



Crl.A(MD)No.411 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2025

Pronounced on : 19.08.2025

CORAM :

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

Crl.A(MD)No. 411 of 2018

N.T.Sukumaran ... Appellant/Respondent/Complainant
Vs.
C.Abdulwahab ... Respondent/Appellant/Accused

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the judgment of the Additional District and Sessions Judge, Palani dated 12.07.2018 in C.C.No.19 of 2016 dated 12.07.2018.

For Appellants : Mr.K.Muthu Gnanapandian
For Respondent : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
for Mr.R.Venkateswaran

JUDGMENT

This Criminal Appeal has been preferred by the complainant challenging the judgment of acquittal made in C.C.No.19 of 201 dated 12.07.2018 on the file of the learned Additional District and Sessions Judge, Palani.



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2. The case of complainant is that the respondent/accused had availed Rs.10,00,000/- (Rupees Ten Lakhs only) as loan from the complainant and towards discharge of the same, he had executed a cheque drawn in favour of Karur Vaisya Bank, Palani, dated 28.07.2015. The appellant had deposited the cheque for collection in the bank and it was returned on 29.09.2015 for the reason of 'fund insufficient'.

3. After informing the respondent and also by issuing legal notice and complying the legal mandates, a private complaint has been filed before the learned Judicial Magistrate, Fast Track Magistrate Court, Palani. At the conclusion of the trial, the learned Magistrate had found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo one year (S.I) with a fine of Rs.5,000/- in default to undergo one month (S.I).

4. The above judgment was challenged by the respondent by preferring an appeal before the Sessions Court and the said appeal was allowed and consequently, the accused was acquitted.



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5. The learned counsel for the appellant submitted that the first appellate court had chosen to reverse the well reasoned judgment of the learned Magistrate only on the ground that the appellant did not prove his financial wherewithals to lend a loan of Rs.10 lakhs to the accused. He further submitted that the accused has been working as a Marine Engineer and he has been drawing a salary of Rs.85,000/- per month and his father also transferred his retirement benefits and other finances to his account frequently and hence, he had the financial capability of lending a sum of Rs.10 lakhs to the respondent. But that was not properly considered by the first appellate court.

6. The learned counsel for the respondent/accused submitted that the first appellate court had rightly appreciated the fact that the appellant did not have the sufficient funds in his account during the relevant point of time, when he is alleged to have lent a sum of Rs.10 lakhs to the respondent; the appellant had not chosen to file his bank account details in order to show that the money transferred from the account of his father



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has been credited to his account and there it was very much available for him while the loan was lent to the accused.

7. This Court gave anxious consideration to the submissions made on either side and carefully perused the materials available on record.

8. In the complaint of the appellant and in his evidence, he had stated that he had lent a sum of Rs.10 lakhs to the accused on 26.03.2015. The accused assured to repay the same within a period of three months and had executed the impugned cheque dated 28.09.2015. In the cross examination, it is stated that the respondent/accused is a friend and he was known to him through his distant relative by name, Chellamuthu and the said Chellamuthu is no more now.

9. The respondent/accused is doing agriculture and he had requested the loan directly to the complainant. He further stated that at the time when he gave the loan to the respondent, there is no other person except the complainant and the respondent and they were alone.



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He further stated that the transaction was not known to his parents and his wife.

10. When the respondent was known to the appellant just through a distant relative, it is difficult to believe that he convinced himself to lend a huge sum of Rs.10 lakhs to him directly without any supporting document and at the sight of any witnesses. The complainant is not a layman and he is running a computer concern.

11. The core contention of the complainant is that the respondent had admitted the signature in the cheque and hence, there is no initial presumption in his favour that the cheque has been issued by the respondent only for the consideration stated therein. No doubt, as per Section 139 of Negotiable Instruments Act, the respondent has got the benefit of drawing an initial presumption in his favour once the execution of the cheque is admitted by the executant. In such a case, it is for the executant to rebut the initial presumption. But the rebuttal proof can be either direct or from the infirmity or lacunae in the evidence of the



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complainant. One of the improbabilities pointed out by the respondent is the manner in which the loan is said to have been given to the respondent. Despite a sum of Rs.10 lakhs is said to have been given to the respondent, who is not closely related to the complainant and he had chosen to give the loan without getting any papers and not even in the presence of any third person as a witness.

12. When coming to the point of financial capability of the complainant, it is claimed by the respondent that during the relevant point of time, the complainant did not have financial wherewithal to lend a sum of Rs.10 lakhs as loan to the respondent. He stated in his evidence that he was working as a Marine Engineer and out of which he was drawing 2000 Dollars, which was Rs.85,000/- in the Indian Rupee value and he had some savings in his hand. He has been working as Marine Engineer for the period from 1995-2005 and the loan transaction happened in the year 2015, i.e after ten years. Admittedly, the loan transaction was not done through bank and it is alleged that the accused had lent it as cash. Again it is difficult to believe that a person like the



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complainant had kept Rs.10 lakhs as cash in his hands. It might be true that he could have lent a sum of Rs.10 lakhs as cash, had it been supported by the withdrawal details from the bank in order to show that the savings of the appellant has been withdrawn from the bank for the purpose of lending it to the respondent. No such bank account details of the appellant has been produced.

13. The defence of the respondent is that his sister's son Ansari has availed a loan of Rs.4,50,000/- in the year 2005 from the appellant and for which he executed a two empty signed promissory notes and four unfilled cheques. Out of the four unfilled cheques, the appellant had given one unfilled cheque by affixing his signature as security and that was being misused by the appellant for the purpose of this case.

14. Under such circumstances, the courts can only presume that there are some improbabilities and infirmities in the case of the appellant and that can be considered as rebuttal proof in favour of the accused.



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15. As the appellant has exhausted an initial presumption as per Section 139 of Negotiable Instruments Act, which is rebuttable in nature, the burden to prove that the cheque has been supported by consideration will swing on the shoulders of the complainant. The respondent could establish rebuttal circumstances from the weaknesses and the improbabilities in the case of the appellant. In respect of the principle of initial presumption as pointed out by the learned counsel for the appellant as referred in **APS Forex Services Private Limited vs. Shakti International Fashions Linkers and others** reported in **2020 (12) SCC 724** with regard to the fact that the appellant is always entitled to draw an initial presumption under Section 139 of Negotiable Instruments Act when the execution is not denied and that the accused had got the reverse burden to prove the rebuttal. Once rebuttal is established, then, the burden will shift on to the appellant.

16. However, the learned counsel for the appellant submitted that he had effectively discharged the said burden also by producing the statement of account of his father in order to show that the amounts have



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been transferred to his account from his father's account. On a perusal of Ex.P.7 statement of account, it is seen that few transactions have been made from his father's account to his account but those transactions have been made only until May 2015. On a perusal of the transactions made in the year 2015, it is seen that there are no heavy transactions and there are only a few thousand rupees transactions. In the year 2012 and 2013, there were some transactions rating from Rs.1 lakh to Rs.3 lakhs and more. But the corresponding statement of account of the appellant is not available in order to show that the money so transacted from his father is very much available in his account in order to enable him to lend Rs.10 lakhs to the respondent during the month of June 2015.

17. Once the burden placed on the accused is discharged, the appellant is expected to prove the possibilities and dispel the improbabilities in order to establish the preponderance in his favour. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court of India in **Rajesh Jain v. Ajay Singh** reported in **2023(10) SCC 148**.



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"54. As rightly contended by the appellant, there is a fundamental flaw in the way both the courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly".

18. When the appellant claims that the transaction was only cash transaction, the burden will be more upon him to show that he had withdrawn the cash amount at the relevant point of time or that he had



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other sources from which he could always have cash flow in his hands. Despite the statement of account of the appellant is the base evidence, for the reasons best known to the appellant, it was not produced before the court as exhibit. In such circumstances, the appellant would take the risk of withholding an important evidence and consequent adverse presumption.

19. Unless the initial presumption under Section 139 of Negotiable Instruments Act alone is culminated into a conclusive proof without rebuttal, the appellant cannot expect the court to fix the guilt against the respondent. Though the trial court has omitted to deal with the nuances correctly, the said exercise was taken up by the first appellate court and the burden of proof and the sufficiency of preponderance of probability to execute the rebuttal burden have been rightly dealt. As the first appellate court has appreciated the evidence in a proper perspective by rightly understanding the shift of burden of proof and ultimately arrived at the conclusion that the impugned cheque has not been given in order



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to discharge a legally enforceable debt, the accused cannot be held guilt.

20. Therefore, in my considered view, the judgment of the first appellate court does not require any interference and consequently, the appeal of the complainant is liable to be dismissed.

21. In the result, the appeal is dismissed and the judgment of the the Additional District and Sessions Judge, Palani, dated 12.07.2018 in C.C.No.19 of 2016 dated 12.07.2018, is confirmed.

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Index : Yes/No
Internet : Yes/No
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To,

1.The Additional District and Sessions Judge, Palani

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



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Dr.R.N.MANJULA, J

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Pre-delivery Judgment made in
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