



CRL.A(MD).No. 797 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 15.10.2025

Delivered on : 21.11.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 797 of 2022

G.Ramar : Appellant

Vs.

S.Shanmuganathan : Respondent

Prayer : This Criminal Appeal is filed under Section 378(B) of Cr.P.C., to call for the records and set aside the judgment of acquittal in S.T.C.No.540 of 2019, dated 20.05.2022 passed by the learned Judicial Magistrate No.I, Sivakasi.

For Appellant : Mr.C.Susikumar

For Respondent : No Appearance

JUDGMENT

This Criminal Appeal is directed against the judgment made in S.T.C.No.540 of 2019, dated 20.05.2022 on the file of the Court of the Judicial Magistrate No.I, Sivakasi, in acquitting the respondent/accused for the offence under Section 138 of Negotiable Instruments Act.



CRL.A(MD).No. 797 of 2022

WEB COPY

2.The appellant, who is the complainant, filed a complaint under Section 200 Cr.P.C., against the respondent for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties herein after will be referred as per their ranking/status before the trial Court.

4.The case of the complainant is that the complainant and the accused are close friends and the accused assured the complainant to arrange lands for lesser value and hence, the complainant advanced a total sum of Rs.4,50,000/- to the accused in two installments of Rs.3,00,000/- on 05.11.2018 and Rs.1,50,000/- on 12.12.2018, for the purpose of purchasing certain property. Since the accused failed to arrange any property, the complainant demanded to return the amount. The accused issued a cheque bearing No.507206 drawn on IndulInd Bank, Sivakasi Branch for Rs.4,55,000/-. The complainant presented the cheque for collection through his bank Central Bank of India, Sivakasi Branch on 10.01.2019, but the same was returned dishonored. As per the request of the accused, the complainant presented the cheque again on 27.02.2019 through his bank



CRL.A(MD).No. 797 of 2022

Central Bank of India, Sivakasi, but the cheque was again returned discharged as 'funds insufficient' vide bankers memo, dated 28.02.2019. The complainant sent a legal notice, dated 23.03.2019 demanding the accused to pay the amount covered by the cheque and the accused having received the notice, sent a reply notice, dated 02.04.2019 with false and untenable allegations. Since the accused has not paid the amount within the stipulated period, the complainant was constrained to file the above complaint for the alleged offence under Sections 138 r/w 142 of Negotiable Instruments Act.

5. The learned Judicial Magistrate, upon receiving the complaint, recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed a *prima facie* case, took the case on file in S.T.C.No.540 of 2019 for the offence under Section 138 of Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to him under Section 207 of Cr.P.C., on free of cost. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.



CRL.A(MD).No. 797 of 2022

6. During trial, the complainant examined himself as P.W.1 and exhibited 6 documents as Ex.P.1 to Ex.P.6. The accused adduced neither oral nor documentary evidence.

7. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment, dated 20.05.2022 holding that the complainant has not proved the offence under Section 138 of Negotiable Instruments Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) of Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

8. It is pertinent to note that when the matter was taken up for hearing on 11.09.2025, at the request made by the learned counsel on either side, the matter was adjourned to 25.09.2025 finally and when the matter was taken up for hearing on 25.09.2025, the learned counsel for the appellant as well as the learned counsel for the respondent submitted that they are not ready and hence, the matter was adjourned to 15.10.2025 as last chance and no further time will be given.



CRL.A(MD).No. 797 of 2022

WEB COPY

9. When the matter was taken up on 15.10.2025, there was no representation for the respondent. Though the learned counsel for the appellant was present, he submitted that he was not ready for arguments.

10. Considering the opportunities granted, this Court was not inclined to adjourn the matter further. Moreover, on considering the nature of the case, impugned judgment and appeal grounds, this Court finds no need to appoint a legal aid counsel for the appellant. Consequently, this Court reserved the case for judgment, giving liberty to both parties to file written submissions, if any within one week. In pursuance of the same, the learned counsel for the appellant submitted the written arguments, none were received from the respondent.

11. Whether the impugned judgment of acquittal passed in S.T.C. No.540 of 2019, dated 20.05.2022 on the file of the learned Judicial Magistrate No.I, Sivakasi, is liable to be set aside, is the point for consideration ?



WEB COPY

12. Before entering into further discussion, it is necessary to refer Section 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption.

“118. ...

(a) of consideration ; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

139.Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

13. It is the specific case of the complainant that the accused being a friend assured to get immovable property at lesser price and the complainant believing the words of the accused advanced the amount of Rs.4,50,000/- in two installments, Rs.3,00,000/- on 05.11.2018 and Rs.1,50,000/- on 12.12.2018; that since the accused failed to arrange any land as assured by him, the complainant demanded the accused to return the amount for which, the accused issued a cheque, dated 10.01.2019 drawn on IndusInd Bank,



CRL.A(MD).No. 797 of 2022

Sivakasi Branch for Rs.4,50,000/- under Ex.P.1; that the accused presented the cheque for collection through his Bank Central Bank of India, Sivakasi Branch, but the same was returned dishonored vide memo, dated 11.01.2019 under Ex.P.2; that thereafter, as per request of the accused, the complainant presented the cheque for collection on 27.02.2019 through Central Bank of India, Sivakasi Branch, but the cheque was again returned dishonored for want of sufficient funds in the bank account of the accused vide bankers memo, dated 28.02.2019 under Ex.P.3; that the complainant sent the legal notice, dated 23.03.2019 under Ex.P.4, directing the accused to pay the amount covered by the cheque; that the accused having received the notice on 25.03.2019 under Ex.P.5 postal acknowledgement, sent a reply notice, dated 02.04.2019 under Ex.P.6 with false and untenable allegations and that since the accused has not complied with the notice demand, he was forced to file the above complaint.

14. The defence of the accused, as evident from Ex.P.6/reply notice is that the accused is well known to the complainant for the past more than eight years; that the complainant is lending money to various persons at exorbitant interest; that the complainant during December 2018 requested the accused to give a signed unfilled cheque pertaining to his account at



CRL.A(MD).No. 797 of 2022

IndusInd Bank, Sivakasi Branch, stating that one of the debtors of the complainant was about to settle his dues through bank account transfer and hence, he needed the cheque to suppress the said dealings in his name as Government servant and the accused as a good friend gave the cheque only to help the complainant; that during 2019, the relationship between the complainant and the accused got strained and the accused found that the complainant avenged him by issuing a legal notice ; that the complainant a Government servant, cannot purchase property without informing his department and that the accused being a policeman would not have parted with Rs.4,50,000/-.

15. As rightly contended by the learned counsel for the complainant, it is evident from Ex.P.6/reply notice that the accused has specifically admitted that Ex.P.1 cheque was belonging to him and also the signature found in Ex.P.1. But according to him, signed unfilled cheque was issued to the complainant so as to enable the complainant to get the amount from one of his debtor.

16. It is pertinent to note that the complainant as P.W.1 gave evidence reiterating the complaint contentions and deposed about the liability of the



CRL.A(MD).No. 797 of 2022

accused, issuance of the cheque therefor, dishonour of cheque for want of sufficient funds in the bank account of the accused, issuance of statutory notice and the failure of the accused to pay the amount within stipulated time.

17. On considering the evidence of P.W.1 and also the admission of the accused with respect to Ex.P.1 cheque and the signature found therein, this Court has no other option, but to draw a presumption under Sections 139 and 118 of the Negotiable Instruments Act.

18. No doubt, the presumptions available under Section 118 and 139 of the Negotiable Instruments Act are always rebuttable in nature. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove his probable defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

19. As already pointed out, the main defence of the accused is that the complainant requested the accused to give signed unfilled cheque pertaining



CRL.A(MD).No. 797 of 2022

to his bank account at IndusInd Bank, Sivakasi Branch so as to enable his debtor to settle the amount due to the complainant through bank transfer and accordingly, the accused issued Ex.P.1 cheque now in dispute.

20. It is the further case of the accused that after their relationship got strained during January 2019, the complainant filled Ex.P.1 cheque and issued the legal notice. The learned trial Judge, by observing that the bank account number was enough for transfer; that there was no need for a cheque and that the accused did not take any action to get back the Ex.P.1 cheque immediately thereafter, held that the said defence is totally unbelievable and unacceptable.

21. As rightly contended by the learned counsel for the appellant, the trial Court rejected the accused's defence, implying he failed to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. However, the trial Judge suo motu raised doubts about the complainant's possession of Rs.4,50,000/- and the unlikelihood of advancing such a sum without particulars, concluding the presumption was rebutted.



CRL.A(MD).No. 797 of 2022

WEB COPY

22. As rightly pointed out by the learned counsel for the complainant, the learned trial Judge noted that the complainant didn't provide evidence for chit subscription or receipt, and as a police constable and his wife a government- aided school teacher, they receive salaries via bank accounts. The learned trial Judge further observed that there was no evidence to show cash withdrawal or chit transactions, leading to the conclusion the complainant did not prove possession of Rs.4,50,000/-.

23. The Hon'ble Supreme Court in **Rohitbhai Jivanlal Patel Vs State of Gujarat** and another reported in **2019 18 SCC 106**, has observed that when a presumption is drawn under Sections 118 and 139 NI Act, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not and the relevant passages are extracted hereunder :

'18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses



WEB COPY



CRL.A(MD).No. 797 of 2022

who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant- accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

.....

20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more



WEB COPY



CRL.A(MD).No. 797 of 2022

in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.

24. In ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in **2022 6 SCC 735**, the Hon'ble Apex Court has held as follows :

“10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were



WEB COPY

right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

11. We have gone through the nature of the evidence in this case. We also bear in mind the fact that three courts have held in favour of the respondent. In this regard, we bear in mind that though it is true that reply notice was sent by the appellant, therein he admits the case of the respondent that the parties were having a cordial relationship. In the reply notice the appellant has not set up any case that the respondent did not have the financial capacity to advance the loan. In fact even we notice that there is no reference to the loss of the cheque book or signed cheque leaf. No complaint was given of the loss of the cheque book or the signed cheque leaf either to the police or to the bank.”



CRL.A(MD).No. 797 of 2022

WEB COPY

25. The Hon'bl Apex Court in *Ashok Singh Vs. State of Uttar Pradesh and another* reported in **2025 SCC Online 706**, reaffirmed that once the drawer admits to signing the cheque, the presumption under Section 139 of the Negotiable Instruments Act, cannot be rebutted merely by questioning the complainant's debt-giving capacity, especially when such a defence was not raised in the reply notice by the accused and the relevant portion is extracted hereunder :

“The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan.”

26. In the present case also, though the accused sent a reply notice/Ex.P.6, he has nowhere whispered about the financial inability of the complainant to pay the amount. Moreover, as rightly pointed out by the learned counsel for the appellant, though P.W.1 was subjected to cross



CRL.A(MD).No. 797 of 2022

examination at length, there was no cross examination touching the financial wherewithal of the complainant and not even a suggestion was made disputing the complainant's capacity to give Rs.4,50,000/- to the accused.

27. No doubt, the accused has taken a stand that the complainant has not taken any permission to purchase immovable property from his police department, but as rightly pointed out by the learned counsel for the complainant, the complainant/P.W.1 in cross examination would say that since the property to be purchased was not finalized, the question of seeking permission from his department does not arise.

28. P.W.1 in cross examination would say that he requested the accused to arrange five cents of land for Rs.6,00,000/- and gave Rs. 4,50,000/- in advance and agreed to pay the balance amount after finalizing the land, trusting him, without an agreement. Given P.W.1 's evidence his claim of advancing Rs.4,50,000/- can't be disbelieved. The accused's defence was rejected, failing to rebut the presumption.

29. As rightly contended by the learned counsel for the appellant that since the accused has not taken a defence in the reply notice that the



CRL.A(MD).No. 797 of 2022

complainant had no wherewithal and in the absence of any cross examination touching financial capacity of the complainant, the finding of the learned trial Judge, disputing the financial capacity of the complainant and his possessing of Rs.4,50,000/- at the relevant point of time cannot be sustained.

30. Hence, this Court has no hesitation to hold that the findings of the learned Magistrate are perverse and as such, the same are liable to be set aside. Consequently, this Court concludes that the accused is guilty for the offence punishable under Section 138 of the Negotiable Instruments Act.

31. Now turning to the punishment to be awarded, the Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta* reported in (2017)3 MWN (CrI) DCC 161 SC, has observed that the offence under Section 138 of the Negotiable Instruments Act related to a civil wrong and the same was a regulatory offence and that the object was described as punitive as well as compensatory. It is very much clear that the intention of the provision is not only to punish the accused, but at the same time, the aggrieved party is to be compensated.



CRL.A(MD).No. 797 of 2022

WEB COPY

32. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of Rs.9,00,000 (twice the cheque amount) within a period of two months from the date of receipt of copy of this judgment, in default, to undergo simple imprisonment for 6 months. Upon payment, the trial court shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

33. The Criminal Appeal is accordingly allowed.

21.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das



WEB COPY



CRL.A(MD).No. 797 of 2022

To

- 1.The Judicial Magistrate No.I, Sivakasi.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.A(MD).No. 797 of 2022

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
CRL.A(MD).No. 797 of 2022

21.11.2025