BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2025

CORAM :

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

Crl.A.(MD)No.728 of 2025

Ganesan ... Appellant/Complainant

versus

Thangapandi ... Respondent/ Accused

Prayer : Criminal Appeal filed under Section 419(4) of BNSS, 2023, to call for the records relating to the judgment dated 13.02.2025 passed in S.T.C.No.613 of 2019 by the District Munsif cum Judicial Magistrate Court, Peraiyur, set aside the same and punish the respondent with maximum punishment as contemplated under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.D.Malaichamy

JUDGMENT

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This appeal has been preferred as against the order of acquittal passed in S.T.C.No.613 of 2019, dated 13.02.2025, on the file of the District Munsif cum Judicial Magistrate Court, Peraiyur.

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 (hereinafter referred to as 'NI Act' for brevity).

3. The brief facts of the case are the appellant and the respondent are friends and the respondent was engaged in the flower commission business. On 30.06.2019, at the request made by the respondent for the purpose of his urgent family needs and business purpose, the appellant had given a loan of Rs.5,00,000/- for which, on the same day, the respondent issued a cheque drawn from Canara Bank, Athipatti Branch, Peraiyur, for Rs.5,00,000/- by posting the date as 30.09.2019. When the cheque was presented by the appellant for collection on 03.10.2019, it was returned by his bankers for the reason 'funds insufficient'. After completion of the legal mandates, the appellant has filed a complaint under 138 of NT 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 two witnesses have been examined as Ex.D2 and Ex.D3 and five documents were marked as Ex.D1 to Ex.D.5.

5. 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 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 for the appellant submitted that the respondent did not deny his signature on the impugned cheque. Therefore, the statutory presumption under Section 139 of NI Act ought to have been drawn in favour of the complainant. However, the learned trial Judge has erroneously proceeded to hold that the appellant has failed to establish his financial capacity to lend a loan of Rs.5,00,000/-. It was further submitted that the respondent failed to send any reply to the statutory legal notice issued by the appellant and this material fact was not properly appreciated by the trial Court.

7. On perusal of the impugned judgment, it is seen that the learned trial Judge was well aware of the statutory presumption under Section 139 of NI Act to be given in favour of the complainant. Accordingly, the initial presumption was drawn in favour of the complainant and then, the burden was shifted to the respondent to rebut the same.

8. The respondent has taken the defence that the appellant's paternal ancle, Chinnamayan, has lent a loan of Rs.85,000/- to the respondent. In that connection, he had given the impugned cheque as security. At the time of issuance, the cheque was unfilled and the respondent had affixed his signature alone. He further submitted that he had repaid the loan amount to Chinnamayan, but the latter failed to return the cheque, which was subsequently misused by the complainant to lodge the present complaint. In fact, he has lodged a complaint against Chinnamayan as he was allegedly demanding further money from the respondent and to that extent the respondent produced certain documents before the trial Court including the copy of the complaint filed against Chinnamayan.

9. When the respondent produced rebuttal evidence by showing that Chinnamayan is a relative of the complainant and that there was a money dispute between himself and Chinnamayan and in respect of which, the respondent had lodged a police complaint, the burden shifted to the complainant to establish that, irrespective of the loan transaction between the respondent and Chinnamayan, the appellant independently advanced a loan of Rs.5,00,000/- to the respondent, and that such loan constituted the consideration for the cheque issued by the respondent.

10. The appellant could have very well produced bank statements or any documentary evidence to show that a sum of Rs.5,00,000/- was transferred to the respondent through a banking transaction. However, the appellant has submitted that the said amount was paid in cash and not through any bank transaction. In such circumstances, it becomes difficult to believe that the appellant chose not to obtain any security or written acknowledgment from the respondent, apart from the issuance of the cheque.

11. In fact, during cross-examination, the appellant admitted that he is a milk vendor by occupation, earning approximately Rs.11,000/- per month. He also stated that he has two children, and on the date of his cross-examination, he had no balance in his bank account. Furthermore, he admitted that he did not even know how to handle a cheque. In light of these admissions, it becomes doubtful that the appellant had the financial capacity to lend a substantial sum of Rs.5,00,000/-. A person, who neither demonstrated the financial wherewithal to advance such a large loan, nor had basic knowledge about handling cheques, has come forward with a case claiming that he had lent Rs.5,00,000/- to the respondent, and that the cheque in question was issued in discharge of the said liability. Under these circumstances, the learned trial Judge has chosen to disbelieve the version of the complainant and arrived at a conclusion that the initial presumption got rebutted by the preponderance of probabilities established against the complainant. In addition to the direct evidence adduced by the respondent, the absence of any proof to establish the financial capacity of the appellant to lend a sum of Rs.5,00,000/- to the respondent also weighs against the credibility of his case.

12. The learned trial Judge has rightly invoked Section 139 of the Negotiable Instruments Act in the context of the present case and duly appreciated the rebuttal evidence produced by the respondent. Upon such consideration, the trial Court has rightly concluded that, after the presumption was rebutted, the complainant failed to establish that the cheque was issued for a legally enforceable consideration. Only after conducting an exhaustive analysis of the facts and evidence on record, and considering the overall circumstances of the case, the learned trial Judge rightly held that the de facto complainant had failed to prove his case beyond reasonable doubt.

13. The learned counsel for the appellant submitted that the respondent failed to mention the cheque number in the complaint allegedly filed against Chinnamayan, but the trial Court has not appreciated the same. It is contended that the said complaint was lodged on the same date, when the statutory notice was issued under Section 138 of NI Act. It would have been more appropriate if the defacto complainant had examined his own uncle, Chinnamayan, as a witness to disprove the appellant's case. In the absence of the same, it is proved that the complaint given by the respondent against Chinnamayan is wholly unrelated to the present case.

14. The respondent cannot be expected to examine Chinnamayan as a witness on his behalf, as his consistent contention was that Chinnamayan had colluded with the appellant. In all probabilities, the defacto complainant failed to prove the genuineness of the transaction and hence, I do not find any error of appreciation of the evidence by the trial Judge both in the undertaking and evaluation. It cannot be said that the Trial Court misapplied or misunderstood the principles relating to the initial presumption under Section 139 of the NI Act, especially when the presumption stood rebutted and the complainant failed to discharge the secondary burden of proof.

15. In fine,

(i) This Criminal Appeal stands dismissed.

(ii) The judgment passed by the learned District Munsif cum Judicial Magistrate, Peraiyur, in S.T.C.No.613 of 2019 dated 13.02.2025 is hereby confirmed.

09.07.2025

Index : Yes/No
NCC : Yes/No.

Rmk

To

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

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

DR.R.N.MANJULA, J.,

Rmk

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