



Crl.A.(MD).No.525 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

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Mayandi ... Appellant/Respondent/Complainant

Vs.

M.Vallivel ... Respondent/Appellant/Accused

PRAYER: Criminal Appeal is filed under Section 372 of Cr.P.C., to set aside the judgment passed in C.A.No.89 of 2017 dated 06.12.2018 on the file of the IIIrd Additional District and sessions Court, Tirunelveli, by which the judgment of sentence and compensation passed in S.T.C.No.01 of 2017 dated 09.11.2017 on the file of the District Munsif cum Judicial Magistrate Court, Cheranmahadevi was reversed.

For Petitioner : Mr.N.Arumugam

For Respondent : Mr.S.Sathya Chidambaram



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ORDER

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This Criminal Appeal has been filed to set aside the Judgment of the Appellate Court namely the IIIrd Additional District and sessions Court, Tirunelveli, in C.A.No.89 of 2017 dated 06.12.2018 reversing the Judgment in S.T.C.No.01 of 2017 dated 09.11.2017 on the file of the District Munsif cum Judicial Magistrate Court, Cheranmahadevi.

<i>Offence under Section</i>	<i>Punishment</i>
138 of NI Act	To undergo 6 months Rigorous imprisonment and to pay a compensation of Rs. 3,10,000/- in default to undergo 1 month rigorous imprisonment

2. On 30.07.2015, the respondent borrowed a sum of Rs.3,10,000/- from the appellant for his family needs. To discharge the said debt, he issued a cheque bearing No.009955 on 25.09.2016, drawn on the Allahabad Bank, Cheranmahadevi. The appellant presented the cheque for collection before the Indian Overseas Bank, Cheranmahadevi on 11.11.2016 and the same were returned with an endorsement “In-sufficiency of funds” on 16.11.2016. So, the appellant issued a legal notice on 19.11.2016. The respondent received the said notice on 2/15



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21.11.2016. But, he did not take any steps to repay the amount. Hence, the appellant filed a complaint under Section 138 of Negotiable Instruments Act before the District Munsif cum Judicial Magistrate Court, Cheranmahadevi. The learned Judicial Magistrate took the complaint on file in S.T.C.No.01 of 2017.

3. Thereafter, on receipt of the summons, the respondent appeared and contested the case. The learned Trial Judge after following the procedure, examined the appellant as PW.1 and perused the documents Ex.A1 to Ex.A5, and passed the conviction under Section 138 of Negotiable Instruments Act and sentenced the respondent to undergo 6 months Rigorous Imprisonment and directed him to pay compensation of Rs.3,10,000/-, in default to undergo 1 month Rigorous Imprisonment by the Judgment, dated 09.11.2017.

4. Aggrieved over the same, the respondent filed an Appeal in C.A.No.89 of 2017 before the IIIrd Additional District and sessions Court, Tirunelveli. The learned Appellate Judge set aside the conviction and sentence imposed on the respondent and acquitted him from the charges by allowing the appeal.



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5. Challenging the same, the appellant/complainant has preferred this appeal before this Court.

6.1. The learned counsel for the appellant/complainant would submit that the learned Appellate Judge failed to consider the full evidence of P.W.1. The learned Appellate Judge has taken into account a portion of evidence of P.W.1 and came to a conclusion that the cheque was not supported by consideration and also the appellant failed to prove the 'means'.

6.2. The learned counsel for the appellant/complainant would further submit that the learned Appellate Judge picked up the stray statement of the appellant/complainant that he gave the amount of Rs. 3,10,000/- to the respondent/accused including the two thousand rupee currency notes with other currency notes and came to the conclusion that the entire transaction was false. In the said circumstances, he seeks to set aside the Judgment passed by the learned Appellate Judge by allowing this appeal.



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6.3. The learned counsel for the appellant/complainant would also submit that when the issuance of the cheque and the signature on the cheque were admitted, the presumption under Section 139 of the Negotiable Instruments Act comes into play, and he failed to consider the same.

6.4. The learned counsel for the appellant/complainant would further contend that no evidence was adduced to rebut the presumption under Section 139 of Negotiable Instruments Act.

6.5. The learned counsel for the appellant/complainant would also submit that when the learned trial Judge had made elaborate discussion on the factual aspects, the learned Appellate Judge took a narrow approach and erroneously acquitted the respondent/accused and hence, he seeks to set aside the unmerited acquittal order passed by the learned Appellate Judge.

6.6. The learned counsel also for the appellant/complainant would further content that the only view which appears from evidence is that the respondent/accused received the amount mentioned in the cheque and to



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discharge the same, he issued the cheque. There is no other view possible. More particularly, the respondent/accused did not get into the witness box and did not send a reply to his notice. Therefore, the learned Appellate Judge is not correct in setting aside the order passed by the learned trial Judge. Hence, he seeks to set aside the impugned judgment passed by learned Appellate Judge by allowing this appeal.

7.1. The learned counsel for the respondent/accused would submit that the learned Appellate Judge on re-appreciation of the evidence which is permissible under Section 386 of Cr.P.C made a detailed analysis of the evidence along with the perusal of the documents came to a conclusion that the appellant/complainant has no means to pay the amount of Rs. 3,10,000/-. Apart from that, he disbelieved his evidence on the basis of the evidence given by him about the denomination of currencies namely two thousand currency notes along with other currency notes, which came into circulation after the issuance of the cheque.

7.2. The learned counsel for the respondent/accused would further contend that considering the same, the learned Appellate Judge come to a conclusion that there was no relationship between the



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appellant/complainant and the respondent/accused. The learned Appellate Judge considered the above circumstances and came to the conclusion that the appellant/complainant has not proved his case beyond reasonable doubt.

7.3. The learned counsel for the respondent/accused would also submit that the said view of the learned Appellate Judge is a possible view, and the mere possibility of another view is not a ground to convert the appeal against the acquittal into conviction. In this regard, the Hon'ble Supreme Court gave detailed guidelines in various cases.

7.4. The learned counsel for the respondent/accused would contend that the non-issuance of reply notice cannot be taken as admission by accused about the receipt of amount. It is the duty of the appellant/complainant to prove the case as pleaded by him. It is the specific case of the appellant/complainant that he had enough money and he handed over the same to the respondent/accused. But, he is an auto driver and he has not proved his means and capacity to lend and the same was properly considered by the learned Appellate Judge and hence, he seeks to confirm the impugned judgment passed by the learned Appellate



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Judge by dismissing this appeal.

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8. This Court considered the rival submissions and perused the materials available on record and the impugned judgment passed by the learned trial Judge and the learned Appellate Judge and also the precedents relied upon by them.

9. The appellant/complainant is an auto driver. His specific case is that he handed over Rs.3,10,000/- to the respondent/accused without receiving any security document or promissory note. To discharge the same, the respondent/accused is said to have issued the cheque. The specific case of the appellant/complainant is that he is in no way connected with the respondent/accused, and he is not his relative, and he has not received the amount. There is no other evidence to corroborate the version of P.W.1 to prove the issuance of the amount of Rs. 3,10,000/-. Further, no document was produced to show his means.

10. The learned trial judge mainly relied on the suggestions put forth by the learned counsel for the respondent/accused during the cross-examination and presumed the issuance of the cheque. The learned



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Appellate Judge, re-appreciated the evidence and found that there was no circumstance to corroborate the suggestions put forth by the respondent/accused. When the suggestions given by the learned counsel for the respondent/accused's are supported with the other material circumstances, then the suggestions can be considered as a corroborating piece of evidence. But, in this case, mere suggestions is not a material evidence to presume the proof of the issuance of cheque for discharging the liability. There was no evidence available to prove that the appellant/complainant gave the amount of Rs.3,10,000/- as a debt to the respondent/accused. When there was no evidence to prove the payment of the amount of Rs.3,10,000/-, then the question of the issuance of cheque to discharge the same is not legally permissible. Therefore, the learned Appellate Judge gave a specific finding that the cheque was not supported with the consideration. When the learned Appellate Judge considered that the relationship between parties is doubtful, then the issuance of cheque in favour of the appellant/complainant after receiving of the amount is also doubtful. The appellant/complainant is an auto driver. The respondent/accused is a government servant. It has not been brought on record under what circumstance the government servant required to borrow money from the appellant/complainant.



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11. Apart from that, the appellant/complainant also gave evidence before the Court that he has given the amount to the respondent/accused in the denomination of two thousand rupee currency notes with other denomination of currency notes. As per the notification issued by the government in the year 2016, demonetization came into force. According to the appellant/complainant, the amount was paid to the accused much earlier and the cheque was also issued before demonetization. On the date of the issuance of cheque, there was no circulation of two thousand rupee currency notes. Demonetization came into force on 08.11.2016. The borrowal was in the year 2015. In all the circumstances, it is one of the material circumstances to doubt the conduct of the appellant/complainant. Therefore, in all probabilities, there is another possible view that the complainant has not proved his case beyond reasonable doubt.

12. In the above circumstances, this Court finds no merits in the appeal and also no merits in the contention of the learned counsel for the appellant/complainant to interfere with the well considered impugned judgment of the Appellate Court.



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13. The learned counsel for the appellant/complainant relied upon the judgment of the Hon'ble Supreme Court in ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in ***2022 6 SCC 735***. In the above said judgment, the Hon'ble Supreme Court only reiterated the principle to presume the presumption under Section 139 of the Negotiable Instruments Act and rebuttal on the part of the respondent/accused.

14. The learned counsel for the appellant/complainant relied upon the another judgment of the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh Vs. Lekh Raj and Another*** reported in ***2000 1 SCC 247*** and would submit that minor discrepancies can not be termed as major contradictions. This Court has no jurisdiction to rely on the minor contradiction and immaterial discrepancy. The said case is based on the police report and also on appreciation of the evidence of the victim, who was ravished in rape incident. In the said circumstances, the Hon'ble Supreme Court considering the evidence of P.W.1 along with the prosecution documents, has held that the discrepancy occurred is not a material one. Therefore, the facts of the said judgment are not applicable to the present case.



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15. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of ***Uttam Ram Vs. Devinder Singh Hudan and Another*** reported in ***(2019) 10 SCC 287***, wherein it has been held that a mere denial of passing of consideration and the liability is not enough to rebut the presumption. In the same judgment, the Hon'ble Supreme Court has held that to dispel the presumption, the accused should bring on record such facts and circumstances. Upon the consideration of which, the Court either may believe that the consideration and debt did not exist. Further, it is observed that it is not necessary to adduce direct evidence.

16. In this case, the Appellate Court gave a specific finding that there was no evidence adduced to prove the payment of Rs.3,10,000/- and also the respondent/accused has no means to give the said amount on the ground that there was no evidence adduced to prove the same. In the said circumstances, the learned Appellate Judge rightly gave a finding that the cheque was not supported with the consideration. Without proof of passing of consideration, the cheque cannot be presumed to have been issued in discharge of liability. Therefore, this Court finds no infirmity in

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the judgment passed by the learned Appellate Judge.

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17. As per the said principles, the judgment of the learned Appellate Judge is in accordance with law. The considered opinion of this Court is that the learned Appellate Judge perused the entire circumstances and also on the basis of the evidence of P.W.1, he came to the conclusion that it was not established that the cheque was issued in discharge of existing liability. All the judgments relied upon by the appellant/complainant are distinguishable on the facts. Hence, this Court is not inclined to interfere with the impugned judgment passed by the learned Appellate Judge. More particularly, this Court finds no concrete evidence to arrive at a different conclusion. Further, the case does not come under the parameters laid down by the Hon'ble Supreme Court to interfere with the appeal against the acquittal in the above cases.

18. In result, the Criminal Appeal is dismissed and the Judgment passed by the IIIrd Additional District and sessions Court, Tirunelveli, in C.A.No.89 of 2017 dated 06.12.2018, reversing the Judgment in S.T.C.No.01 of 2017 on the file of the District Munsif cum Judicial Magistrate Court, Cheranmahadevi, dated 09.11.2017, is hereby confirmed.



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NCC : Yes/No
Index : Yes/No
Internet : Yes/ No
dss

To

1. The 3rd Additional District and sessions Court,
Tirunelveli.
2. The District Munsif cum Judicial Magistrate Court,
Cheranmahadevi.
3. The Section Officer,
Record Section (Crl.)
Madurai Bench of Madras High Court, Madurai.



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K.K. RAMAKRISHNAN. J.,

dss

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