

CrI.A(MD)No.313 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

CrI.A(MD)No.313 of 2014

S. Kaleeswaran

... Petitioner

Vs

V. Malaravan

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to set aside the Judgment passed in STC No.634 of 2012 on the file of the Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai, dated 04.09.2014 and convict the respondent.

For Appellant : Mr. R.Parthiban

For Respondent : Mr.V.Nagendiran

JUDGMENT

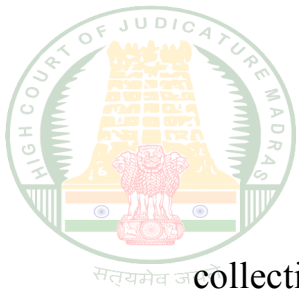
The present Criminal Appeal has been filed challenging the Judgment of the learned Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai, dated 04.09.2014 made in STC No.634 of 2012.



Crl.A(MD)No.313 of 2014

WEB COPY

2.The appellant is the complainant, who had filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') on the allegation that the respondent along with his brother borrowed a loan of Rs. 3,70,000/- for producing a feature film from the complainant and his wife on 04.10.2004. The accused and his brother agreed to pay interest @ 24% per annum in respect of the above transaction. The accused along with his brother executed a promissory note in favour of the complainant and his wife on 04.10.2004 itself, but the loan was not repaid as agreed. On 09.11.2006, both the accused and his brother had given undertaking letters that they would pay the loan amount of Rs. 3,70,000/- along with the interest amount of Rs. 1,11,350/-. On executing an undertaking on 09.11.2006, they got back the promissory note. On 10.05.2008, the respondent alone had executed another undertaking letter. Even thereafter, the respondent did not repay the loan amount. Later, he gave a cheque drawn from his banker IDBI Bank, KK Nagar, Madurai on 14.08.2008 for Rs.4,00,000/- towards part payment of the outstanding payable by him. When the cheque was presented for



Crl.A(MD)No.313 of 2014

WEB COPY

collection on 21.08.2008, it was returned for the reason 'funds insufficient' on 24.08.2008.

3.After completing the legal mandates, sending statutory notice and exhausting the statutory wait period, the defacto complainant has filed the complaint. After trial, the trial Court found the accused not guilty and aggrieved over that, this appeal has been preferred by the complainant.

4.The learned counsel for the appellant submitted that the trial Court has not drawn initial presumption in favour of the complainant as contemplated under Section 139 of NI Act; the Court had dealt the case on a wrong presumption that the complainant has got burden to prove the offence beyond reasonable doubts irrespective of rebuttal of initial presumption; the accused, who was examined as D.W. 1, has admitted in his cross-examination that a civil case has been filed in OS No. 142 of 2008, on the file of 1st Additional District Court, Madurai with regard to the above transaction and a decree has been



Crl.A(MD)No.313 of 2014

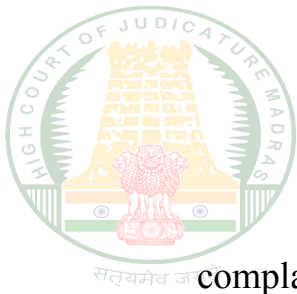
WEB COPY

obtained; He further admitted that he has not repaid the amount even as per the civil Court decree and taken the same defence before the civil Court that the issuance of the cheque is only for security purpose; the civil Court has believed the letter of undertaking acknowledgement given by the accused. However, the criminal Court has dealt its evidentiary value once again and held not proved.

5.The learned counsel for the respondent submitted that the trial Court has rightly given a finding that the cheque was not given for any enforceable debt or liability, as the complainant has not proved the same. If the cheque is not given for any legally enforceable debt, the Court has no other option except to dismiss the complaint. The trial Court has rightly done the same.

6.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

7.On perusal of the Judgment of the learned trial judge, it is seen that the trial Court has appreciated the correctness of filing of



Crl.A(MD)No.313 of 2014

WEB COPY

complaint under Section 138 of NI Act after fulfilling the legal mandates of issuing statutory notice and wait period. Thereafter, the trial Court has predominantly dealt with about the reliability of the letter of undertaking.

8.The fact remains that the accused did not dispute the signature in the impugned cheque. In such case, the Court ought to have granted the benefit of initial presumption in favour of the complainant and presumed that cheque has been issued for legally enforceable debt. Only when the accused could rebut the initial presumption by proving the contrary, the presumption can be broken.

9.To rebut the initial presumption, it is not necessary that the accused should always give direct evidence. He can also lean upon the infirmities or inadequacies in the evidence of the complainant.

10.In the instant case, the accused had examined himself as DW1 and has stated that the cheque was not issued for legally enforceable debt. But in the cross-examination, he has admitted that a



Crl.A(MD)No.313 of 2014

WEB COPY

civil case has been filed on the basis of the undertaking given by him.

On that basis, civil Court decree has been passed. When decree itself is passed by the civil Court on the basis of undertaking given by the accused, the trial Court shall not doubt on the genuineness or veracity of the undertaking. DW1 has further stated in his cross-examination that he had taken the very same stand before the civil Court that the documents have been given as a security, but that was not accepted by the civil Court. Even after the civil Court decree, he did not repay the decree amount.

11.It is not the contention of the defacto complainant that the transaction believed before the civil Court is a different transaction involved in the promissory note. It appears that the defacto complainant had exhausted the civil Court remedy and on the strength of the promissory note issued for discharge of the alleged loan amount availed by the respondent, he has also filed a criminal case under Section 138 of NI Act.



Crl.A(MD)No.313 of 2014

WEB COPY

12.As the initial loan availed by the accused has not been paid and that has culminated into a civil Court decree, there need not be any doubt in the mind of the learned Magistrate about the liability of the respondent. Once the signature is accepted and the liability also proved on the strength of the civil Court decree, then the trial Court ought to have allowed the initial presumption to be transformed into a conclusive proof without appreciating the evidence and in the absence of any rebuttal proof, the learned trial judge has chosen to dismiss the complaint and thereby, acquit the accused.

13.In this regard, it is worthwhile to refer the decision of this Court in ***J.Franklin Vs S.Gunalan*** in ***Crl.R.C.No.343 of 2016*** cited by the learned counsel for the appellant in support of his contention about the benefit of initial presumption in favour of the complainant, wherein, it is held that:

“12. The learned counsel for the petitioner submitted that there are contradictions in the evidence of the complainant/PW1 and Velusamy/PW2, who is said to be the witness for pro-note executed by the accused. The learned counsel for the petitioner drew the attention of the Court to the



WEB COPY



Crl.A(MD)No.313 of 2014

variation of time of giving the loan in the evidence of PW1 and PW2. It is to be noted that this is not a case for recovery of money based on promissory note. This case is filed under Section 138 of Negotiable Instruments Act. Hence, it is sufficient to see whether the fundamental facts are proved. Since the revision petitioner admitted the execution of the cheque, the respondent/complainant is entitled to get the initial presumption. The reverse burden is only on the revision petitioner/accused to disprove the same by producing any contrary evidence. Despite the revision petitioner/accused had refuted the allegations of the complainant no rebuttal proof is produced.

13. The only defence side witness before the Court is DW1. He is none other than the Manager of the Indian Overseas Bank, where the accused held an account. But, the documents which are marked as Exs.D1 to D4 through DW1 are not in anyway connected to the case of the complainant. The revision petitioner/accused has not taken any steps to prove that the complainant did not have the financial capacity to lend him a loan of Rs.3,50,000/-. The complainant's account was also not called for to prove anything contrary to the case of the complainant and to substantiate the contention of the accused



WEB COPY



Crl.A(MD)No.313 of 2014

that the impugned cheque was not supported by consideration.

With a mere self-assertive evidence of the accused, it cannot be taken that the preponderance of probability had shifted in favour of the revision petitioner / accused.

14. The learned trial Judge as well as the learned Appellate Judge have appreciated the facts and applied the position of law and found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act. Hence, I do not find any reason for interference.”

14.In respect of the validity of the civil Court decree, when there is a conflict of decision between civil and criminal jurisdiction, the Hon'ble Supreme Court has held in ***Prem Raj Vs Ponnamma Menon and Ors, reported in 2024 INSC 260*** that criminal jurisdiction would be bound by the civil Court finding. In this regard, the relevant portion is extracted hereunder:

“11. The position as per [Premshanker](#) (supra) is that sentence and damages would be excluded from the conflict of decisions in civil and criminal jurisdictions of the Courts. Therefore, in the present case, considering that the Court in



WEB COPY



Crl.A(MD)No.313 of 2014

criminal jurisdiction has imposed both sentence and damages, the ratio of the above-referred decision dictates that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque, the subject matter of dispute, to be only for the purposes of security.

12. In that view of the matter, the criminal proceedings resulting from the cheque being returned unrealised due to the closure of the account would be unsustainable in law and, therefore, are to be quashed and set aside. Resultantly, the damages as imposed by the Courts below must be returned to the appellant herein forthwith.”

15.In view of the above discussions, I feel that the matter needs to be remanded back to the trial Court to redo the exercise in light of the above Judgment.



WEB COPY



Crl.A(MD)No.313 of 2014

16. Accordingly,

- *this Criminal Appeal is allowed;*
- *the judgment of acquittal passed by the learned Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai in STC No.634 of 2012, dated 04.09.2014 is set aside;*
- *the matter is remitted back to the file of Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai to redo the exercise afresh in the light of the above Judgment, in the manner known to law.*

21.07.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM

To

1.The Judicial Magistrate No.I, Fast Track Court (Magistrate Level),
Madurai

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

11/12



WEB COPY



Crl.A(MD)No.313 of 2014

DR.R.N.MANJULA, J.

PNM

JUDGMENT IN

Crl.A(MD)No.313 of 2014

21.07.2025