IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.04.2025

CORAM:

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

Crl.A.No.118 of 2022

S.T.Sukumar ... Appellant/Complainant

Versus

P.Elakkiya ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the order of acquittal in S.T.C.No.28 of 2019 on the file of the Judicial Magistrate, Fast Track Court, Thiruthuraipundi dated 29.09.2021.

For Appellant : Mr.R.Muruga Bharathi

For Respondent : Mr.N.Palanivel

**JUDGMENT**

The appellant as complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in S.T.C.No.28 of 2019. The trial Court, by the judgment dated 29.09.2021 dismissed the complaint, acquitted the respondent/accused, against which, the present appeal is filed.

2.The case of the appellant/complainant is that the respondent is known to the appellant. On 12.01.2019, the respondent had taken a hand loan of Rs.1,30,000/- from the appellant and promised to repay the same. In discharge of the said liability, she issued a cheque bearing No.000052 drawn on Lakshmi Vilas Bank, Thiruthuraipoondi branch, dated 18.01.2019 for Rs.1,30,000/- and informed him to present the cheque on due date and collect the amount. The appellant presented the cheque in Canara Bank, Thiruthuraipoondi Branch. The cheque was dishonoured and returned for the reason 'Funds insufficient'. On receipt of the bank return memo, petitioner also caused a statutory notice on 06.02.2019, which was received by the respondent on 12.02.2019. The respondent sent a reply on 23.02.2019 with false allegations. Hence, ignoring the same complaint filed. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P5. The respondent examined herself as DW1 and her brother as DW2 and marked Exs.D1 to D3. On conclusion of trial, the trial Court dismissed the complaint, acquitted the respondent.

3.The contention of the appellant is that the respondent not denied the issuance of cheque and the signature found in Ex.P1. In such circumstances the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act comes into play. But the trial Court accepted the contention of the respondent that cheque/Ex.P1 was issued as security and the loan was discharged as early as in 2017. In support of her contention, she examined DW1 and DW2 and marked Exs.D1 to D3. Ex.D1 is the Statement of Account of the respondent in which, cheque No.000054 issued for Rs.1,00,000/- and the same was encashed by the appellant on 11.05.2017 and it was taken as a probable defence. The appellant submitted that DW1 in her evidence while confronting Ex.D1, saying that the cheque was not issued with serial number and the same was accepted. In such circumstances, the trial Court finding that cheque No.000052 ought to have been issued in the year 2017 and not in the year 2019 is not proper.

4.The learned counsel further submitted that the respondent admits that she had taken loan from the appellant for her urgent needs and now citing the earlier transaction and taking a defence that the liability for Ex.P1 discharged earlier is not proper. The offence under Section 138 of the Negotiable Instruments Act is purely a technical one, wherein the drawer of the cheque not denied the issuance of cheque and signature, but the trial Court proceeded on the evidence of DW1 stating that DW1's husband Palaniyappan is known to the appellant and for his requirement the amount has been given to the respondent and if at all there is any liability, it is with Palaniyappan and not with the respondent. This may not be proper for the reason that within a family issuing cheque for each other is common. In such circumstances it would be proper for the respondent to examine Palaniyappan as defence witness. But the trial Court expects the appellant to examine

Palaniyappan and considering the defence given by the respondent is acceptable, is not proper. The minor discrepancy with regard to the date and addition of his spelling in the name was considered to be one of the reasons for dismissing the appeal is not proper. Hence, the trial Court judgment is perverse and liable to be set aside.

5.The learned counsel for respondent denied the appellant's contention and submitted that in this case the appellant even denies the knowledge about DW2/Ganapathy @ Selva Ganapathy, brother of the respondent, who is running a computer business adjacent to the appellant's shop. The respondent in her reply notice denied any liability to the cheque/Ex.P1. Her categorical explanation is that cheque No.000052 was issued as security when the respondent had taken a loan on 23.02.2017 for a sum of Rs.1,00,000/- in the year 2017 for her mother's medical expenses and promised that within three months the said loan amount would be repaid. Thereafter on 10.05.2017 the respondent went to pay back the loan at that time the appellant informed that the cheque No.000052 is missing. Thereafter, the respondent issued cheque No.000054 for a sum of Rs.1,00,000/- on 11.05.2017. The same was presented and encashed. Two years thereafter the security cheque, which was given in the year 2017, was filled up by the appellant and projected as though on 12.01.2019 the respondent had taken a loan and for repayment of the same, the cheque dated 18.01.2019 is said to have been issued. The appellant not disclosed this fact in Ex.P3/statutory notice or in his complaint or in the sworn statement.

6.He further submitted that during cross examination, when confronted with this fact, the appellant denies about receipt of Rs.1,00,000/- by way of cheque No.000054. Ex.D1/Statement of Account reflects the payment and encashment of Rs.1,00,000/- by the appellant and Ex.D3/Record slip it was written that cheque No.000052 is missing. Though this Ex.D3 document with the respondent could have been written at any point of time, no cross examination made in this regard. It is further seen that the other cheque leaves, which are written in the cheque book/Ex.D2 are found correspondingly deposited in the bank account in Ex.D1 and the respondent probabilised her defence in the reply notice, cross examination and also by examining herself/DW1 along with her brother/DW2 to prove repayment of Rs.1,00,000/- as early as in the year 2017 and by Exs.D1 to D3. The trial Court had rightly considered the evidence and dismissed the complaint, which needs no interference.

7.Considering the submissions made and on perusal of the material, it is seen that the case of the appellant is that the respondent asked for loan of Rs.1,30,000/- for her urgent needs on 12.01.2019 and in discharge of the said liability on the same day issued cheque No.000052 dated 18.01.2019 for Rs.1,30,000/- drawn on Lakshmi Vilas Bank, Thiruthuraipoondi branch. The cheque was presented and the same was returned by bank return memo dated 21.01.2019 as 'Funds Insufficient'. Thereafter, statutory notice issued on 06.02.2019. The respondent issued a reply on 23.02.2019 in which, she had clearly stated that on 23.02.2017, she had taken a loan of Rs.1,00,000/- for medical expenses of her mother and promised to repay the same within three months and on 10.05.2017 she repaid the amount by way of cheque No.000054. At that time, the security cheque, which was given in blank was requested. The cheque was not immediately available and not handed back to the respondent. Two years thereafter on 18.01.2019, the cheque for Rs.1,30,000/- presented got dishonoured. The respondent examined herself as DW1 and her brother as DW2 to prove the fact that on 10.05.2017, she consulted her brother and thereafter repaid the loan of Rs.1,00,000/- by cheque No.000054, which was confirmed through Exs.D1 to D3. It is seen that the appellant not disclosed or refuted these facts by rejoinder or complaint or sworn statement but when confronted with these fact, he gives new explanation that the respondent's husband Palaniyappan had taken loan and he had some Income Tax problem and for that reason he asked his wife/respondent to issue the cheque/Ex.P1. This is new fact, for the first time in the cross examination such answer given, without any contemporary materials. In fact, the appellant goes to the extent of saying that he had not received the amount of Rs.1,00,000/- by cheque No.000054 but the documents proves otherwise. The trial Court considered all these aspects and finding that respondent discharged statutory presumption and probabilised her defence had rightly dismissed the complaint and acquitted the respondent.

8.In view of the same, this Court finds that the trial Court had passed a well reasoned judgment and the same needs no interference. Hence, this Criminal Appeal is dismissed.

08.04.2025

Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
rsi

**M.NIRMAL KUMAR, J.**

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To

1.The Judicial Magistrate,
Fast Track Court, Thiruthuraipoondi.

2.The Public Prosecutor,
High Court, Madras.

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