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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

Crl.A(MD)No.687 of 2025

P.Ramachandran

... Appellant

Vs

A.Karunanithi

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records and set aside the impugned Judgment of acquittal, dated 17.04.2025, passed by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Thanjavur in STC No.241 of 2023 and convict the respondent.

For Appellant : Mr. P.M.Vishuvarthanan

JUDGMENT

The present Criminal Appeal has been filed challenging the Judgment of the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Thanjavur, dated 17.04.2025 made in STC No.241 of 2023.

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2.The appellant is the complainant, who had filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') on the allegation that the respondent has obtained a loan of Rs. 3 lakhs and he has been paying the interest regularly and thereafter, he defaulted to pay both the interest and the principal amount and towards discharge of the same, he has issued a cheque for a sum of Rs. 4 lakhs on 08.02.2023. When it is presented for collection, the cheque was not honoured and returned as 'funds insufficient'.

3.The trial judge after having conducted the trial and examining one witness on the side of the defacto complainant and receiving exhibits, Ex.P.1 to Ex.P.9 and Ex.D.1, dismissed the complaint. Aggrieved over that this appeal has been preferred by the complainant.

4.The learned counsel appearing for the appellant submitted that when the respondent did not deny the signature is the cheque, the petitioner is entitled to initial presumption under section 139 of N.I. Act and that has not been properly appreciated by the trial Court.

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5.It is further submitted that the respondent was in the habit of paying the interest to an extent of Rs.1,08,000/- and that was also not properly considered by the trial Court. The respondent, without discharging his burden of rebuttal, has got the benefit of dismissal of the complaint. It is not correct.

6.On a perusal of the judgment, it is seen that the learned trial Judge has appreciated the points taken by the defacto complainant that the respondent was paying interest until sometime to the tune of Rs. 1,08,000/-. But the Court was not able to accept such contention on the ground that no such document has been produced to substantiate his contention.

7.However, the learned counsel for the appellant submitted that the proof of consideration goes with the initial presumption under Section 138 of N.I. Act and that ought to have been properly considered by the trial Court. It is submitted that the respondent without letting any rebuttal proof, has been allowed to go scot free.

8.So far as the reverse burden on the part of the respondent is concerned, the rebuttal proof cannot only be direct, but it can be indirect. That would mean that the respondent can demolish the initial presumption either by

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way of letting direct evidence or by relying upon the infirmities on the evidence of the complainant.

9.In this regard, it is relevant to refer the decision of the Hon'ble Supreme Court in ***Basalingappa v. Mudibasappa,*** reported in ***(2019) 5 SCC 418***, wherein, it is held as follows:

> *"25.We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:*
>
> *25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
>
> *25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof a for rebutting the presumption is that of preponderance of probabilities.*
>
> *25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.*
>
> *25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an*

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evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence."

10. The defence of the respondent is that the complainant and the accused had been running a joint business and during that time, he had issued an unfilled signed cheque and that has been misused by the complainant for the purpose of the case. The respondent has also produced Ex.D1 to show that there was some joint business run between the defacto complainant and the respondent and the respondent was managing the affairs of the business.

11. Though Ex.D1 does not state anything concrete about the transaction concerning, the impugned cheque, it can probalise the fact that the respondent has got his association with the complainant, as a partner in conducting a partnership business.

12. Under such circumstances, the burden would once again shift on the shoulder of the defacto complainant to prove that the cheque was indeed supported by consideration and the respondent has issued the cheque just for discharging the same. For that, the appellant appears to place reliance mostly on the allegation that the respondent has been paying the interest of Rs 1,08,000/-,

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but the said fact was not substantiated.

13. In these circumstances, the trial Court was not able to conclude the initial presumption as a conclusive proof and that resulted in dismisssal of the complaint.

14. As I find no error of understanding and appreciation on the part of the trial Court, the Judgment does not require any interference.

15.Accordingly,

- ***this Criminal Appeal stands dismissed;***
- ***the judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Thanjavur in STC No.241 of 2023, dated 17.04.2025, is confirmed.***

23.06.2025

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

1.The Judicial Magistrate, Fast Track Court (Magistrate Level), Thanjavur

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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R.N.MANJULA, J.

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