



Crl.A.(MD)No.710 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.710 of 2025

Bose

... Appellant/Respondent/
Complainant

versus

Chellapandi

... Respondent/Appellant/
Accused

Prayer : Criminal Appeal filed under Section 415(2) of BNSS, to call for the records and set aside the judgment dated 05.04.2025 made in Crl.A.No. 46 of 2024 on the file of the Principal District and Sessions Judge, Ramanathapuram thereby reversed the judgment of conviction made in S.T.C.No.02 of 2019 on the file of the learned Judicial Magistrate, Paramakudi, dated 05.07.2024.

For Appellant : Mr.G.Vishnuram



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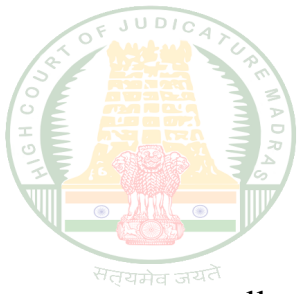
JUDGMENT

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This appeal has been preferred as against the order passed in Crl.A.No.46 of 2024, dated 05.04.2025, on the file of the learned Principal District and Sessions Judge, Ramanathapuram, reversing the judgment of conviction made in S.T.C.No.2 of 2019 on the file of the learned Judicial Magistrate, Paramakudi, dated 05.07.2024.

2. The appellant is the complainant and the respondent is an accused in the complaint lodged for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The crux of the complaint is that, on 10.08.2016, the respondent borrowed a sum of Rs.10,00,000/-(Rupees Ten Lakhs only) from the appellant/complainant by promising to repay the same along with interest at the rate of 12% p.a. On the date of borrowal itself, the respondent executed a promissory note, Ex.P.1. Thereafter, the respondent failed to repay the said amount. After repeated demands, on 10.10.2018, the respondent issued cheque, Ex.P2, for a sum of Rs.10,00,000/- and the same was presented for



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collection on the same date, however, it was returned vide Ex.P.4, return memo, on 11.10.2018 for the reason 'insufficient funds'. After having served the notice to the respondent as per the mandatory provision of Negotiable Instrument Act, the appellant/complainant has lodged a private complaint before the trial Court against the respondent for punishing him under Section 138 of Negotiable Instrument Act.

4. Before the trial Court, on the side of the appellant, he himself was examined as P.W.1 and Murugan was examined as P.W.2 and six documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondent, he himself was examined as D.W.1 and one Ramapandi was examined as D.W.2 and two documents were marked as Ex.D1 and Ex.D.2.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent guilty for the offence punishable under Section 138 of Negotiable Instrument Act (hereinafter referred to “NI Act” for brevity) and sentenced him undergo 1 year of simple imprisonment with fine of Rs.10,000/- and also, a sum of Rs.10,00,000/- was ordered to pay as compensation under Section 357(3) of Cr.P.C., to the appellant. Aggrieved

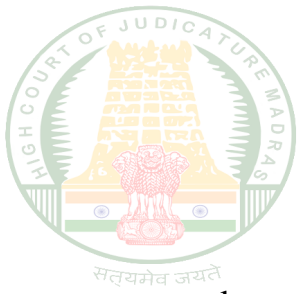


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by the same, the respondent filed Crl.A.No.46 of 2024 before the Principal District and Sessions Judge, Ramanathapuram. The appellate Court vide judgment dated 05.04.2025 had allowed the said appeal by setting aside the judgment of the trial Court. Challenging the same, the present appeal has been filed.

6. The learned counsel for the appellant/complainant submitted that the respondent/accused did not deny the execution of the cheque and the trial Court has rightly given the initial presumption in favour of the defacto complainant. The learned Sessions Judge, without properly appreciating the same, had set aside the judgment of the trial Court. He further submitted that the respondent has alleged that he had issued a cheque to one Balakrishnan and not to the appellant herein. But, on the side of the respondent, the said Balakrishnan has not been examined as witness.

7. On perusal of the records and the judgment of the learned Sessions Judge, it is seen that reference has been made to the legal notice exchanged between Balakrishnan and the respondent as Ex.D1 and Ex.D2. The defence of the respondent is that the cheque handed over by Balakrishnan to



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the complainant was misused to file the present complaint. When Balakrishnan and the defacto complainant have joined together, it is not reasonable and probable to expect the respondent to examine the said Balakrishnan. On the other hand, the respondent has produced the legal notice issued by the Balakrishnan demanding repayment of a loan allegedly advanced by him to the respondent. In these circumstances, the burden would shift upon the defacto complainant to prove that the amount in question was given by him and that the cheque was issued by the respondent in discharge of a legally enforceable debt.

8. One of the ways, in which such a fact can be proved before the Court is by proving the financial capacity of the complainant. In the present case, the respondent has taken a defence that the complainant did not have any wherewithal to lend a loan of Rs.10,00,000/- , though it is claimed by the defacto complainant that the cheque was issued towards the discharge of a loan of the said amount. The alleged loan amount given to the respondent in the year 2016 was inclusive of interest. The learned Sessions Judge has rightly observed that the defacto complainant has not claimed to have regularly received any interest from the respondent. Notably, the cheque in

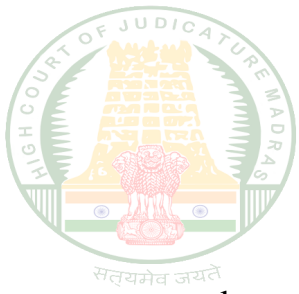


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question has been issued only for Rs.10,00,000/-, and not for any amount inclusive of the alleged interest, thereby casting doubt on the complainant's version of events.

9. No doubt, under Section 139 of NI Act, once the execution of the cheque was admitted by the drawer, a statutory presumption arises in favour of the complainant that the cheque was issued for consideration. At that stage, the burden would shift on the respondent to rebut the same by way of letting either direct and positive evidence or by establishing serious improbabilities or material weakness in the evidence adduced by the complainant.

10. In the case on hand, the respondent has not only adduced positive evidence by examining himself and another witness to establish that the cheque in question was issued to Balakrishnan and not to the defacto complainant, but has also substantiated this defence by producing the legal notice exchanged between himself and the said Balakrishnan. Apart from the above direct evidence, he had also raised serious doubts on the case of



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the complainant that no one will receive the cheque towards discharge of loan amount, which was lent three years ago, without including the interest, when it is alleged that the loan has been given on the condition to pay interest. Hence, the above improbability that was culled out and exhibited before the Court would demonstrate the improbabilities and weaknesses on the side of the defacto complainant. The learned trial Judge ought to have appreciated the same before convicting the respondent. The Appellate Court has rightly corrected the aforesaid error and appreciated the evidence in a holistic and comprehensive manner and had set aside the judgment of the trial Court by acquitting the respondent.

11. As the learned sessions Judge had rightly applied the principles of law by understanding burden of proof on both sides and recorded acceptable reason to set aside the judgment of the trial Court, I do not find any ground made out in this appeal. Hence, this Criminal Appeal is rejected.

30.06.2025

Index : Yes/No
NCC : Yes/No.

Rmk



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To

- 1.The Principal District and Sessions Judge, Ramanathapuram.
2. The Judicial Magistrate, Paramakudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.R.N.MANJULA, J.,

Rmk

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