had lent only a sum of Rs.7,50,000/- to the respondent. Though her husband had also lent a sum of Rs.7,50,000/- to the respondent, the cheque cannot be produced for Rs.15,00,000/- by the appellant alone. Therefore, the said cheque was not issued for any legally enforceable debt and the same was categorically rebutted by the respondent. Hence, the above judgment is not applicable to the case on hand. In view of the same, this Court finds no infirmity or illegality in the order passed by the trial Court.

8. Accordingly, this Criminal Appeal is dismissed.

21.08.2025

Index: Yes/No
Internet: Yes/No
uma

G.K.ILANTHIRAIYAN,J



Crl.A.No.1044 of 2023

uma

WEB COPY

To

The Fast Track Judicial Magistrate No.I, Coimbatore.

Crl.A No.1044 of 2023

21.08.2025