



Crl.A.No.1122 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

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B. Raman

... Appellant

Versus

S.Senthil Murugesan
S/o.R.Subramaniyan
Proprietor, M/s.Impel Cad Solutions,
Door No.A-44, AKS Sun Stone Apartment,
Aishwarya Nagar,
Ayyanambakkam,
Chennai - 600 095.

... Respondent

PRAYER: Criminal Appeal is filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, against the Judgment passed by the Judicial Magistrate, Thiruvottiyur, Chennai dated 21.06.2024 in S.T.C.No.2377 of 2018 acquitting the respondent from an offence under Section 138 of Negotiable Instrument Act.

For Appellant : M/s. R. Yash Rathi



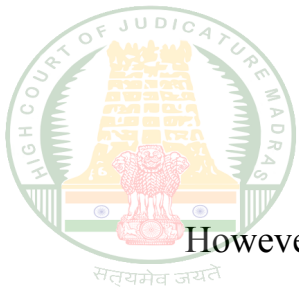
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JUDGEMENT

This Criminal Appeal has been preferred against the Judgement passed in S.T.C.No.2377 of 2018 dated 21.06.2024 by the learned Judicial Magistrate, Thiruvottiyur, whereby the complaint filed by the appellant/complainant for the offence under Section 138 of the Negotiable Instruments (N.I.) Act, 1881 against the respondent/accused, was dismissed.

2. The case of the appellant is that the respondent/accused approached the appellant/complainant and represented that he had been allotted the work of installation of 1500 digital signages in all the Primary Health Care centres and Temples across the State of Tamil Nadu. By showing an Identity Card and pay slip of two officers of the H.R. & C.E department, the respondent/accused sought financial assistance. The respondent/accused requested the complainant to act as a capital investor and provide mentor support by depositing a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) into the business. Accordingly, a Memorandum of Understanding was entered into between the complainant and the respondent. The respondent/accused assured the complainant that he would pay a sum of Rs.1,00,000/- (Rupees One Lakhs only) per month. Believing the assurance, the appellant deposited the said sum of Rs.10 Lakhs.



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However, the respondent failed to honour his promise and did not act in accordance with his undertaking. Consequently, a due amount of Rs.34,10,000/- become outstanding. Towards the said dues, the respondent issued two cheques. However, the respondent/accused instructed stop payment, and when the cheques were presented for collection, they were returned dishonoured for the reason “Payment stopped by the drawer”. After causing statutory notice, the appellant filed the present complaint. During trial, the appellant/complainant examined himself as P.W.1 and marked Exs.P1 to P14. On the side of the respondent/accused, he was examined as D.W.1 and marked Exs.D1 to D8. On perusal of the oral and documentary evidence, the Trial Court dismissed the complaint, holding that the offence under Section 138 of the Negotiable Instruments Act, was not made out as against the respondent/accused. Aggrieved by the same, the appellant/complainant has preferred this appeal.

3. The learned counsel for the appellant/complainant submitted that the respondent/accused admitted his signature and the issuance of cheques, and therefore, the appellant discharged his initial burden as contemplated under Section 138 of the N.I. Act. Once such presumption arose, it was the respondent to rebut the presumption. However, the



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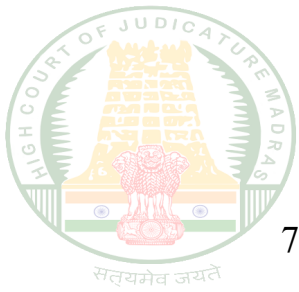
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respondent failed to rebut the statutory presumption, and even then, the Trial Court acquitted the respondent.

4. The specific defence taken by the respondent/accused is that the complaint itself is not maintainable, since there was no valid cognizance taken of the alleged offence under Section 138 of the N.I. Act.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. According to the appellant/complainant, he had deposited a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as a capital investment. However, the respondent/accused contends that the said amount was only a loan, which had subsequently been repaid. It is his defence that the cheques in question were not issued for any legally enforceable debt, but were given only as security, and the appellant had misused them by presenting the same for collection on 09.05.2018. Further, the respondent contends that he had caused a legal notice stating that only a balance of Rs.55,000/- was payable by him, and demanded to return the cheques. On receipt of the said notice, the appellant had sent a reply to the said notice on 16.05.2018.



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7. It is the specific case of the respondent that legal notices, which were marked as Ex.R1 as well as Ex.P13 dated 07.05.2018, 16.05.2018 would clearly indicate that the complainant had not complied with the mandatory requirements to fulfill the provision under Section 138(b) of the N.I. Act. The notices were not properly issued to the respondent, and further, there was no specific demand for payment of the cheque amount in the said notices. Hence, according to the respondent, the statutory notice itself is a defective, and therefore, no cause of action arose for the complaint under Section 138 of the N.I. Act.

8. That apart, the notice contemplated under Section 138 of the N.I. Act, ought to be issued only to the drawer of the cheque and must contain a demand restricted to the cheque amount. If any additional amount is demanded, the same can be severed or separated, and such notice will not be a fatal to the proceedings. However, when the demand itself is vague, or if the notice claims an inseparable amount not confined to the cheque value, such a notice would be invalid in law.

9. In the present case, the alleged legal notice was not issued to the respondent directly or through post; rather, it was sent only to the



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WEB COPY counsel of the respondent, and even then, properly addressed to the respondent. Therefore, the said notice cannot be construed as a valid legal notice honouring under Section 138 of the N.I. Act. Therefore, without issuing any statutory notice, the very complaint itself cannot be maintained. Thus, the Trial Court has rightly dismissed the complaint filed by the appellant/complainant and as such the order of dismissal does not warrant any interference of this Court.

10. In view of the above, this Court finds no infirmity or any illegality in the Judgment dated 21.06.2024 passed in S.T.C.No.2377 of 2018 by the Judicial Magistrate, Thiruvottiyur, Chennai. Accordingly, this Criminal Appeal is dismissed.

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Index : Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation : Yes/No

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To

1.The Judicial Magistrate, Thiruvottiyur, Chennai.



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G.K.ILANTHIRAIYAN, J.

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