



CRL.A(MD).No. 238 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.11.2025

Delivered on : 27.11.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 238 of 2025

P.Rajesh Samuel

: Appellant

Vs.

M.Janat Amala Arul Jothi

: Respondent

Prayer : This Criminal Appeal is filed under Section 419 of B.N.S.S., (378 of Cr.P.C)., to call for the records relating to the impugned judgment, dated 29.11.2024 made in S.T.C.No.973 of 2017 on the file of the learned Judicial Magistrate, Sathankulam, acquitting the respondent/accused and set aside the same.

For Appellant : Mr.K.P.S.Palanivel Rajan, Senior Counsel
for Mr.V.Sasikumar,

For Respondent : Mr.J.David Ganesan

JUDGMENT

This Criminal Appeal is directed against the judgment made in S.T.C.No.973 of 2017, dated 29.11.2024 on the file of the Court of the



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Judicial Magistrate, Sathankulam, in acquitting the respondent/accused for the offence under Section 138 of Negotiable Instruments Act.

2.The appellant, who is the complainant, filed a complaint under Section 200 Cr.P.C., against the respondent for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the trial Court.

4.The complainant's case is :

a) The complainant and the accused's husband George are close friends and on account of that friendship, the accused and her husband approached the complainant in the month of April 2016 requesting to lend a sum of Rs.15 lakhs to settle the loans obtained from private parties and for settling the home loan in the bank. Though the complainant expressed that he did not have such a huge amount, both of them expressed that both will have to face severe legal consequences and they have no other source to meet out the severe financial crunch.



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b) The complainant, considering the helpless condition of the accused and her husband, pledged his jewels and raised funds and from that amount along with his savings, lent a sum of Rs. 15 lakhs, on 30.05.2016 to the accused and requested the accused to return the amount within one year as the complainant's bank would take action against him for which, the accused promised to return the same on or before 31.07.2017. The complainant approached the accused demanding the return of the loan amount of Rs.15 lakhs for which, the accused issued a cheque, dated 28.03.2017 for Rs.15 lakhs drawn on Indian Overseas Bank, Sathankulam, promising the complainant that the cheque will be honoured on presentation to the bank. The complainant believing the words of the accused, presented the cheque for collection on 28.03.2017 through his bank State Bank of India, Nazareth Branch, but the cheque was returned dishonored as 'funds insufficient' on 04.04.2017. The complainant sent a legal notice, dated 03.05.2017 to the accuse demanding her to pay the amount covered by the cheque, but the accused having received the said notice on 04.05.2017, neither send any reply nor paid the cheque amount. Hence, the complainant was constrained to file the above complaint against the accused for the alleged offence under Sections 138 r/w 142 of Negotiable Instruments Act.



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5. The learned Judicial Magistrate, upon receiving the complaint, recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed a *prima facie* case, took the case on file in S.T.C.No.973 of 2017 for the offence under Section 138 of Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to him under Section 207 of Cr.P.C., on free of cost. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined himself as P.W.1 and one Radhakrishnan as P.W.2 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The accused examined two witnesses Thiru.Thillai Buvaneshwaran and Thiru.Sobitharaj as D.W.1 and D.W.2 respectively and exhibited one document as Ex.D.1.

7. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment, dated 29.11.2024 holding that the complainant has not proved the offence under Section 138 of Negotiable



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Instruments Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) of Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

8. Whether the impugned judgment of acquittal passed in S.T.C.No. 973 of 2017, dated 29.11.2024 on the file of the learned Judicial Magistrate, Sattankulam, is liable to be set aside ? is the point for consideration.

9. Before proceeding further, it is necessary to refer Section 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption.

“118. ...

(a) of consideration ; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

139.Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”



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10. It is the specific case of the complainant that the accused being a friend's wife borrowed a sum of Rs.15 lakhs on 30.05.2016 to clear their debts and agreeing to repay the same on or before 31.07.2017; that when the complainant demanded the loan amount on 26.03.2017, the accused issued a cheque for Rs.15 lakhs, dated 28.03.2017 drawn on Indian Overseas Bank, Sathankulam under Ex.P.1; that the complainant presented the said cheque for collection on 28.03.2017 through his bank State Bank of India, Nazareth Branch, but the cheque was returned for want of sufficient funds in the bank account of the accused vide bankers' memo dated 04.04.2017 under Ex.P.2; that the complainant sent a legal notice, dated 03.05.2017 under Ex.P.3, directing the accused to pay the amount covered by the cheque; that the accused having received the notice on 04.05.2017 under Ex.P.4 postal acknowledgement, has not complied with the notice demand and that therefore, the complainant was forced to file the above complaint.

11. The defence of the accused, as evident from the cross examination made to P.W.1/complainant and P.W.2 and the evidence of D.W.1 and D.W.2 is that the accused never borrowed any amount from the complainant nor issued any cheque to him; that the complainant is the friend of her husband; that when the accused's husband was vacating his computer center, the



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complainant, who used to come to the computer center often, had taken a cheque from the computer center and by misusing the same and to extract money from the accused, the above complaint came to be filed and that the complainant was not having necessary source of income or means to advance such huge amount of loan. It is the further defence of the accused that the signature found in the cheque is not that of the accused and that the accused used to sign only in Tamil not in English as shown in the disputed cheque.

12. As rightly contended by the learned trial Judge, the accused in her initial questioning and in the proceedings under Section 313(1)(b) of Cr.P.C., and in the applications filed before the trial Court, subscribed her signature in English and more particularly as M.Jothi.

13. As rightly contended by the learned counsel for the complainant, it is evident from the cross examination made by the defence that the accused has impliedly admitted that Ex.P.1 cheque was belonging to her. But the learned Magistrate, by observing that the accused has not disputed her signature found in Ex.P.1 cheque while examining him under Section 251 of Cr.P.C and in the proceedings under Section 313(1)(b) of Cr.P.C and taking



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note of the fact that the accused had subscribed her signature in English in all the Court proceedings and on comparing signatures found in Ex.P.1 cheque with the other admitted signatures of the accused, has come to a finding that the signature in Ex.P.1 cheque is that of the accused. According to the accused, Ex.P.1 cheque was stolen by the complainant from the computer center run by her husband and on that basis, raised a stand that the blank cheque was misused.

14. It is pertinent to mention that the complainant as P.W.1 gave evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of the cheques therefor, dishonor of cheque, issuance of statutory notice and the failure of the accused to pay the amount within stipulated time. On considering the evidence of P.W.1 and also the implied admission of the accused that Ex.P.1 cheque was also belonging to her and taking note of its finding with regard to the accused signature in Ex.P.1 cheque, the learned Magistrate has rightly drawn a presumption under Section 118 and 139 of Negotiable Instruments Act.

15. As rightly contended by the learned counsel for the accused, the presumptions available under Section 118 and 139 of the Negotiable



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Instruments Act are always rebuttable in nature. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove his probable defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

16. At the outset, it is pertinent to note that the accused having received Ex.P.3 statutory notice vide Ex.P.4 postal acknowledgement, admittedly has not sent any reply. When the complainant P.W.1 was cross examined on 04.01.2018 , it was suggested that the complainant informed the accused that legal notice was sent by mistake, the accused has not chosen to sent the reply, but the same was denied by the complainant and the relevant portion is extracted hereunder :

“எதிரிக்கு வக்கீல் மூலம் அறிவிப்பு அனுப்பினேன் என்றால் சரிதான். எதிரிக்கு நோட்டீஸ் அனுப்பியபோது அவரிடம் தவறுதலாக அனுப்பிவிட்டேன் என்று கூறியதால் அவர் பதில் நோட்டீஸ் அனுப்பிவில்லை என்றால் சரியல்ல.

Considering the above suggestion, as rightly contended by the learned counsel for the complainant, it can easily be inferred that the accused has admitted the receipt of statutory notice and her failure to send any reply.



17. The learned counsel for the complainant would rely on a decision of the Hon'ble Supreme Court in the case of **Rangappa Vs. Sri Mohan** reported in **(2010) 11 SCC 441**, wherein also the accused did not reply to the notice sent in the manner contemplated under Section 138 of the Act, has specifically held that the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version and the relevant portion is extracted hereunder :

29. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability.



18. The learned counsel would then rely on the decision of the Hon'ble Supreme Court in **Rajesh Jain Vs. Ajay Singh** reported in (2023) 10 SCC 148, wherein also the accused did not respond to the statutory notice, the Hon'ble Supreme Court has observed as follows :

“46. The accused has neither replied to the demand notice nor has led any rebuttal evidence in support of his case. The case set up by him needs to be drawn from the suggestions put during the cross examination and from his reply given in the statement recorded under Section 313 of Cr.P.C.

...

52. ... The accused has also not explained as to why he has not set up his defense at the earliest point, that is, at the stage of receiving the demand notice, even though he admits having received the demand notice in his 313 statement, yet he makes a suggestion to the complainant in his cross examination that no legal notice had been issued. The theory of 'blank cheque' being misused has been suggested, only to be denied by both, the complainant and Gita Sunar-CW-3. No action has been taken by way of registering a police complaint in order to prosecute the alleged illegal conduct of his blank cheque having been misused by CW-3.

19. No doubt, as rightly observed by the learned trial Judge, just because the accused has not sent any reply to the statutory notice or that



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nothing was stated while questioning under Section 313(1)(b) of Cr.P.C., it cannot be taken that the accused has failed to rebut the presumption and he can very well rebut the presumption in other modes also. Admittedly, the accused did not choose to enter into the witness box, but examined her bank Manager, IOB, Sathankulam as D.W.1 to show that she did not obtain any loan from them and the Secretary of TB69 Sathankulam Taluk and Teachers' Cooperative Thrift and Credit Society as D.W.2 to show that the accused had obtained loan from them in the year 2021.

20. The complainant examined his bank Manager as P.W.2 to show that the complainant had obtained jewel loan for Rs.8,29,000/- and also to show that Ex.P.1 cheque was returned for want of sufficient funds in the bank account of the accused.

21. The only point to be decided is as to whether the accused during cross examination of P.W.1 and P.W.2 and though the evidence of D.W.1 and D.W.2 has specifically shown a probable defence and thereby rebutted the presumption drawn under Sections 118 and 139 of Negotiable Instruments Act.



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22. The accused has admitted her husband's friendship with the complainant, and the complainant has consistently narrated the circumstances under which the loan was sought and advanced. The complainant has explained that he raised the funds by pledging his jewels with the State Bank of India, Nazareth Branch, and supplemented it with his savings to lend Rs. 15 lakhs to the accused. The learned trial Judge's skepticism about the complainant's conduct in pledging his jewels is misplaced, as it is not unusual for individuals to take such measures to help friends in genuine need.

23. The learned trial Judge, by referring some portions of the evidence of the complainant, observed that the complainant does not know anything about the accused. When asked about the avocation of the accused, P.W.1 would say that the accused was working as a Teacher at Mela Sathankulam, but he does not know the name of the school. The learned trial Judge's observation that the complainant does not know anything about the accused is patently incorrect and not warranted. The complainant, P.W.1, has clearly stated that the accused is a friend of her husband, and his lack of knowledge about the name of the school where the accused works as a teacher is not sufficient to discredit his testimony. Furthermore, the complainant's inability



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to recall the denominations of the currency notes given to the accused is not a material discrepancy that would render his case false.

24. The complainant during his cross examination would say that he was running a travels and workshop and was having six vehicles and was earning Rs.10 lakhs per year. The learned Magistrate, by observing that since the complainant had admitted that he was not paying income tax, disbelieved the version of the complainant that he was earning Rs.10 lakhs per year. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in the case of ***Rohitbhai Jivanlal Patel Vs State of Gujarat and another*** reported in ***2019 18 SCC 106***, wherein the Hon'ble Apex Court has observed that when such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not and the relevant passages are extracted hereunder :

'18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses



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who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant- accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

.....

20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more



in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant.”

25. The learned counsel for the complainant would rely on the decision of Hon'ble Supreme Court in the case of ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in **2022 6 SCC 735**, wherein the Hon'ble Apex Court



has held that in the case under 138 of NI Act, the complainant need not show that he had the capacity and the relevant passages are extracted hereunder :

“10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

11. We have gone through the nature of the evidence in this



case. We also bear in mind the fact that three courts have held in favour of the respondent. In this regard, we bear in mind that though it is true that reply notice was sent by the appellant, therein he admits the case of the respondent that the parties were having a cordial relationship. In the reply notice the appellant has not set up any case that the respondent did not have the financial capacity to advance the loan. In fact even we notice that there is no reference to the loss of the cheque book or signed cheque leaf. No complaint was given of the loss of the cheque book or the signed cheque leaf either to the police or to the bank.”

26. The Hon'ble Supreme Court in ***S.S.Production Vs. T.R.Pavithran Prasanth*** reported in ***2024 INSC 1059***, has held that mere taking a counter stand to raise a probable defence is not sufficient to shift the onus to the complainant and the relevant passage is extracted hereunder :

“8.From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. Just by taking a counter-stand to raise a



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probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. ”

27. Though the accused has taken a stand during cross examination of the complainant that the complainant had stolen Ex.P.1 cheque from the computer center, it is not the case of the accused that they have lodged a police complaint or that they have taken appropriate proceedings against the complainant for misusing the cheque.

28. Regarding the stand of blank cheque, as rightly contended by the learned counsel for the complainant even a blank cheque leaf signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the



absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

29. At this juncture, it is necessary to refer the decision of this Court in ***Padmavathy Vs. M/s Sri Balaji Networks in Crl.R.C.(MD)No.523 of 2023, dated 30.06.2023***, while dealing with the scope of Section 20 of the Negotiable Instruments Act, has observed as follows:

“7. The learned Counsel for the complainant would submit that as per Section 20 of the Negotiable Instruments Act, the holder of the cheque either by himself or through any third party can very well fill up the blank cheques and it is necessary to refer Section 20 of the Negotiable Instruments Act hereunder for better appreciation;

“Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a



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holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead by him to be paid to thereunder.”

8. *As per Section 20 of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank pronote and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such Section 20 of the Negotiable Instruments Act, will have no application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.*

9. *The learned Counsel for the revision petitioner/accused has relied on the decision of the Division Bench of the Hon'ble Supreme Court in T.Nagappa Vs. Y.R.Muralidhar reported in 2008(2) Crimes 219 (SC) and the relevant passages are extracted hereunder:*

“ Code of Criminal Procedure 1973 – Section 243(2) r/w Article 21 of the Constitution of India – An accused has a right



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to fair trial and to adduce evidence for that purpose – Ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.

Negotiable Instruments Act 1881 – Section 20 – Only a prima facie right, that too conditional, had been conferred upon the holder of the negotiable instrument – Request of the appellant for referring the cheque to Forensic examination was bona fide.”

10. At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in Oriental Bank Of Commerce vs Prabodh Kumar Tewari reported in 2022 Live law SC 714, wherein it has been held as follows:

“ Negotiable Instruments Act, 1881 – Sections 138, 139 - A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a handwriting expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert. The presumption which arises on the signing of the cheque cannot be rebutted merely by



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the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.”

11. In that decision, another judgment of the Three Judges Bench of the Hon'ble Supreme Court in Kalamani Tex Vs. Balasubramanian reported in 2021(5) SCC 283 was referred and wherein the Hon'ble Apex Court has reiterated the legal position settled in Bir Singh Vs. Mukesh Kumar reported in (2019)4 SCC 197, wherein it has been held as follows:

“14. In Bir Singh v. Mukesh Kumar, after discussing the settled line of precedent of this Court on this issue, a two-Judge Bench held:

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount



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and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

[...]

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. (emphasis supplied)”

12. The above decisions are clearly applicable to the case on hand. In the present case, according to the petitioner, she has not written the contents of the cheque. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served, if the disputed cheques are sent for expert opinion. Even assuming for argument sake, that the expert gives his opinion that the writings found in the cheque are not that of the petitioner, that by itself would not advance the case of the petitioner further. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability and that the cheque presumption arises under Section 138 of the Negotiable Instruments Act. Section 139 of the said Act mandates that it



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shall be presumed, unless the contrary is proved, that the holder of a cheque received it for the discharge, in whole or in part, of any debt or other liability. In case if the accused is able to raise a probable defence which creates doubts about the existence of a legally recoverable debt or liability, the prosecution can fail. The standard of proof for rebuttal of presumption under Section 139 of the Negotiable Instruments Act is guided by preponderance of probabilities. For deciding the above, the fact that the details in the cheque have been filled up not by the drawer, but by some other person, would be immaterial.”

30. The accused's failure to respond to the legal notice demanding repayment of the loan amount of Rs. 15 lakhs raises significant doubts about her explanation. Given the substantial amount involved, (even according to the accused, it's huge amount), it is reasonable to expect that the accused would have taken prompt action to dispute the claim if it were indeed unfounded. The accused's explanation for not sending a reply notice, namely that the complainant informed her that the notice was sent by mistake, is unconvincing and lacks credibility.

31. P.W.1 in his cross examination would say that he gave the loan amount to the accused in his office and cheque was issued by the accused in her house and that the cheque was issued after writing the contents.



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“என் ஆபிஸில் வைத்துதான் பணம் கொடுத்தேன். வீட்டில் வைத்துதான் செக் தந்தார்கள். வழக்கில் சொன்னமாதிரி எதிரி வீட்டில் வைத்ததுதான் செக் கொடுத்தார்கள். செக்கில் முழுவதும் எழுதி தந்தார்களா என்றால் வீட்டுக்குள் வைத்து எழுதிதான் தந்தார். ...

எங்கு வைத்து பணம் வாங்கினார்கள் என்றால் என்னுடைய அலுவலகம் நாசரேத்தில் வைத்து பணம் வாங்கினார்கள்.

அவர்கள் எத்தனை நாட்களுக்கு முன்பு பணம் கேட்டார்கள், எந்த எண்ணிலிருந்து என்னை தொடர்பு கொண்டார்கள் என்றால் எதிரியும் அவர் கணவரும் 2, 3 நேரங்கள் வந்து கடன் கேட்டார்கள். எந்த தேதியில் வந்தார்கள் என்றால் தேதி ஞாபகம் இல்லை.

எதிரி என்னிடம் வரும்போதே காசோலையை நிரப்பி தான் கொண்டு வந்தார் என்றால் சரிதான். எதிரியும் அவரது கணவரும் எத்தனை மணிக்கு வந்தார்கள், எந்த வாகனத்தில் வந்தார்கள், எப்படி பணம் பெற்று சென்றார்கள் என்றால், காரில் வந்தார்கள், பணம் பெற்று சென்றார்கள்....

பணம் கொடுக்கும் போது எத்தனை மணி இருக்கும் என்றால் மணி 4 இருக்கும். யார் உடன் இருந்தார் என்றால் எனது டிரைவர் மணி இருந்தார், ஸ்டாலின் என்பவரும் இருந்தார். அவர்களுக்கு எதிரிக்கு பணம் கொடுத்த விபரம் தெரியுமா என்றால் தெரியும்,

32. Moreover, as rightly pointed out by the learned counsel for the complainant, the learned Magistrate, by referring to a part of the sentence,



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has commented that the complainant had admitted that he does not see the accused and the relevant portion is extracted hereunder :

“ எனக்கு பண வசதி இல்லை என்றால் சரியல்ல. எனக்கு பண வசதி இல்லை என்பதால் நான் எதிரியை நான் பார்த்தது இல்லை, நான் எதிரியை பார்த்தது இல்லை, எதிரி எங்கு வேலை செய்கிறார் என்ற விபரமும் தெரியாது என்றால் சரியல்ல.

Despite a lengthy cross-examination, P.W.1's testimony remained unshaken, and the defence failed to elicit any material discrepancies or doubts that would undermine the prosecution's case.

33. In view of the foregoing discussion, this Court is satisfied that the accused has failed to rebut the presumption in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act. The learned Magistrate's findings are perverse, relying on immaterial factors and overlooking crucial evidence. Consequently, this Court concludes that the impugned judgment of acquittal is liable to be set aside and that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act.

34. Now turning to the punishment to be awarded, the Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited and*



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another Vs. Kanchan Mehta reported in (2017)3 MWN (CrI) DCC 161

SC, has observed that the offence under Section 138 of the Negotiable Instruments Act related to a civil wrong and the same was a regulatory offence and that the object was described as punitive as well as compensatory. It is very much clear that the intention of the provision is not only to punish the accused, but at the same time, the aggrieved party is to be compensated.

35. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of Rs. 30,00,000 (twice the cheque amount) within a period of two months from the date of receipt of copy of this judgment, in default, to undergo simple imprisonment for 6 months. Upon payment, the trial court shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

36. The Criminal Appeal is accordingly allowed.

27.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate, Sathankulam.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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