BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.06.2025

CORAM

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

Crl.A(MD)No.669 of 2025

V.Thangapandi ... Appellant / Complainant

Vs

P.Sankara Pandian ... Respondent / Accused

PRAYER :-

This Criminal Appeal is filed under Section 419(4) of BNSS, to call for the records pertaining to the judgment of acquittal in the above S.T.C.No.567 of 2023 dated 28.02.2025 on the file of the learned Judicial Magistrate, Special Court for Exclusive Trial of Negotiable Instruments Act, Tirunelveli District and set aside the same.

For Appellant : M/s.A.Rajaram

JUDGMENT

This Criminal Appeal has been filed by the appellant / complainant, challenging the order of acquittal, dated 28.02.2025 passed by the learned

Judicial Magistrate, Special Court for Exclusive Trial of Negotiable Instruments Act, Tirunelveli District, in S.T.C.No.567 of 2023.

2. The appellant who is the defacto complainant has filed a complaint against the accused alleging that the accused is well known to the defacto complainant and at his request he lent a sum of Rs.9 Lakhs on 01.10.2022. The accused agreed to return the same within three months with interest at the rate of 12% p.a. As the accused did not return the loan amount as agreed, he executed a promissory note dated 19.10.2022 and assured to return the same within a period of three months or before 08.12.2023. Even after that, the accused did not repay the loan amount as agreed in the promissory note. Hence the accused issued a cheque dated 15.01.2023 for a sum of Rs.9 Lakhs towards discharge of the loan amount. As instructed, the complainant deposited the cheque for collection on 15.06.2023. But it was returned as insufficient fund. Hence, the complainant has preferred the present case against the accused under Section 138 of the Negotiable Instruments Act read with Section 420 of IPC, before the learned Judicial Magistrate, Special Court for Exclusive Trial of Negotiable Instruments Act, Tirunelveli District.

3. Before the trial Court, the complainant examined himself as P.W.1 and marked five documents as Ex.P.1 to Ex.P.5. No oral or documentary evidence was let in by the accused.

4. On completion of trial and hearing the arguments of both sides, after perusing the materials on record, the trial Judge found the accused not guilty for the offence under Section 138(b) of the Negotiable Instruments Act.

5. Aggrieved over the acquittal, the complainant has preferred this appeal.

6. Learned counsel for the appellant submitted that despite the accused did not dispute the execution of the cheque, learned trial Judge has rendered a finding as to the financial capability of the defacto complainant and held that the impugned cheque is not supported by consideration. It is further submitted that the defacto complainant had issued a statutory notice to the accused, after the cheque was returned. But the same was returned as unclaimed. Learned counsel for the appellant submitted that he is entitled to initial presumption as against the accused under Section 139 of Negotiable Instruments Act. The same has not been given to him as per law.

7. On perusal of the record, it is seen that the cheque has not only been returned but also earmarked that the signature of the cheque differs. When the signature of the accused is seen to be mismatching, it is for the defacto complainant to prove that the signature was affixed by the respondent. Unless, the foundational facts are proved, even in cases, where the complainant is entitled to initial presumption, the same cannot be given. In the instant case, the cheque has been returned questioning the legitimacy of the same under the positive payment system. As per the above system, if the cheque amount exceeds Rs.5 Lakhs, the Banks used to confirm with its customers about these genuineness of execution before passing the same. In view of such regulations are in force as per Reserve Bank of India guidelines from 01.01.2021, it has become mandatory for the Bank to pass the cheque only with the consent and confirmation of the drawer of the cheque.

8. The defacto complainant being unaware of the same, has presented the cheque and when it was subjected to the positive payment system, the bank did not get the confirmation and it was returned for the reasons not only due to insufficient fund but also due to mismatch in the signature of the drawer. So in the absence of admitting the fact of excluding the cheque, it is not correct on the part of the defacto complainant to grant initial presumption under Section 139 of NI Act.

9. In fact, an instrument can be considered as a Bill of Exchange, only if it is signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. So just because the cheque contains some signature, it cannot be presumed as a Bill of Exchange, within the meaning of Section 5 of the Negotiable Instruments Act. It should be proved that the signature on the instrument is affixed by the maker. When the respondent Banker themselves have doubt about the signature on the cheque, then the cheque loses its status of being considered as a Bill of Exchange. For more clarity, Section 6 of Negotiable Instruments act would also state that a *"cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form*. But unsigned cheques are not proved to be signed by the maker, will not itself entitle a cheque to be presumed as a Bill of Exchange in terms of Section 5 of the Negotiable Instruments Act. Before getting the benefit of presumption under Section 139 of NI Act, it is obligatory on the part of the defacto complainant to prove that the cheque was very much signed by the respondent. The Bank had followed the procedure of getting confirmation from his customer who is the respondent herein with regard to the genuineness and execution of the high value cheque. The defacto complainant not being aware of the same had presented the cheque for a sum of Rs.9 Lakhs with an expectation that the Bank will start the process of honouring the cheque, if it is without the knowledge of the respondent. The complaint of the defacto complainant would fail at that stage itself.

10. However, the learned trial judge had addressed the appellant's capability to lend a sum of Rs. 9 Lakhs to the respondent. The above step would go only if the execution of the cheque itself is proved. The defacto complainant has stated that he has got a promissory note and on that basis he might have filed a civil suit for recovery of money. Under such circumstances, the observation of the trial Court about the financial capability of the defacto complainant would affect his interest.

11. Since the trial Judge has unnecessarily adverted into the above said aspect, it is for the civil Court to address the issue on the financial capability of the complainant, unmindful of the observation made by the learned trial judge, in case, the defacto complainant brings (or brought) a suit for recovery of money on the basis of the alleged promissory note if any. As the ingredients to attract the essential ingredients to maintain a complaint under Section 139 of Negotiable Instruments Act, is not available due to the written endorsement of the Bank stating that the signature also mismatches, it is right for the trial Judge to dismiss the complaint filed by the defacto complainant and acquit the accused. Hence, I find no reason to interfere with the judgment of the trial Court.

12. In the result,

i) This Criminal Appeal is dismissed.

ii) The judgment and decree dated 28.02.2025 passed by the learned Judicial Magistrate, Special Court for Exclusive Trial of Negotiable Instruments Act, Tirunelveli District in S.T.C.No.567 of 2023, is confirmed.

19.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
pnn

R.N.MANJULA, J.

pnn

To

1.The Judicial Magistrate, Special Court for Exclusive Trial
of Negotiable Instruments Act,
Tirunelveli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.A(MD)No.669 of 2025

19.06.2025