



Crl.A.No.759 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09-01-2025

CORAM:

The HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 759 of 2018

--

A. Jagatheesan

.. Appellant

Versus

R. Panneerselvam

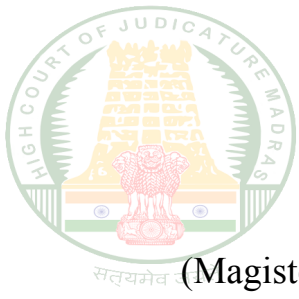
.. Respondent

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, to set aside the judgment of acquittal dated 28.09.2018 made in Criminal Appeal No. 92 of 2018 on the file of the II Additional District and Sessions Judge, Erode, reversing the Judgment of conviction and sentence passed in S.T.C.No.304 of 2017 dated 08.03.2018 on the file of the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial level), Erode.

For Appellant	:	Mr. S. Kaithamalai Kumaran
For Respondent	:	Mr. R. Karthikeyan

JUDGMENT

The Appellant is the *De facto Complainant* in S.T.C. No. 304 of 2017 on the file of the learned Judicial Magistrate Fast Track Court No.1

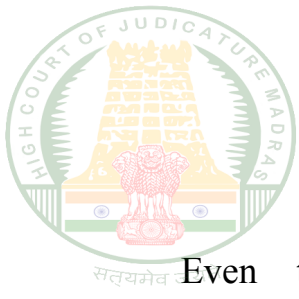


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(Magisterial level), Erode. By judgment dated 08.03.2018, the Respondent/Accused was convicted for the offence punishable under Section 138 of The Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of six months and to pay the cheque amount of Rs.80,000/- to the *De facto Complainant*, failing which to undergo one month simple imprisonment. Challenging the judgment of conviction dated 08.03.2018, the Respondent/Accused preferred Criminal Appeal No. 92 of 2018. The Appellate Court, by the impugned judgment dated 28.09.2018, reversed the judgment of conviction passed by the trial Court and acquitted the Respondent/Accused. Therefore, challenging the judgment dated 28.09.2018, the present Appeal is filed.

2. As per the complaint in S.T.C. No. 304 of 2017, the Respondent/Accused borrowed a sum of Rs.80,000/- on 01.03.2017 from the Appellant/*De facto Complainant*. To discharge the said loan amount, he has issued the cheque No. 106903 dated 24.03.2017 drawn on Punjab National Bank, Erode Branch. When the Appellant deposited the cheque with his Bankers – Canara Bank, Gangapuram Branch on 08.05.2017, it was dishonoured for the reason “insufficient funds”. On 09.05.2017, the Appellant sent a notice to the Respondent calling upon him to pay the cheque amount.



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Even though the notice dated 09.05.2017 was received by the Respondent/Accused on 12.05.2017, he has neither paid the cheque amount nor issued any reply. Therefore, the Appellant/*De-facto Complainant* has filed the complaint under Section 138 r/w. 142 of The Negotiable Instruments Act before the trial Court against the Respondent/Accused.

3. During trial, the Appellant/*De-facto Complainant* examined himself as P.W-1 and marked Ex.P-1 to Ex.P-4. On behalf of the Respondent/Accused, Mr. Selvaraj, Assistant Manager of Dhanalakshmi Bank was examined as D.W-1 and Ex.D-1 to Ex.D-3 were marked. The trial Court, on appreciation of the oral and documentary evidence, concluded that the Respondent/Accused did not dispute the signature in the cheque and therefore, the presumption under Section 139 of The Negotiable Instruments Act is that the cheque was issued by none other than the Respondent/Accused. The trial Court also observed that the Respondent/Accused did not issue a reply notice to the notice dated 09.05.2017 sent on behalf of the Appellant/*De-facto Complainant*. The defence of the Respondent/Accused that as on the date of the cheque for Rs.80,000/- he is having sufficient amount in his Bank account and there was no necessity for him to borrow Rs.80,000/-. The further defence of the Respondent/Accused is that the cheque was issued to one Devaraj and



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due to difference of opinion between the Respondent/Accused and the said Devaraj, the said Devaraj has given the cheque to the Appellant/*De-facto Complainant* and accordingly, the complaint was filed. However, the trial Court rejected the defence for the reason that at the earliest point of time, the Respondent/Accused ought to have issued a reply to the notice dated 09.05.2017, but the Respondent/Accused did not do so. Further, if it is true that the cheque was issued to one Devaraj, the Accused ought to have examined the said Devaraj and therefore, allowed the complaint filed by the Appellant/*De-facto Complainant*.

4. On appeal, the appellate Court reversed the judgment of conviction mainly on the ground that as per Ex.D-2 and Ex.D-3, marked through P.W-1 during his cross-examination which are statement of account in respect of account maintained by Complainant in Canara Bank, wherein as on 01.03.2017, the Complainant had merely Rs.7,354.90. In respect of D.W-3, the Complainant had Rs.1,50,725/- as on 31.01.2017. Further, no transaction took place in the account of the Complainant from 31.01.2017 to 18.03.2017 and therefore, the Appellate Court reached a conclusion holding that the Complainant failed to prove that the cheque was issued for legally enforceable debt. When the defence of the Respondent/Accused was that the cheque was



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given to one Devaraj, who due to enmity had filled up the name of the Complainant. Having come to such a conclusion, the first Appellate Court allowed the Appeal and set aside the judgment of conviction passed by the trial Court and acquitted the Respondent/Accused from all the charges. Assailing the judgment dated 28.09.2018 of the Appellate Court, the present appeal is filed.

5. The learned Counsel for the Appellant submitted that the defence of the Accused was that the Complainant does not have the resources to lend the loan of Rs.80,000/-. This defence cannot be countenanced, especially when the Respondent/Accused had not stepped into the witness box or produced any document to show that the Appellant/*De-facto Complainant* is not resourceful enough to lend the sum of Rs.80,000/-. In any event, the Respondent/Accused had not rebutted the initial presumption raised by the Appellant/*De-facto Complainant* by producing the cheque in question and when the Respondent/Accused had not denied his signature in the cheque. The learned Appellate Judge placed the burden on the Complainant to prove that he had sufficient means to lend the amount of Rs.80,000/-. The amount of Rs.80,000/- is not a huge amount for the Complainant warranting him to produce his PAN card and income tax receipts before the Trial Court. Further,



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the learned Counsel for the Appellant submitted that prior to lodging the complaint, the Complainant had issued statutory notice which was received by the Accused, but he had not replied to the same. Only after waiting for the reply and after expiry of the time stated in the Negotiable Instruments Act, 1881, the Complainant filed the complaint. The learned Appellate Judge ought to have drawn an adverse inference from the conduct of the Accused in not entering the witness box. Though so many defences were raised by the Accused, those defences were not proved either by any witness or by producing any documentary evidence. While so, the acquittal of the Respondent/Accused is erroneous and it is liable to be interfered with by this Court.

6. It is the further submission of the learned Counsel for the Appellant that the learned Appellate Judge misdirected himself in ignoring the presumptions available in favour of the Complainant and shifted the burden on the Complainant to prove his resources. It is the submission of the learned Counsel for the Appellant that as per Ex.D-1 marked through D.W-1 the Accused had Rs.23,68,358/- as on 01.03.2017 in his Bank account. The fact that the Accused had more than one lakh in his Bank account by itself may not be a defence for the Accused to contend that there is no necessity for him to



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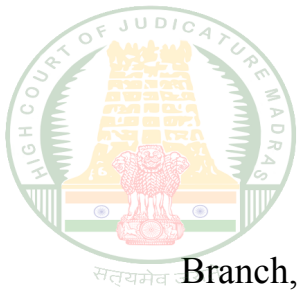
borrow money from the Appellant/*De-facto Complainant*. This fact was ignored by the learned II Additional District and Sessions Judge, Erode, while reversing the judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial level), Erode. Further, the learned Counsel for the Appellant relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Rangappa Vs. Sri Mohan*** reported in (2010) 11 ***SCC 441*** wherein it was held that “once it is admitted that the cheque was issued by the Accused from a Bank account maintained by him and also admits and accepts the signature in the cheque, then the initial presumption as contemplated under Section 139 of The Negotiable Instruments Act, 1881, has to be raised by the Court in favour of the Complainant. The presumption referred to in Section 139 of the Negotiable Instruments Act, 1881, is a mandatory presumption and not a general presumption, but the Accused is entitled to rebut the said presumption.” In the said judgment, it was held by the Honourable Supreme Court that when an initial presumption has been raised by the Complainant, what is expected from the Accused is more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court. In the present case, the defence of the Respondent/Accused is that on the date of the cheque, he has more than Rs.1



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lakh in his Bank account and therefore, there is no necessity for him to borrow the amount. This cannot be accepted as a rebuttal evidence and therefore, the Appellate Court ought not to have reversed the judgment of conviction recorded by the trial court. Accordingly, the learned Counsel for the Appellant seeks to set aside the judgment of acquittal recorded by the learned II Additional Sessions Judge in C.A.No.92 of 2018 dated 28.09.2018 and to restore the judgment of conviction recorded by the learned Judicial Magistrate Fast Track Court No.1 (Magisterial level), Erode, in S.T.C.No.304 of 2017 dated 08.03.2018.

7. The learned Counsel for the Respondent/Accused submitted that the learned Judicial Magistrate Fast Track Court No.1 (Magisterial level), Erode, failed to appreciate the admissions in cross-examination of P.W-1. It is his submission that the Accused need not enter the witness box to disprove the contention of the Complainant. It is sufficient for the Accused to discharge the initial presumption raised by the Complainant through cross-examination by eliciting the facts in his favour which would strengthen his defence. As regards the wherewithal of the Complainant-Appellant, in his cross-examination he has admitted that he has a Bank account with Punjab National Bank, Easwaran Koil Street. As far as the Bank account with Gangapuram



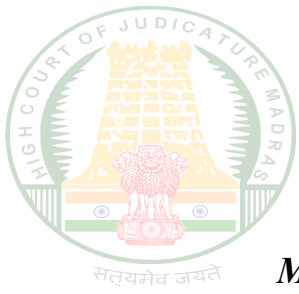
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Branch, as on the date of lending the sum of Rs.80,000/-, he has no such amount in his account. However, he has amount in the other account. He also admitted that he has not presented the statement of Bank accounts. He also admitted that he has no permanent employment or income. However, he receives Rs.30,000/- as rental income besides Rs.25,000/- from the Car tinkering shop. This admission of the Appellant/*De-facto Complainant* has been omitted to be considered by the trial Court, but was taken note of by the learned Appellate Judge to reverse the judgment of conviction. The learned Counsel for the Respondent relied on paras 13 and 14 of the learned Appellate Court judgment and submitted that when the Appellant/*De-facto Complainant* had not produced any document to show he was resourceful enough to lend the amount, the Judgment of acquittal is proper and it does not call for any interference by this Court.

8. Heard the learned Counsel for the Appellant as well as the learned Counsel for the Respondent and perused the materials placed on record.

Point for consideration:

Whether the judgment of the learned II Additional District and Sessions Judge, Erode, in Crl.A.No.92 of 2018 dated 28.09.2018 reversing the judgment of the learned Judicial



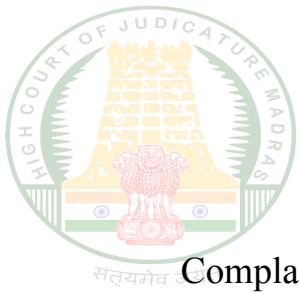
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Magistrate Fast Track Court No.1 (Magisterial level), Erode, in S.T.C.No.304 of 2017 dated 08.03.2018 is to be set aside as perverse?

10. This Court carefully perused the judgment of the learned Trial Judge as well as the judgment of the learned Appellate Judge. At the outset, it must be stated that in a proceeding under Section 138 of The Negotiable Instruments Act, 1881, the Complainant has to raise a presumption that the cheque was issued for a legally enforceable debt and liability. When such a presumption has been raised it must be rebutted by the Accused by legally acceptable evidence. Such a rebuttal evidence shall be in the form of cross-examination of the Complainant or by documentary evidence. Such rebuttal evidence must be stronger to satisfy the Court that the cheque was not issued for a legally enforceable debt or liability and it was issued for some other purpose.

11. In this case, the Respondent/Accused does not dispute the signature in the cheque. By such admission, a legal presumption arises that the cheque was issued by none other than the Respondent/Accused from a Bank account maintained by him and the cheque was issued only for a legally enforceable debt or liability. If such a presumption is raised by the



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Complainant, then, it has to be rebutted by the Respondent/Accused. As mentioned above, such a rebuttal evidence must be greater than the presumption that was raised by the Complainant to satisfy the Court that the cheque was not issued for a legally enforceable debt and liability. To rebut the presumption, the Accused did not step into the witness box. The Accused has marked three documents only to show that he has sufficient funds in his Bank account and there was no necessity to borrow the amount and the Complainant comparatively was less resourceful. There was nothing to show that the cheque he issued in favour of the Complainant was not for a legally enforceable debt or liability. Thus, the documents filed on behalf of the Accused are not stronger enough to rebut the initial presumption raised by the Complainant.

12. The defence of the Accused is that the cheque was issued to one Devaraj and he has caused the cheque to be presented by the Appellant/*De-facto Complainant*. If it is so, it is for the Accused to step into the box and say that the cheque was not issued to the Appellant/*De-facto Complainant* but to one Devaraj. The Accused is also expected to say that the cheque was not issued to the Appellant/*De-facto Complainant* and there is no nexus or relationship between him and the Appellant. This was not done by the



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Respondent/Accused and he maintained stoic silence. By reason of such silence on the part of the Accused, the presumption raised by the Complainant has become stronger and robust.

13. The greater flaw committed by the Accused in this case is worth mentioning. After the dishonour of the cheque, the Complainant caused a legal notice on 09.05.2017, which is evident from Ex.P-3 and it was received by the Accused as could be seen from Ex.P-4. By virtue of such legal notice, the Complainant had built a fortress on his own and the key to enter in to it is the reply notice to be sent on behalf of the Respondent/Accused. However, for the reasons best known, the Accused did not issue any reply thereof. It was the earliest opportunity available to the Accused to rebut the presumption that may be raised by the Complainant in his favour. Such a golden opportunity given to the Accused has been apparently missed by him. The date on which the Accused received Ex.P-3 is the golden hour available and the statutorily prescribed time started tickling against him till such time he issues a reply to the statutory notice. Having missed such an opportunity to demolish the fortress built by the Complainant, it is futile on the part of the Accused to put forth his defence when the complaint under Section 138 r/w. 142 of The Negotiable Instruments Act, 1881, is filed.



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14. The submissions of the learned Counsel for the Respondent/Accused is that in the cross-examination of P.W-1/*De-facto Complainant*, he has admitted that he has two accounts with the Bank and in the Bank account with Gangapuram he has no balance to the tune of Rs.80,000/-. This admission may not go in favour of the Accused to demolish the case of the Complainant. The learned Counsel for the Accused has only read over a few lines from the cross-examination and omitted to read it in entirety. In the very same cross-examination, P.W-1 proceeded to state that he can furnish the statement of account from the Bank. He also says that on going through his Bank account, there was a sum of Rs.2 lakhs available in it. The Complainant had not specifically stated from which account he withdrew the amount of Rs.80,000/- and paid it. The Accused also did not put forth any question to the Complainant in this regard. The fact remains that out of the two Bank accounts, the Complainant has, in one account, Rs.2,00,000/- and this is sufficient to take note of the resourcefulness of the Complainant. Even otherwise, the Complainant had gone on record by stating that he is in receipt of Rs.30,000/- per month as rental income and Rs.25,000/- per month from the car tinkering workshop run by him. Therefore, by any stretch of imagination, it cannot be said that the Complainant is not resourceful enough to pay to the



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Accused the sum of Rs.80,000/- as loan.

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15. The other submission of the learned Counsel for the Accused is that the Accused produced Ex. D-1 to Ex.D-3 to show that he has got Rs.23 Lakhs in his Bank account as on 31.01.2017 and there was no necessity to receive the loan from the Complainant. This defence is contrary to the defence of the Accused that the cheque was only given to Mr. Devaraj and he has issued it to the Complainant. It is not known as to what was the loan transaction between the Accused and Devaraj and what was the amount, if any, borrowed by the Accused from Devaraj. This air of controversy has not been cleared by the Accused. In any event, possessing more than the loan amount in his Bank account cannot be a defence for the Accused to rebut the initial presumption raised by the Complainant, without stepping into the witness box. It is true that in a criminal proceeding the Accused is entitled to maintain stoic silence leaving the ingredients of the complaint to be proved by the Complainant. However, when the initial burden is discharged by the Complainant, then, the Accused must get into the witness box and rebut the initial presumption. In the present case, the Accused, for the reasons best known, did not step into the witness box, which lead to the presumption raised by the Complainant more stronger and robust. Thus, the failure on the part of



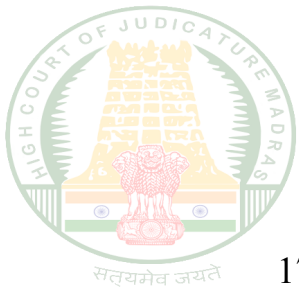
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the Accused to rebut the initial presumption raised by the Complainant is fatal to his defence.

16. In the case of ***Rangappa Vs. Sri Mohan*** reported in (2010) 11 ***SCC 441*** the Honourable Supreme Court held as follows:-

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in a commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clause and the defendant-Accused cannot be expected to discharge an unduly high standard of proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an Accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of ‘preponderance of probabilities’. Therefore, if the Accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the Accused can rely on the materials submitted by the Complainant in order to raise such a defence and it is conceivable that in some cases the Accused may not need to adduce evidence of his/her own.”

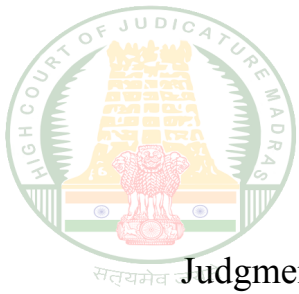


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17. Applying the ratio laid down by the Honourable Supreme Court in the above case, the Accused herein is unable to raise a probable defence to tweak into the credibility of the evidence made available by the Complainant, which would have the tendency of creating a doubt about the existence of a legally enforceable debt or liability. In such circumstances, applying the ratio laid down by the Honourable Supreme Court in the above case, this Court is of the view that the Appellate Court had committed a legal error in reversing the well considered judgment of the trial court.

18. In the light of the above, the point for consideration is answered in favour of the Appellant and against the Respondent. The judgment of acquittal dated 28.09.2018 made in Criminal Appeal No. 92 of 2018 on the file of the II Additional District and Sessions Judge, Erode, is set aside and the Judgment of conviction and sentence passed in S.T.C.No.304 of 2017 dated 08.03.2018 on the file of the learned Judicial Magistrate Fast Track Court No.1 (Magisterial level), Erode is to be restored.

In the result, this **Criminal Appeal is allowed**. The judgment of acquittal dated 28.09.2018 made in Criminal Appeal No. 92 of 2018 on the file of the II Additional District and Sessions Judge, Erode, is set aside and the



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Judgment of conviction and sentence passed in S.T.C.No.304 of 2017 dated 08.03.2018 on the file of the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial level), Erode is restored.

The learned Judicial Magistrate, Fast Track Court No.1 (Magisterial level), Erode is directed to take steps as expeditiously as possible to secure the Respondent/Accused so as to undergo the period of sentence imposed in the Judgment dated 08.03.2018 passed in S.T.C.No.304 of 2017 by issuing warrant through the Station House Officer of the Police Station concerned.

09-01-2025

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

- 1.The Judicial Magistrate
(Fast Track Court No.1), Erode.
- 2.The II Additional District and Sessions Judge,
Erode.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J,

cda

Judgment made in
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