



Criminal Appeal No.779 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09-01-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.779 of 2018
and
Crl.M.P.No.16051 of 2018

M/s. Indumathi Jewellers
A Regd. Partnership Firm
Rep. By its Managing Partner
N.R. Babulal.

.. Appellant

Versus

K. Reena Padmini

.. Respondent

Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to set aside the Order dated 01.08.2018 made in Crl. A. No. 29 of 2017 on the file of the learned I Additional District Judge, Salem and to restore the Judgment of trial Court in C.C. No. 235 of 2013 on the file of the learned Judicial Magistrate, Salem.

For Appellant	:	Mr. S. Kalyanaraman
For Respondent	:	Mr. C. Prabakaran

JUDGMENT

This Criminal Appeal has been filed by the Appellant/Complainant seeking to set aside the Order dated 01.08.2018 passed in Crl. A. No.29 of 2017 on the file of the learned I Additional District Judge, Salem and to

<https://www.mhc.tri.ostforidlis> restore the Judgment of trial Court in C.C. No. 235 of 2013 on the file of the



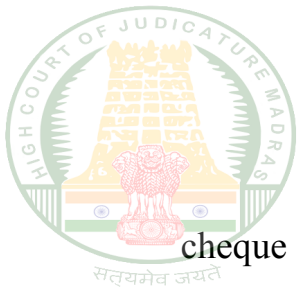
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learned Judicial Magistrate, Salem.

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2. The brief facts which are necessary to dispose of this Appeal are as follows:-

2.1. The Complainant is “Indumathi Jewellers”, represented by its Managing Partner Babulal. The other partner is Shanthi, who is the wife of Babulal. The Complainant is doing business in silver. On 01.11.2012, Complainant said to have entrusted silver ankle chains weighing about 25.641 kgs, valued about Rs.35,57,400/- to his employee Siva, with a direction to hand over the same to Thirupathy Jewellers at Hyderabad. The Accused is very close to Siva and his family members. At the time of entrusting the silver ankle chain to Siva, the Accused gave guarantee in writing to Complainant for the safe entrustment of silver ankle chains to Thirupathy Jewellers at Hyderabad, but Siva, with the connivance of Accused, his wife Manjula, his brother Fakrudin and his father-in-law Vijayan, misappropriated the silver, which was entrusted to him. Hence, the Complainant preferred Complaint with Shevapet Police Station, based on which the case in Cr. No. 237 of 2013 was registered for the offence under Sections 420 & 406 of IPC on 22.06.2013. After coming to know about the registration of the case against her and others, the Accused Reena Padmini came to the Complainant and gave

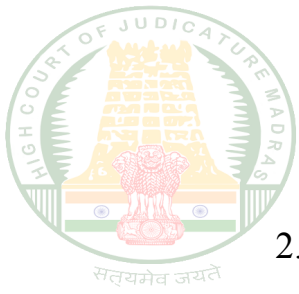


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cheque for Rs.35,57,400/- being the value of the silver anklet chain misappropriated by her and four others and requested the Complainant not to proceed with the criminal case. When the cheque issued by the Accused was presented for collection on 13.07.2013 with his Bank namely Lakshmi Vilas Bank Ltd., Salem Town Branch, Salem, the cheque was not honoured and returned back to the Complainant with endorsement "Account Closed" on 26.07.2013. The Complainant therefore caused a statutory notice on 27.07.2013 to the Accused calling upon her to pay the cheque amount within fifteen days. The Accused gave a reply to the statutory notice on 16.08.2013 with false particulars claiming that the cheque was not issued for any legally enforceable debt. Therefore, the Complainant filed the Complaint under Section 138 of Negotiable Instruments Act, 1881.

2.2. The Accused appeared before the trial Court and she was furnished with copy of the Complaint. When the Accused was questioned with regard to the charge against her, she pleaded not guilty and claimed to be tried.

2.3. On the side of the Complainant, P.W-1 and P.W-2 were examined as witnesses and Ex.P-1 to Ex.P-13 documents were marked. On behalf of the Respondent/Accused D.W-1 to D.W-3 were examined and four documents were marked as Ex.D-1 to Ex.D-4.



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2.4. The learned Judicial Magistrate – III, Salem, on perusing the oral and documentary evidence and the rival submissions made, convicted the Accused for the offence punishable under Section 138 of The Negotiable Instruments Act, 1881 and sentenced her to undergo Simple Imprisonment for six months, with fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month.

2.5. Aggrieved by the Judgment of conviction dated 13.02.2017 in C.C. No. 235 of 2013, the Accused had preferred the Appeal before the learned I Additional District Judge, Salem. After hearing both parties, the learned I Additional District Judge by judgment dated 01.08.2018 in Criminal Appeal No. 29 of 2017, allowed the Appeal and set aside the judgment of conviction passed by the trial Court.

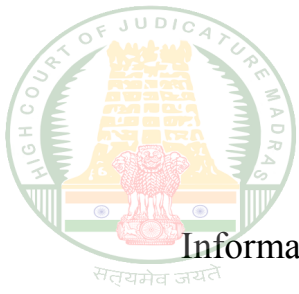
3. Challenging the Judgment of the learned Additional District Judge – III, Salem dated 01.08.2018 passed in Criminal Appeal No. 29 of 2017, the Complainant is before this Court as Appellant.

4. The learned Counsel for the Appellant submitted that the Appellant herein is a private Complainant before the learned Judicial Magistrate – III, Salem in C.C.No.235 of 2013. As the cheque for a sum of Rs.35,57,400/- issued by the Respondent herein was bounced, Appellant



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preferred the Complaint. After trial, the Respondent was convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo six months Simple Imprisonment with fine of Rs.5,000/-. On appeal, the judgment of conviction was reversed by the Appellate Court and the Respondent/Accused was acquitted. The Appellate Court held that Ex.P-4 is the guarantee letter said to have been given by the Accused. However, the original was not produced and only a copy of the said guarantee letter was produced. On perusal of Ex.P-4, it does not say the Accused has given a guarantee to the Complainant for safe transaction of the silver materials. There is nothing to say in Ex.P-4 that the Accused has given a guarantee that Siva will complete the transaction, as directed by the Complainant failing which she will pay the amount. Further, it was observed that Ex.P-4 was not issued at the time of the alleged transaction, but the letter was prepared one year after the transaction. The complainant has purchased Silver ankle chains from one Sekar on 01.11.2012. The guarantee letter shows that it was prepared subsequent to 01.11.2012. The learned Counsel for the Appellant further submitted that the Appellate Court has come to the conclusion that signature in the cheque is admitted, however, there is no legally recoverable debt as alleged, since she is only a guarantor for delivery of the goods assigned. At the instance of the Appellant herein, initially First



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Information Report was registered against the Accused along with one Siva and others. After investigation, final report was filed for the alleged offence under Sections 406 & 420 of IPC and charge sheet also has been filed before the trial Court, as could be seen from Ex.P-10.

5. The learned Counsel for the Appellant submitted that the Appellate Court held that the Accused only stood as guarantor and she cannot be held liable for the alleged misappropriation of 25.641 kgs of silver ankle chain by Siva who is Accused in the criminal case. The learned Counsel for the Appellant further submitted that when the Police had registered the case, the Accused in this case offered Rs.35,57,400/- being the value of the silver ankle chains being misappropriated by her and four others and requested the Complainant not to proceed with the criminal case. The Accused assured and promised that the cheque will be honoured when presented for collection. But when the Complainant presented the cheque for collection, it was not honoured and returned with endorsement "Account Closed". The act of the Accused constitutes the offence under Section 138 of Negotiable Instruments Act, 1881. On appreciation of evidence, the learned Judicial Magistrate – III, Salem convicted the Accused. But, on Appeal by the Accused, the learned I Additional District Judge, Salem, had arrived at an erroneous conclusion that



there was no legally enforceable debt in favour of the Complainant. The said observation is not justified as the Accused herself approached the Complainant and issued the cheque.

6. The learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1 and the discussion of evidence by the learned Appellate Judge in C.A. No. 29 of 2017. Except the evidence of D.W-2 nothing is available on record to rebut the initial presumption raised by the Complainant. Further, in the cross-examination of P.W-1 the relationship between the Accused, Siva and the Complainant has been clearly spelt out. It was stated that Siva was employed in the Complainant's Jewellery for two years prior to the Complaint, therefore, they entrusted the jewels to Siva. The learned I Additional District Judge, Salem without any materials available on record arrived at an erroneous conclusion that there is no prior liability for the Accused to issue cheque for Rs.35,51,400/-. The learned Counsel for the Appellant also invited the attention of this Court to Ex.P-4-guarantee letter executed by Accused in this case to Indumathi Jewellers wherein the Accused had stated that silver anklets were handed over to Siva and obtained undertaking from them to hand over the same to Thirupathy Jewellers, Hyderabad. It was only a formality by which the Accused herein, a close

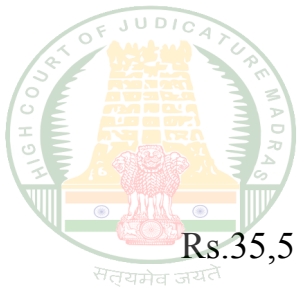


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relative of the employee of Indumathi Jewellers had given affidavit to that effect and there is no prior enforceable liability for the Accused in this case.

The Appellate Court also disbelieved the reason and purpose for which the cheque was issued. When the Accused did not deny the signature in the cheque, the initial presumption has been raised by the Complainant and it was not rebutted in a manner it required. The Appellate Court, on an erroneous observation of the oral and documentary evidence, held that the cheque was not issued for a legally enforceable debt and liability. The learned Counsel therefore prayed for allowing this Appeal by setting aside the judgment of the Appellate Court, and to restore the judgment of conviction passed by the trial Court.

7. Per contra, the learned Counsel for the Respondent submitted that the cross-examination of P.W-1 itself would show that the case projected against the Respondent/Accused is false. The Complainant had preferred Police Complaint with respect to missing of silver anklet chain. The Shevvapet Police had registered the case in Cr. No. 237 of 2013 for the offence under Sections 420 & 406 of IPC and filed charge sheet against Siva and four others. Therefore, when the Police investigation had been completed and pending for trial, the institution of complaint for dishonour of cheque for



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Rs.35,51,400/- clearly indicates that there was no enforceable liability with the Accused. The learned Judicial Magistrate – III ignored the genuine claim of the Accused but the learned I Additional District Judge had on re-appreciation of the very same set of evidence considered that the Complainant had not proved the prior liability of the Accused in this case. Under those circumstances, the Appeal lacks merits and is to be dismissed.

Point for consideration:

Whether the Judgment of acquittal passed by the learned I Additional District Judge, Salem, in Crl.A.No.29 of 2017, dated 01.08.2018 warrants interference by this Court and is to be set aside as perverse?

8. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent.

9. Perused the deposition of evidence of Complainant as P.W-1 and deposition of Accused as D.W-1 and other Witnesses D.W-2 and D.W-3. The husband of the Accused/D.W-2 in which D.W-2 had admitted that the Police case had been pending as C.C before the learned Judicial Magistrate – III. He



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had denied the suggestion that the wife had given a cheque towards her liability voluntarily. He had denied the suggestion that they had not produced documentary proof regarding their claim regarding online marketing.

10. On perusal of records, it is found that the Accused had denied the claim of Complainant under Ex.P-7 by their reply in Ex.P-9 stating that the Accused was originally working as online marketing agent. Since commission provided by the Complainant was not sufficient and the online business was dull, they had stopped acting as Commission Agent to the Complainant's Jewellers.

11. It is true that the signature in the cheque had not been denied by the Respondent/Accused. But the manner in which the cheque was obtained from her has been explained in the reply notice dated 16.08.2013. In Para No.2 of the reply notice, it was stated that on 21.04.2011, the Respondent/Accused and her husband were detained in the house of a politician for hours together, tortured physically and mentally and their signatures were obtained in 3 blank promissory note, 3 blank stamp paper, 9 blank green promissory note and blank cheque maintained with Corporation Bank bearing Nos. 480395, 480396 and 480397. That apart, cheques and



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blank promissory notes were also obtained from the husband of the Accused.

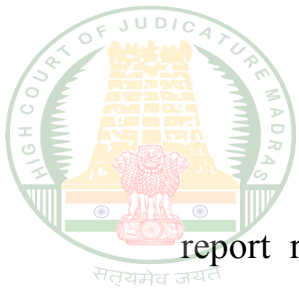
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It was stated in the reply notice that the cheque was not issued voluntary, but it was made to be executed out of coercion and duress. For this reply notice, the Appellant had not issued any rejoinder. The reply notice satisfactorily rebuts the initial presumption raised by the complainant in the complaint under Section 138 of The Negotiable Instruments Act, 1881. In such an event, the burden shifts to the shoulders of the complainant to prove the contra. This was not done by the Appellant/Complainant and therefore, the defence of the Respondent/Accused has to be accepted. The defence so raised by the Respondent/Accused is a plausible defence and it cannot be ignored by this Court.

12. On perusal of the Judgment of the learned I Additional District Judge, Salem, it is found that the learned Judge had observed as follows:

“13. While so, the defence of the Accused as per the reply notice Ex.P-9 is that the signature of the Accused was obtained by the Complainant by force and coercion in the blank cheque leaves of Corporation Bank bearing Nos.480395, 480396 and 480397. While so, the signature of the Accused in the case cheque leaf bearing No.480395 is not disputed.”

13. When the FIR in Cr.No.237 of 2013 implicates the staff of the Complainant firm viz., Indumathi Jewellers and the Police had filed final



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report regarding misappropriation of silver ankle chains, the claim of the

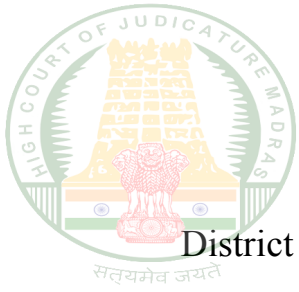
Complainant that the Accused in this case had herself offered to pay the amount towards value of the missing silver ankle chains is found unbelievable in the light of Ex.A-9 wherein she had denied that she is not a staff of Indumathi Jewellers and she was involved in online marketing. Since it was not helping her with income towards her expectation the relationship with Indumathi Jewellers had strained. The person who is alleged to have taken 25.641 kgs silver ankle chain to Hyderabad from the Complainant, against whom a criminal case has been initiated and is now pending for trial. Therefore, she is not duty bound to issue cheque towards the missing silver ankle chains whereas she and her husband were detained in Police on the instigation of the Complainant by using his relationship and influence with Politician. On the request of Politician, the Police had obtained cheque leaves from the Accused and that is why the Accused had given reply and had closed Accounts. Under those circumstances, when the charge sheet is pending, the person claiming to be an Accused in the criminal case cannot be expected to settle the dues. If really she had settled the dues, then, the complainant would have filed appropriate memo to withdraw the criminal case, through the investigation officer. On the other hand, the Respondent/Accused disputed the claim of the Appellant towards misappropriation of jewels. In the cross-



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examination of Complainant/P.W-1, he had admitted that the said Siva with whom he had handed over the silver ankle chain was working prior to the date of handing over of the silver articles. Under those circumstances, when the criminal case is pending for the same cause of action, obtaining cheque from the Accused is found unacceptable as per the Provisions of Negotiable Instruments Act. Under those circumstances, the observation of the learned Sessions Judge that there is no enforceable debt between the Accused and the Complainant is found justified. In short, Complainant is found to have extracted a cheque from this Accused. When more people are suspected to have been involved in misappropriation of silver ankle chains receiving a cheque from one among them is found not acceptable. When the criminal case is pending against many individuals, receiving the cheque only from the Respondent/Accused gives rise to a suspicion. Under those circumstances, the finding of learned Appellate Judge is found reasonable and acquittal by the learned I Additional District Judge is proper. It does not warrant any interference of this Court.

15. In the light of the above discussion, the point for consideration is answered in favour of the Respondent/Accused and against the Appellant/Complainant. The Judgment passed by the learned I Additional



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District Judge, Salem in Crl.A.No.29 of 2017 dated 01.08.2018 is found proper

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which does not warrant interference by this Court.

In the result, **this Criminal Appeal is dismissed.** The Judgment passed by the learned I Additional District Judge, Salem in Crl.A.No.29 of 2017, dated 01.08.2018 is confirmed. Consequently, connected Miscellaneous Petition is closed.

09-01-2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order
dh



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To

1. The I Additional District Judge,
Salem.
2. The Judicial Magistrate – III,
Salem.
3. The Section Officer,
Criminal Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment made in
Criminal Appeal No.779 of 2018

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