



Crl.A.No.1383 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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<i>Reserved on</i>	25.07.2025
<i>Pronounced on</i>	05.08.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.1383 of 2024

M.Gerald Arokiaraj
S/o. Michael Alfred,
No.56, Golden Complex,
M.K.B.Nagar, Vyasarpadi,
Chennai – 600 039.

.....

Appellant

Vs

V.T.Janarthanan
S/o. Thiruvengadam Pillai,
D-3, Karthick Flat,
Dr.Vijayaraghava Salai,
T.Nagar, Chennai – 600 017.

.....

Respondent

Prayer: Criminal Appeal filed is under Section 378(4) Cr.P.C. / Section 419(4) of BNSS, 2023, to set aside the judgment and acquittal order dated 06.08.2024 made in Crl.A.No.471 of 2023 by the learned IV Additional Sessions Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Sivaramalingam

For Respondent : Mr.N.Baskaran

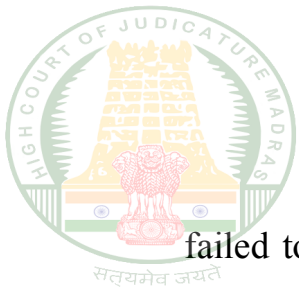


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JUDGMENT

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2. The appellant lodged a complaint as against the respondent for the offence punishable under Section 138 of NI Act alleging that he is a Builder and entered into a Joint Venture Agreement with the respondent for constructing a flat in the vacant land owned by the respondent to an extent of 3390 sq.ft. The appellant had paid a sum of Rs.55,80,000/- to the respondent for the contractual obligations. Thereafter, the respondent breached the agreement without the knowledge of the appellant and mortgaged the said property for loan to the tune of Rs.60,00,000/- to a third party. Therefore the Joint Venture Agreement came to be terminated by the deed of assent dated 06.08.2014. As per the said deed a sum of Rs.15,00,000/- was repaid by the respondent to the appellant through cheque and the balance amount of Rs.40,80,000/- had to be paid as on 06.08.2014. However, the respondent

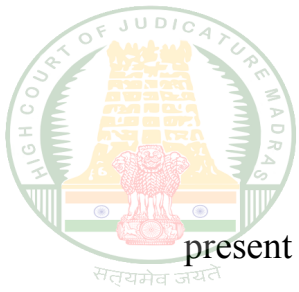


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failed to pay the said amount and as such the appellant caused legal notice and also lodged a police complaint. In the enquiry, the respondent agreed to repay the amount which was received by him for a sum of Rs.40,80,000/- by way of three cheques. The first cheque was dated 24.12.2017 and was issued for a sum of Rs.5,00,000/-. It was presented and the same was honoured by the respondent. However, the other two cheques for a sum of Rs.15,00,000/- dated 03.02.2018 and for a sum of Rs.20,00,000/- dated 31.03.2018, respectively, were dishonoured and returned for the reason “Funds insufficient”. Therefore, after causing statutory notice, the appellant lodged a complaint for the offence under Section 138 of NI Act.

3. In order to prove the complaint, the appellant had examined P.W.1 and marked Exs.P1 to P18. On the side of the respondent he was examined as D.W.1 and marked Ex.D1. On perusal of the oral and documentary evidence, the trial Court found the respondent guilty for the offences punishable under Section 138 of NI Act and sentenced him to undergo simple imprisonment for three months and also awarded compensation to the tune of Rs.35,00,000/-. Aggrieved by the same the respondent preferred an appeal and the same was allowed by the appellate Court by setting aside the order of conviction and sentence imposed by the trial Court. Hence the

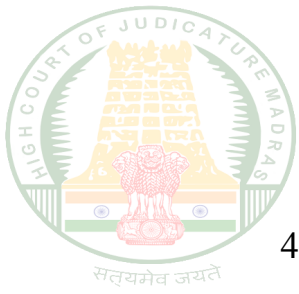


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present appeal.

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4. Mr.K.Sivaramalingam, the learned counsel for the appellant, submitted that the respondent never denied his signature and issuance of the cheques. As per the Joint Venture Agreement, the appellant had paid a sum of Rs.55,80,000/-. Thereafter the respondent created encumbrance over the property by mortgage and borrowed loan to the tune of Rs.60,00,000/- from a third party. Therefore, the appellant had executed a deed of assent dated 06.08.2014 with the respondent. Accordingly the respondent had settled a sum of Rs.15,00,000/- and he had promised to pay the balance amount within a period of sixty days. However, the respondent failed to keep up his promise and as such the appellant had issued a legal notice and also lodged a complaint. On the complaint, enquiry was conducted and during enquiry the respondent admitted his liability and issued three cheques for a sum of Rs.5,00,000/-, Rs.15,00,000/- and Rs.20,00,000/- dated 24.12.2017, 03.02.2018 and 31.03.2018, respectively. The first cheque dated 24.12.2017 was duly honoured by the respondent for a sum of Rs.5,00,000/-. However, the other two cheques were not honoured and hence the appellant had rightly initiated proceedings under Section 138 of NI Act.



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4.1 The learned counsel for the appellant further submitted that the respondent failed to rebut the presumption and as such the trial Court has rightly convicted the respondent. However, the appellate Court acquitted the respondent on the ground that the cheques were not issued for any legally enforceable debts as the alleged debt itself is barred by limitation. Since the amount was paid by the appellant in the year 2011 and cheques were issued on 03.02.2018 and 31.03.2018, as per the assent deed dated 06.08.2014 the debt becomes barred after three years i.e. from 05.08.2017. He further submitted that though the appellate Court concluded that the acceptance letter dated 01.12.2017 was not give under any coercion before the police personnels, mechanically acquitted the respondent on the ground of limitation.

5. Per contra, Mr.N.Baskaran, the learned counsel for the respondent, submitted that the letter of acceptance dated 01.12.2017 was issued in favour of the Inspector of Police, R4, Pondy Bazaar Police Station, Chennai and it was admittedly obtained under coercion. In fact immediately on the date of execution of the said letter, three cheques were forcibly obtained from the respondent. In his cross-examination the respondent categorically deposed that the said letter and the cheques were obtained from him forcibly under



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coercion. Therefore, the cheques were not issued for any legally enforceable debt and on the date of the cheque, the debt itself was barred by limitation.

He further submitted that the appellant herein had issued a cheque (Ex.D1) as security at the time of entering into the Joint Venture Agreement and it was not presented by the respondent since the entire amount has been settled by the respondent after the deed of assent.

5.1 He further submitted that the respondent categorically rebutted the presumption by issuance of reply notice, by examining D.W.1 and by marking Ex.D1. The respondent was examined as D.W.1 and he categorically deposed that after executing the letter of acceptance before the Inspector of Police, R4, Pondy Bazaar Police Station, he immediately lodged complaint before the Commissioner of Police. However, it was once again forwarded to the very same police station and as such no action was taken on the complaint. Therefore, the appellate Court has rightly acquitted the respondent and the judgment of the Appellate Court does not require any interference by this Court.

6. Heard Mr.K.Sivaramalingam, the learned counsel for the appellant and Mr.N.Baskaran, the learned counsel for the respondent and perused the



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materials available on record.

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7. The trial Court convicted the respondent and the appellate Court acquitted the respondent for the offence punishable under Section 138 of NI Act for the reason that the cheques were not issued for a legally enforceable debt as the debt itself barred by limitation. Admittedly, the appellant is a Builder and he entered into a Joint Venture Agreement with the respondent to construct a flat in the land owned by the respondent. The Joint Venture Agreement is marked as Ex.P2. Even before the execution of Joint Venture Agreement, the appellant and the respondent entered into a Memorandum of Understanding dated 12.09.2011 which was marked as Ex.P1. A perusal of Ex.P1 reveals that the appellant had paid a sum of Rs.10,00,000/- as advance. Apart from the sum of Rs.10,00,000/-, as per the Memorandum of Understanding, another sum of Rs.45,80,000/- was paid by the appellant. Further, both the parties agreed that the appellant shall pay a further sum of Rs.34,20,000/- for which the appellant had issued a cheque which was marked as Ex.D1 for a sum of Rs.34,20,000/-. However, the respondent made encumbrance over the subject property by way of mortgage deed and borrowed loan to the tune of Rs.60,00,000/- from a third party. The certified copy of the said mortgage is marked as Ex.P3 dated 05.05.2014. Therefore,



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the appellant insisted to return the amount to the tune of Rs.55,80,000/- and the respondent also agreed to repay the same. Accordingly, they had entered into the deed of assent dated 06.08.2014. The relevant clause is extracted hereunder:

“ And whereas the Second Party demanded money from the first party and raised objections in retaining the advance amount with first arty and pressurized him to return the pending money due of Rs.55,80,000/- (Rupees Fifty Five Lakhs and Eighty Thousand Only) from the first party. The first party has now arrived to settle the due amount and assented to pay the due as hereunder:

1. The First Party gives a Banker's Cheque for value of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) favouring the Second Party to-day (Cheque No. “560977” From JK Bank, T.Nagar dated 06.08.2014) receipt of which the Second Party hereby acknowledges.

2. The first party hereby promises to pay the balance amount of Rs.40,80,000/- (Rupees Forty Lakhs and Eighty Thousand Only) by means of Demand Draft within 60 days from this date i.e. on or before 06.10.2014 without fail. In case if any default in payment occurs on valid reasons, further time shall be allowed on mutual agreement.”

8. Thus it is clear that the respondent had paid a sum of Rs.15,00,000/- and he agreed to pay the balance amount of Rs.40,80,000/- within a period of



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sixty days. But the respondent even after expiry of sixty days, failed to return the amount and as such the appellant caused legal notice which was marked as Ex.P5. It was duly received by the respondent. However, the respondent failed to return the amount and as such the appellant was constrained to lodge complaint. On the complaint the Inspector of Police, R4, Pondy Bazaar Police Station, Chennai conducted enquiry. In the enquiry the respondent agreed to return the amount of Rs.40,00,000/- by way of three cheques. The cheques for a sum of Rs.5,00,000/-, Rs.15,00,000/- and Rs.20,00,000/- dated 24.12.2017, 03.02.2018 and 31.03.2018 respectively. Thereafter, the first cheque dated 24.12.2017 was presented for collection and the same was honoured by the respondent. When the appellant presented the remaining two cheques for collection, the same were dishonoured for reason “Funds insufficient”. Therefore, the appellant lodged the complaint. Considering the above facts and circumstances the trial Court rightly convicted the respondent for the offence under Section 138 of NI Act. But the appellate Court acquitted the respondent on the ground that the debt itself is barred by limitation and as such the cheques were not issued without any legally enforceable debts.

9. Though the respondent had taken a specific stand that the cheques

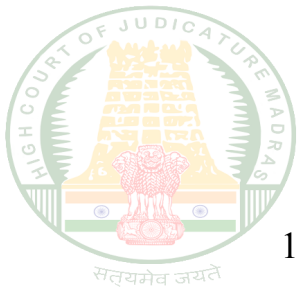


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were obtained under coercion before the Police Station, it cannot be considered as a letter of acceptance accepting the liability to save limitation.

The appellate Court concluded that the argument of coercion was found as unacceptable since the cheques were not issued under any coercion. On the other hand the appellate Court held that the debt itself is barred by limitation since the letter of assent was executed on 06.08.2014 and the cheques were issued on 03.02.2018 and 31.03.2018. As per the letter of assent, the limitation is barred from 05.08.2017.

10. Though the respondent deposed that all the three cheques were obtained under coercion by executing the letter of acceptance, the respondent honoured the first cheque for a sum of Rs.5,00,000/-. On one hand the respondent honoured one of the cheques which was allegedly obtained under coercion from respondent but on the other hand the respondent failed to honour other two cheques. Therefore, the letter dated 01.12.2017 is nothing but clear acceptance of liability. Further, the respondent also failed to produce any piece of evidence to show that, after issuance of cheques, the respondent lodged a complaint alleging that the cheques were issued under coercion in the presence of police personnels.



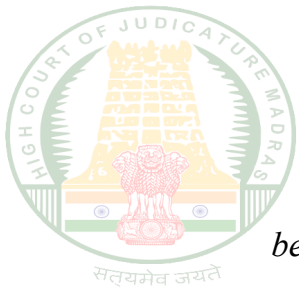
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11. Though a sum of Rs.55,80,000/- was paid by the appellant in the year 2011, after the property was mortgaged by the respondent, the appellant and the respondent had executed the deed of assent on 06.08.2014 thereby the respondent repaid a sum of Rs.15,00,000/- and agreed to repay the remaining amount of Rs.40,00,000/- same within a period of sixty days. Therefore, by the deed of assent the limitation was saved and thereafter the respondent had executed the letter of acceptance dated 01.12.2017. Though it was addressed to the Inspector of Police, the respondent categorically admitted his liability and agreed to repay the balance of Rs.40,00,000/- and issued three cheques. Out of the three cheques one cheque was honoured and the remaining two cheques were dishonoured. Therefore, it cannot be said that the debt itself is barred by limitation.

12. The provision under Section 25(3) of the Contract Act, came to rescue the case of the appellant. It is relevant to extract Section 25(3) of Contract Act which reads as under:

“ 25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law – An agreement made without consideration is void, unless-

(3) it is a promise, made in writing and signed by the person to



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be charged therewith, or by his agent generally or specifically authorized in that behalf, to pay wholly or in part a debt or which the creditor might have enforced payment but for the law for the limitation of suits.”

13. Thus it is clear that in respect of time barred debt, if the debtor gives a promise in writing signed by him to the creditor, then it becomes a fresh contract for which consideration is not necessary and the original consideration would suffice. In the case on hand, by way of acceptance letter dated 01.12.2017 the respondent issued three cheques in which one cheque was duly honoured by the respondent for a sum of Rs.5,00,000/-. However, the respondent failed to honour the remaining two cheques for a sum of Rs.15,00,000/- and Rs.20,00,000/- respectively. Therefore it cannot be said that the entire debt itself is barred by limitation.

14. The learned counsel for the respondent vehemently contended that the said letter of acceptance was issued in the name of the Inspector of Police. Though the letter of acceptance was issued in the name of the Inspector of Police, the cheques were issued in the name of the appellant herein. Therefore, a promise can be made even in a case where the limitation

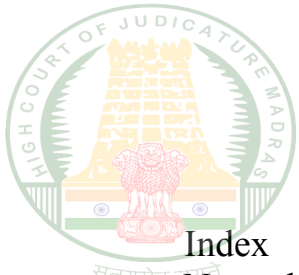


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for recovery of amount had already expired. Such a promise can be in the form of a cheque also. When a cheque is delivered to a payee, the person is entitled to present the cheque to the bank for encashment. In such an event, if the cheque is dishonoured, the liability under Section 138 of NI Act would arise. It would not be permissible for the respondent to contend that the liability was not legally enforceable without a legitimate substantiation. Therefore, this Court finds that the judgment of the appellate Court as perverse and it cannot be sustained.

15. In the result, this Criminal Appeal is allowed and the judgment and acquittal order dated 06.08.2024 made in Crl.A.No.471 of 2023 on the file of the learned IV Additional Sessions Judge, City Civil Court, Chennai, is hereby set aside and the judgment of the conviction and sentence imposed by the the learned Special Metropolitan Magistrate / XVI Court of Small Causes, Chennai, vide judgment dated 28.07.2023 in STC No.1052 of 2021 is restored. The trial Court is at liberty to secure the respondent in order to comply the order of conviction and sentence, in the manner known to law.

05.08.2025



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Index : Yes/No

Neutral citation : Yes/No

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- To:
- 1.The IV Additional Sessions Judge, City Civil Court, Chennai.
 - 2.The Special Metropolitan Magistrate / XVI Court of Small Causes, Chennai.



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G.K.ILANTHIRAIYAN, J.

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