BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2025

CORAM :

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

Crl.A.(MD)No.616 of 2025

V.Sundarraj ... Appellant/Complainant

versus

S.Mohammed Ismayil ... Respondent/Respondent

Prayer : Criminal Appeal filed under Section 419(4) of BNSS, to call for the records and set aside the order passed by the District Munsif Court cum Judicial Magistrate Court, Shenkottai in S.T.C.No.1348 of 2022 dated 10.05.2024 and allow the appeal.

For Appellant : Mr.R.J.Karthick

JUDGMENT

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This appeal has been preferred as against the order of acquittal passed in S.T.C.No.1348 of 2022, dated 10.05.2024, on the file of the District Munsif Court-cum-Judicial Magistrate Court, Shenkottai.

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 11.01.2021, the respondent borrowed a sum of Rs.5,00,000/-(Rupees Five Lakhs only) from the appellant/complainant by promising to repay the same within 20 months. On the date of borrowal itself, the respondent issued post-date cheque bearing No.061268, which was drawn in Federal Bank, Shengottai, to the appellant. When the complainant presented the cheque for collection at his bank viz., Canera Bank, Shenkottai, on 21.09.2022, the same was returned on 23.09.2022 for the reason 'signature differs'. 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 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 four documents were marked as Ex.D1 to Ex.D.4.

5. The defence taken by the respondent is that the impugned cheque does not contain his signature, though the cheque has been issued by him to the complainant, but only as security. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence punishable under Section 138 of Negotiable Instrument Act (hereinafter referred to "NI Act" for brevity) and dismissed the complaint by acquitting the respondent. Aggrieved by the same, the present appeal has been filed by the appellant/complainant.

6. The learned counsel appearing for the appellant/complainant submitted that the trial Court ought to have granted the benefit of 139 NI Act presumption to the complainant, but it is not done so. The cheque itself has been returned for the reason that the signature in the cheque differs.

7. As per the definition of cheque under Section 6 of the NI Act, a cheque is the 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. For a better understanding, Section 6 of the NI Act is extracted hereunder:

> *"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.

Explanation I.—For the purposes of this section, the expressions—

(a)"a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

(b)"a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II.—For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

Explanation III.—For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000."

8. As the cheque is a bill of exchange, it is essential to look into the definition of bill of exchange as it appears under Section 5 of the NI Act. For the purpose of better appreciation, Section 5 of NI Act is extracted as under:

"5. "Bill of exchange".—A "bill of exchange" is an instrument in writing containing an unconditional order, 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.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified even which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only."

9. The above definition would clearly state that a bill of exchange is an instrument in writing containing an unconditional order, 'signed by the maker'.

10. Even though the respondent has admitted that he has issued the impugned cheque to the appellant/ complainant, but only if he has admitted that he had signed the cheque, it would come within the meaning of bill of exchange.

11. It is claimed by the appellant/complainant that the cheque has been signed by the respondent and it would come within the definition of bill of exchange and he is entitled to present it for collection. In that case, cheque so presented by the complainant ought to have been honored for collection by accepting the signature on the cheque. But, the banker had returned the cheque for the very reason that 'signature differs'. In that case, the obligation would be on the shoulder of the appellant/complainant to prove that the signature in the cheque very much is the signature of the respondent and there is no difference as pointed out by the banker in his written memo. Only after proving the above fact, the very instrument can be presumed as a 'bill of exchange', which has been duly signed by the respondent.

12. Even after proving the same, the respondent is still at liberty to deny that the cheque is not supported by consideration as shown therein. In the instant case, the complainant has not proved the first step that the signature on the cheque is the signature of the respondent. Just because some one has issued an unsigned cheque to another person, he cannot claim that as a 'bill of exchange', unless he obtained a signature of the person, for whom, the book containing the whole cheque has been issued by the bank.

13. The complainant in this case has not taken any steps to compare the signature of the respondent with that of the signature of the cheque in order to show that it was very much the signature scribed by the respondent. In the absence of the said proof, it is not correct on the part of the appellant/complainant to expect that the Court to give him the benefit of presumption under Section 139 of NI Act. When the respondent has denied the drawing of the cheque by affixing his signature, it is right for the trial Court not to give the benefit of presumption under Section 139 of NI Act in favour of the appellant/complainant. The trial Court has rightly dealt with the issue both factually and legally and acquitted the respondent by dismissing the complaint. Hence, this Court does not find any illegality or infirmity in the order passed by the trial court.

14. In fine,

(i) This Criminal Appeal stands dismissed.

(ii) The judgment passed by the learned District Munsif cum Judicial Magistrate, Shencottai, Tenkasi District in S.T.C.no.1348 of 2022 dated 10.05.2025 is hereby confirmed.

05.06.2025

Index : Yes/No
Internet:Yes/No
NCC : Yes/No.
Rmk

To

1.The District Munsif Court cum Judicial Magistrate Court,
Shenkottai

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

R.N.MANJULA, J.,

Rmk

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