



Crl.A.(MD)No.886 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2025

Pronounced on : 21.11.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.886 of 2022

N.Ramadoss

... Petitioner/
Appellant/
Complainant

Vs.

V.Paramasivam

... Respondent/
Respondent/
Accused

Prayer : This Criminal Appeal filed under Section 378(2) of Criminal Procedure Code, to call for the records and set aside the judgment and acquittal order passed by the learned Judicial Magistrate, Tiruchendur dated 06.08.2022 in S.T.C.No.1843 of 2017 and convict the accused for the offences under Section 138 r/w. 142 of Negotiable Instruments Act.

For Appellant : Mr.Aayiram K.Selvakumar

For Respondent : Mr.A.Robinson



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JUDGMENT

The Criminal Appeal is directed against the judgment made in S.T.C.No.1843 of 2017 dated 06.08.2022 on the file of the Court of Judicial Magistrate, Tiruchendur, in acquitting the respondent / accused for the offence under Section 138 of the Negotiable Instruments (hereinafter referred as 'NI') Act.

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

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

4. The case of the complainant is that the accused having close acquaintance with the complainant approached him on 18.03.2016 and demanded a loan of Rs.6 lakhs to meet out his urgent family expenses agreeing to repay the same within a month and the complainant, believing the words of the accused, advanced a loan of Rs.6 lakhs on that day, for



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which, the accused issued a postdated cheque dated 18.04.2016 drawn on Canara Bank, Tiruchendur Branch for Rs.6 lakhs in favour of the complainant requesting him to present the cheque and get the amount. The complainant presented the cheque through his banker Tamilnad Mercantile Bank, Udankudi Branch on 18.04.2016 but the cheque was returned dishonored as funds insufficient vide bank memo dated 20.04.2016 and the same was informed to the complainant by banker's memo dated 06.05.2016. The complainant sent a legal notice dated 18.05.2016 demanding the accused to pay the amount covered by the cheque and the accused having received the legal notice on 19.05.2016, neither sent any reply nor complied with the notice demand. Hence, the complainant was constrained to file the above complaint against the accused for the alleged offence under Section 138 r/w 142 of the NI 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.1843 of 2017 and ordered for issuance of summons to the accused. After appearance of the accused, copies of records were



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furnished to him under Section 207 Cr.P.C. on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined himself as P.W.1 and exhibited 4 documents as Ex.P.1 to Ex.P.4. 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 06.08.2022, holding that the complainant has not proved the offence under Section 138 of the NI Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

8. Whether the impugned judgment of acquittal passed in S.T.C.No. 1843 of 2017 dated 06.08.2022 on the file of the Judicial Magistrate, Tiruchendur, is liable to be set aside? is the point for consideration.



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

*“Section 118 : Presumptions as to negotiable instruments,
- Until the contrary is proved, the following presumptions shall be made:-*

(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;”

“Section 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.”

10. It is the specific case of the complainant that the accused being a known person borrowed a sum of Rs.6 lakhs on 18.03.2016 to meet out his urgent family expenses and issued a postdated cheque dated 18.04.2016 under Ex.P.1 drawn on Canara Bank, Tiruchendur Branch, requesting the complainant to present the cheque on that day and get the amount, that the



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complainant presented the cheque for collection on 18.04.2016 through his banker Tamilnad Mercantile Bank, Udankudi Branch but the same was returned dishonored for want of sufficient funds in the bank account of the accused through bank memo dated 20.04.2016 under Ex.P.2, that the complainant has then sent a legal notice dated 18.05.2016 under Ex.P.3 directing the accused to pay the amount covered by the cheque, that the accused having received the legal notice on 19.05.2016 vide Ex.P.4-postal acknowledgement card, has not chosen to pay the cheque amount within the stipulated period and that therefore, the complainant was forced to file the above complaint.

11. The defence of the accused, as evident from the cross-examination evidence of P.W.1, is that the accused is not having previous acquaintance with the complainant, that the accused never borrowed any amount nor issued any cheque to the complainant, that the accused borrowed hand loan from one Gopal, relative of the complainant and issued cheque for security purpose and that the complainant, by misusing the said cheque issued to Gopal, has filed the above case. The accused has also taken a stand that the complainant does not have any source of



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income to give loan of huge amount of Rs.6 lakhs and that the complainant had not issued any legal notice to the accused prior to filing of the above case and the accused had not received any statutory notice from the complainant.

12. At the outset, it is pertinent to note that the accused has admitted that Ex.P.1-cheque was belonging to him and also the signature found therein. But according to him, Ex.P.1-cheque was issued to one Gopal, relative of the complainant as a security for the hand loan received by him. The complainant as P.W.1 has given evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonor of cheque, issuance of the statutory notice and failure of the accused to pay the amount within the stipulated time. On considering the evidence of P.W.1 and also the admission of the accused with respect to Ex.P.1 cheque and signature found therein, this Court has no other option but to draw a presumption under Sections 118 and 139 of the NI Act.

13. As rightly contended by the learned counsel appearing for the



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

14. The learned trial Judge, considering the defence of the accused that no legal notice was served on him, has referred a legal position that the complainant has to satisfy five conditions so as to draw a presumption under Section 139 of the NI Act and listed out the following conditions;

- 1. the cheque must be issued from the bank account of the accused;*
- 2. the complainant should have presented the cheque within three months for collection in his bank;*
- 3. the cheque was returned by the accused bank as dishonored;*
- 4. the complainant has to issue a legal notice informing the dishonor of the cheque and demanding the amount covered by the cheque within a month from the date of cheque returned; and*
- 5. the cheque amount is not paid even thereafter.*



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15. No doubt, the above conditions must be met by the complainant before filing a complaint under Section 138 of the NI Act, but that is distinct from establishing a case to draw a presumption under Section 139 of the NI Act.

16. As already pointed out, the main defence is that no statutory notice as contemplated under Section 138 of the NI Act was served on the accused. The complainant, in his complaint, has specifically stated that after the return of cheque, he sent a legal notice dated 18.05.2016 under Ex.P.3 and that the same was received by the accused on 19.05.2016 through Ex.P.4-postal acknowledgement card. But according to the accused, the same was not received by him. No doubt, P.W.1, in cross-examination, would admit that the signature found in Ex.P.4-postal acknowledgement card is not that of the accused, but as rightly pointed out by the learned counsel appearing for the complainant, the correct address of the accused is shown in Ex.P.3-notice and also in the main complaint filed under Section 200 Cr.P.C.

17. The learned counsel appearing for the complainant would



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submit that the trial Court's summons and private notice in the appeal were served to the accused at the same address used for the pre-complaint legal notice. Since Ex.P.3-notice was served at the correct address and received by another person, it is deemed served on the accused, so non-service is not an issue.

18. The learned counsel appearing for the complainant would rely on a decision of the Hon'ble Supreme Court in ***C.C.Alavi Haji Vs. Palapetty Muhammed and another*** reported in ***2007 6 SCC 555***, wherein, the Hon'ble Apex Court, while answering the reference pertaining to the service of notice in terms of Clause (b) of proviso to Section 138 of the NI Act, has held as follows:

“Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the



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time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh; State of M.P. Vs. Hiralal & Ors. and V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.”

19. In the case on hand, the complainant has specifically averred in the complaint that he has sent a legal notice dated 18.05.2016 to the accused and the same came to be received by another. Given the above circumstances, the burden lies on the accused and he must demonstrate that the address shown in the acknowledgement card was incorrect or that a postal cover was served on a person unconnected with the accused or that service of notice by the postal department was erroneous. Admittedly, the accused has not adduced any evidence to substantiate the same. It is



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not the case of the accused that he was not residing in the address shown in Ex.P.3 and Ex.P.4. As rightly contended by the learned counsel appearing for the complainant, the defence has not disputed the service of trial Court summons and also the private notice in the present appeal in the same address.

20. At this juncture, it is necessary to refer the following passages in **C.C.Alavi Haji's** case referred supra, which are extracted hereunder:

“16. As noticed above, the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of Section 138. In Vinod Shivappa (supra), this Court observed:

One can also conceive of cases where a well intentioned drawer may have inadvertently missed to make necessary arrangements for reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that Clause (c) of proviso to Section 138 provides that the section shall not



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apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice.

To repeat, the proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons.

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot



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obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.”

21. In the case on hand, the accused, upon the receipt of trial Court summons, entered into appearance through his advocate on 18.07.2017 and thereafter appeared in person on 07.09.2017. Notably, the accused failed to pay the amount within 15 days from entering into appearance. Given the legal position, the accused cannot claim improper service of notice under Section 138 of the NI Act, especially in light of the statutory presumption under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act.

22. As already pointed out, the accused has also taken a stand that



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the complainant had no wherewithal to advance such a huge loan amount.

The Hon'ble Supreme Court, in ***Rohitbhai Jivanlal Patel Vs. State of Gujarat and another*** reported in ***(2019) 18 SCC 106***, has specifically held that once the Court has drawn presumption of existence of legally enforceable debt as per Section 139 of the NI Act, factors like source of funds are not relevant if the accused has not been able to rebut the presumption 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 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



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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.

19. In order to discharge his burden, the accused put forward the defence that in fact, he had had the monetary transaction with the said Shri Jagdishbhai and not with the complainant. In view of such a plea of the appellant-accused, the question for consideration is as to whether the appellant-accused has shown a reasonable probability of existence of any transaction with Shri Jagdishbhai? In this regard, significant it is to notice that apart from making certain suggestions in the cross-examination, the appellant-accused has not adduced any documentary evidence to satisfy even primarily that there had been some monetary transaction of himself with Shri Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Shri Jagdishbhai and another factor relied upon is that Shri Jagdishbhai had signed on the stamp paper in question and not the complainant.

xxx

20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and



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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 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. The other observations as regards any variance in the statement of



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complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant....”

23. In ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in (2022) 6 SCC 735, the Hon'ble Supreme Court has held that in the case under Section 138 of the NI Act the complainant need not show at the first instance that he had the capacity, as the proceedings under Section 138 of the NI Act is not a civil suit and at the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent and 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. In the present case, as already pointed out, despite the receipt of statutory notice, the accused has not chosen to send any reply notice.

24. No doubt, as rightly pointed out by the learned counsel appearing for the accused, P.W.1 would depose that he gave a sum of Rs.6



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lakhs to the accused out of the amount he saved in between the years 2014, 2015 and 2016 i.e., from the income he earned through agricultural proceeds and by running a tailor shop. He would say that the amount was saved for the purpose of taking jewels for his child. Though P.W.1 was subjected to cross-examination at length, nothing was elicited by the defence in their favour with regard to the financial capacity of the complainant. Except cross-examining P.W.1, the accused has not produced any iota of evidence to prove that the complainant had no wherewithal.

25. The learned counsel appearing for the accused would rely on a decision of the Hon'ble Supreme Court in ***Basalingapa Vs. Mudibasappa*** reported in ***(2019) 5 SCC 418***, wherein, it was shown, apart from loan of Rs.6 lakhs, within two years, another loan of Rs.18 lakhs was given to the accused and since financial capacity of the complainant was questioned, it was held that the complainant was duty bound to explain his financial capacity.

26. The learned counsel appearing for the accused would further contend that the complainant had admitted that he knew the accused only a



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year and did not know their family members and lent of Rs.6 lakhs, which is unusual for a prudent person.

27. As observed in ***Rohitbhai Jivanlal Patel's*** case, when a presumption under Sections 118 and 139 of the NI Act is drawn, the factors relating to source of funds, want of knowledge about the family members of the accused and other aspects are irrelevant factors for consideration of a probable defence of the accused.

28. In ***Ashok Singh Vs. State of Uttar Pradesh and another*** reported in ***2025 LiveLaw (SC) 383***, the Hon'ble Supreme Court reaffirmed that once the drawer admits to signing the cheque, the presumption under Section 139 of the NI Act, cannot be rebutted merely by questioning the complainant's debt giving capacity, especially when such a defence was not raised earlier. The Hon'ble Apex Court has further observed that the said burden remains with the accused, who failed to rebut the presumption of a legally enforceable debt and did not respond to the notice to present evidence that the complainant lacked the financial capacity to grant the loan.



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29. Considering the above, the findings of the learned Magistrate that the alleged non-service of statutory notice and the alleged failure of the complainant to prove his wherewithal to lend the amount had successfully rebutted the presumption are perverse and not in accordance with the settled legal position and as such, the same are liable to be set aside. Given the above circumstances, this Court has no hesitation in holding that the accused has miserably failed to rebut the presumption in favour of the complainant under Sections 118 and 139 of the NI Act. Consequently, this Court concludes that the accused is guilty of the offence under Section 138 of the NI Act.

30. 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 (Crl) 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



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to be compensated.

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31. Taking into account the nature of the offence and the cheque amount, the respondent / accused is sentenced to pay a fine of **Rs.12,00,000/- (Rupees Twelve Lakhs only)** (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 appellant / complainant under Section 357 Cr.P.C.

32. In the result, this Criminal Appeal is allowed.

21.11.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Judicial Magistrate,
Tiruchendur.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Judgment made in
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Dated : 21.11.2025