



Crl.A.(MD)No.199 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.199 of 2025

Prasath

... Appellant

versus

PMC Muthusamy

... Respondent

Criminal Appeal filed under Section 419 of the Bharathiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Section 378 (4) of Cr.P.C., to call for the records and set aside the Judgment dated 27.10.2023 made in C.C.No.68 of 2018 by the Judicial Magistrate Court, Aruppukottai, acquitting the respondent/accused and convict the respondent for the offence under Section 138 of the Negotiable Instrument Act.

For Appellant : Mr.A.V.Arun

For Respondent : Mr.M.Jothi Basu

JUDGMENT

This Criminal Appeal is directed against the Judgment of acquittal passed in C.C.No.68 of 2018 on the file of the learned Judicial Magistrate, Aruppukkottai, dated 27.10.2023.



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WEB COPY 2. The appellant has lodged a private complaint under Section 200 Cr.P.C., as against the respondent for the offence under Section 138 r/w. Section 142 of the Negotiable Instruments Act, before the learned Judicial Magistrate, Aruppukkottai and the same was taken on file in C.C.No.68 of 2018.

3. The case of the complainant is that the respondent has borrowed a sum of Rs.5,00,000/- as hand loan on 09.09.2016 and for the discharge of the said amount, he has issued a cheque (Ex.P1) dated 04.09.2017. When the complainant presented the said cheque for collection on 06.09.2017, it was returned with an endorsement as “insufficient funds”. Therefore, the complainant has issued a notice, as required under Section 138(b) of the Negotiable Instruments Act, to the respondent on 08.09.2017 and the same was received by the respondent on 09.09.2017. The respondent, instead of paying the cheque amount, has issued a reply notice on 21.09.2017 with false averments. Therefore, the complainant has instituted the above complaint as against the respondent for the offence under Section 138 of the Negotiable Instruments Act.



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4. Before the trial Court, the complainant examined himself as P.W.1 and marked six documents, namely, Exs.P1 to P6. The respondent has also entered into the box and his evidence was recorded as D.W.1 and two other witnesses were also examined on the side of the respondent. The Bank statement of the respondent was also marked as Ex.D1.

5. The respondent took a defence that the cheque (Ex.P1) was issued as a collateral security for holding the post of President of SBK Primary School and SBK KSS Thiyagarajan Matriculation School and the same was misused by the complainant, who is the friend of his opponent one Sudhakar, in order to prevent him from contesting the election. The defence of the respondent was accepted by the trial Court. Therefore, the trial Court, having found that the presumption under Section 139 of the Negotiable Instruments Act was rebutted by the accused, shifted the liability on the complainant and since the appellant has not proved his case, dismissed the complaint, by its Judgement dated 27.10.2023. Aggrieved over the same, the complainant has preferred this appeal.



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6. The learned counsel appearing for the appellant submits that the cheque (Ex.P1) was issued by the respondent, which was not denied by him and the signature found in Ex.P1 was also not denied by him. The cheque, which was presented for collection, was returned with an endorsement as “insufficient funds”. The return memo of the Tamil Nadu Mercantile Bank was marked before the Court as Ex.P2. The legal notice issued under Section 138(b) of the Negotiable Instruments Act was marked as Ex.P3 along with the acknowledgment (Ex.P4). Therefore, according to the learned counsel for the appellant, the complainant has proved that the respondent has issued a cheque for a sum of Rs.5,00,000/- which was presented for collection and the same was returned with an endorsement as “insufficient funds”. Therefore, on completion of the statutory period as required under Section 138 of the Negotiable Instruments Act after the receipt of notice, the offence under Section 138 of the Negotiable Instruments Act is made out and therefore, a presumption under Section 139 of the Negotiable Instruments Act is made out in this case.

7. The learned counsel for the appellant further submits that the solvency certificate required by the Nadar Uravinmurai Sangam is only



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from the Secretary, who is operating the Accounts and not from the President. Further, the cheque would be obtained only at the inception of the post, i.e. in the year 2012. But, the respondent held the post of President from the year 2012 to 2015. Even assuming that the requirement of issuance of cheque was available at that point of time, the cheque would have been issued in the year 2012 and not in the year 2015, as projected by the respondent.

8. The learned counsel for the appellant further submits that the respondent, in his reply notice, has taken a stand that apart from the cheque (Ex.P1), he issued five (5) promissory notes for a sum of Rs.1,00,000/- each as security for holding the post of President. However, the respondent, in his evidence, has stated contrary to his reply notice. But, the trial Court, without considering the same, has erroneously dismissed the complaint, by believing the evidence of the respondent.

9. Mr.M.Jothi Basu, learned counsel takes notice for the respondent and submits that this cheque was given for collateral security for holding the post of President of Schools run by the Nadar Uravinmurai Sangam.



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According to him, the Nadar Uravinmurai Sangam run several Educational Institutions. One Samraj was the President of the Nadar Uravinmurai Sangam. The Sangam run two schools in the name of SBK Primary School and SBK KSS Matriculation School at Aruppukottai. The respondent was the President of the Schools and D.W.2, one Soundara Pandiyan, was the Secretary of the Schools from the year 2012 to 2015. Since the Secretary and the President of the Schools are administering the entire affairs of the School, the Sangam insisted for solvency from the President as well as from the Secretary of the School. Therefore, as the respondent was holding the post of President of SBK Primary School and SBK KSS Matriculation School, he has issued the cheque (Ex.P1) in the year 2015, which was misused by the complainant, who is the friend of the then President Sudhakar, who intimidated the respondent and to prevent him from contesting the election for Nadar Uravinmurai Sangam.

10. According to the learned counsel for the respondent, the President of the Nadar Uravinmurai Sangam, Mr.Samraj, died in the year 2016. One Sudhakar, who is the brother of the said Samraj, wanted to continue the post of President of Nadar Uravinmurai, which was not accepted by the



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respondent. Therefore, the respondent has contested the election against the said Sudhakar. The appellant herein is the friend of the said Sudhakar. The election for Nadar Urainmurai Sangam was conducted on 05.09.2017. Two days before the election, i.e., on 03.09.2017, there was a negotiation made by the appellant along with the said Sudhakar requesting the respondent not to contest for the post of President. But, the respondent did not agree for the same. Therefore, the cheque, which was given for collateral security/solvency for holding the post of President in the schools, has been given by the said Sudhakar to the complainant/appellant and it was presented for collection on 04.09.2017, i.e. just one day prior to the election. In fact, the respondent was defeated in the election and subsequently, he was elected as a President of the Nadar Uravinmurai Sangam and during the evidence, he was the President of the Nadar Uravinmurai Sangam.

11. The learned counsel appearing for the respondent further submits that the complainant has issued a legal notice on 08.09.2017, to which, a reply notice was sent by the respondent on 21.09.2017. The respondent has also entered into the box and examined himself as D.W.1. That apart, the respondent has examined one Soundara Pandiyan, the then Secretary of



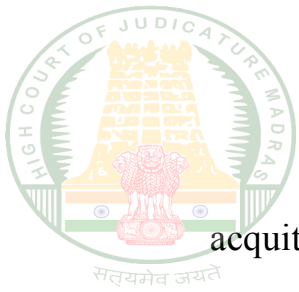
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SBK Primary School and SBK KSS Matriculation Schools as D.W.2 and also examined the Bank Manager as D.W.3. As per the evidence of D.W.3, except this cheque, all the cheques have been cleared. D.W.2, in his evidence, has also substantiated the practice, which was adopted in the Nadar Uravinmurai Sangam, by obtaining solvency/security for holding the post of President or Secretary of the Schools. Therefore, according to him, the cheque, which has been given as security/solvency for holding the post of President of the schools, have been misused by the complainant at the instance of the said Sudhakar. The trial Court has considered the evidence on the side of the respondent and found that the presumption has been rebutted by the accused and therefore, applying the ratio laid down, has rightly rejected the complaint given by the appellant. Therefore, there is no reason to interfere with the Judgment of the trial Court.

12. This Court has considered the rival submissions made and perused the materials placed on record.

13. Since this appeal is filed as against the Judgment of acquittal, it is necessary to bear in mind the principles governing the appeal against



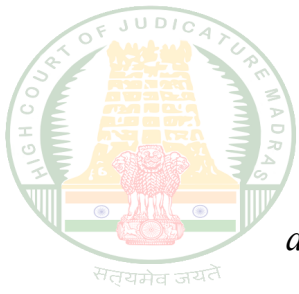
acquittal, as laid down by the Hon'ble Supreme Court in ***V.Sejappa v. State [(2016) 12 SCC 150]***, wherein, the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730]***. The guidelines issued in the said decision are extracted hereunder:

“23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation



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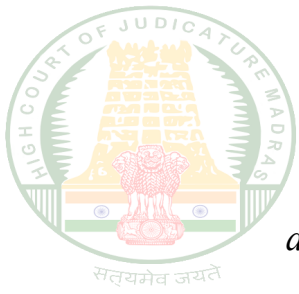
and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

14. In yet another decision in the case of ***Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]***, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

“(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', good and sufficient grounds', 'very strong circumstances', distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of



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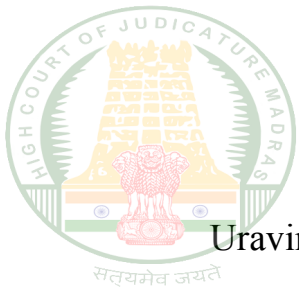
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an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.”

15. Admittedly the appellant and the respondent are the members of the Nadar Uravinmurai Sangam. There was an election for the Nadar Uravinmurai Sangam on 05.09.2017. The petitioner was holding the post of Secretary of the school run by the Sangam. There is a practice in the Sangam to get solvency / security for holding the post of President and Secretary. According to the respondent, the cheque Ex.P1 was issued as security for holding the post of President of the school run by the Nadar



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Uravinmurai Sangam.

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16. The case of the appellant is that the respondent had borrowed a sum of Rs.5 lakh and in discharge of the same, he issued the cheque (Ex.P1) on 04.09.2017. The appellant has not substantiated his case other than his statement that it was issued for loan transaction. The appellant is not having any other document than Ex.P1. On the other hand, the respondent has rebutted the presumption through evidence of DW2 and DW3. The banker (DW3) of the respondent has stated that apart from this Ex.P1, all other cheques prior to Ex.P1 and after Ex.P1 were cleared. However this cheque Ex.P1 was returned. The respondent and the Secretary of the School have entered the witness box and deposed on the practice prevailing in this Nadar Uravinmurai Sangam in collecting security for holding the post of President and Secretary of the schools run by the Nadar Uravinmurai Sangam. That was not disputed by the appellant. The respondent has substantiated that there was a negotiation to prevent the respondent from contesting the election in Nadar Uravinmurai Sangam on 03.09.2017. The respondent has rejected the request. Therefore the cheque was presented on 04.09.2017, just one day prior to the date of election on 05.09.2017. Considering the



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materials and the ratio laid down by the Hon'ble Supreme Court cited above,
this Court is not inclined to entertain this appeal. Accordingly, this criminal
appeal is dismissed.

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

The Judicial Magistrate Court,
Aruppukottai.



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