

Crl MP(MD)No.116 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl A(MD)No.116 of 2022

and

Crl MP(MD)No.6213 of 2024

R.Vasanthan

... Appellant / Complainant

Vs.

V.K.Santhi

... Respondent/ Accused

PRAYER: Appeal filed under Section 378 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 13.07.2018 passed in STC.No.383 of 2018 on the file of the Fast Track Court (Magistrate Level), Nagercoil acquitting the respondent / accused under Section 138 of the Negotiable Instruments Act and allow the above appeal.

For Appellant : Mr.R.Murugan

For Respondent : Mrs.D.Saranya

Legal Aid Counsel

JUDGMENT

The appellant / complainant has filed a private complaint as against the respondent / accused before the Fast Track Court No.II (Magisterial Level),



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Nagercoil, for the offence under Section 138 of the Negotiable Instruments Act.

The complaint was tried in STC No.383 of 2018 and it was dismissed by the learned Judicial Magistrate, Fast Track Court No.II, Nagercoil by judgment dated 13.07.2018. As against the judgment of the trial Court, the complainant has filed an appeal before the Principal Sessions Judge, Kanyakumari District and the same was transferred to this Court pursuant to the orders of the Hon'ble Full Bench and listed for final hearing.

2.For sake of convenience the parties are referred herein, as per their ranks before the trial Court.

3.The case of the complainant is that on 27.02.2012 the accused borrowed a sum of Rs.1,00,000/- (Rupees one lakh) from the complainant promising to repay the same within three months and the accused issued a cheque bearing No.0977032 of her account at State Bank of India, Pazhavor Branch dated 27.09.2012 instructing the complainant to present the cheque and collect the amount. On 28.09.2012 the complainant presented the cheque in Syndicate Bank, Nagercoil branch for collection. But the cheque was dishonoured and returned on 10.10.2012 as funds insufficient. Therefore, on 18.10.2012 the

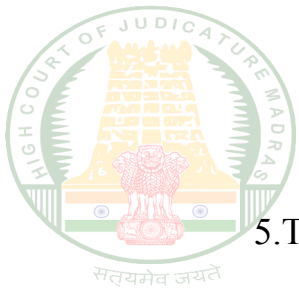


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complainant sent a legal notice to the accused intimating the dishonour of cheque. Though the accused received the notice, she had not sent any reply.

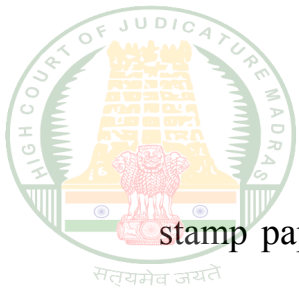
Therefore he has instituted proceedings under Section 138 of the NI Act.

4.The learned counsel for the appellant / complainant submits that while sending notice to the accused, the amount was wrongly mentioned as Rs.25,000/- instead of Rs.1,00,000/- and the same was taken as a ground by the trial Court to dismiss the complaint. According to him, there is no correction, addition or omission in the cheque Ex.P1. The cheque Ex.P1 was issued for a sum of Rs.1,00,000/- and it was presented for collection before his banker on 28.09.2012 and it was returned as 'insufficient funds' on 10.10.2012. The complainant had sent a legal notice calling upon the accused to repay the cheque amount by notice dated 18.10.2012 and the accused received the notice on 19.10.2012. However she has failed to pay the amount and has not sent any reply to the said notice. Therefore according to the learned Counsel the essential ingredients for constituting the offence under Section 138 of the NI Act have been proved sufficiently by the complainant and the presumption is in favour of the complainant as per Section 139 of the NI Act.



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5.The learned Counsel for the respondent / accused submits that the presumption mandated under Section 139 of the NI Act, includes the presumption of existence of legally enforceable debt or other liability. In the event the cheque has been returned by the bank unpaid, the payee or the holder of the cheque in due course may make demand for payment of the said amount of money by giving notice in writing to the drawer of the cheque within 30 days as required under Section 138(c) of the NI Act. The legal notice dated 18.10.2012 has been sent demanding Rs.25,000/- as the amount borrowed by the accused from the complainant. Though the complainant claimed that it was mistakenly mentioned as Rs.25,000/-, no rectification notice was sent by the complainant. The complainant PW1 has also admitted that he has wrongly mentioned the amount as Rs.25,000/- in the legal notice Ex.P3. Therefore, according to the learned Counsel for the accused, the complainant has failed to comply with the requirements as required under Section 138 (c) of the NI Act and that defect was considered in the light of the Hon'ble Supreme Court in ***Suman Sethi Vs Ajay K.Churiwal*** (Criminal Appeal No.113 of 2000) and therefore, the trial Court has acquitted the respondent / accused. According to the learned Counsel for the accused, the accused has borrowed a sum of Rs.25,000/- from the complainant and issued seven cheques and one signed

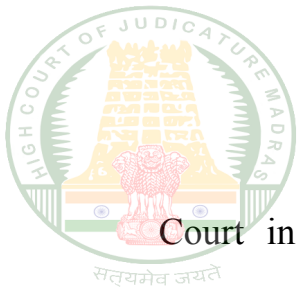


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stamp paper in favour of the complainant as security. In respect of one of the cheques used by the complainant, the proceedings in STC No.382 of 2018 was initiated and wherein the complainant has projected that on 17.06.2012 the accused has received a sum of Rs.50,000/- and issued post dated cheque ie., dated 17.09.2012. This complaint has been filed in STC.No.383 of 2018 as if the accused borrowed another sum of Rs.1,00,000/- on 27.06.2012, for which this accused has issued the cheque Ex.P1 dated 27.09.2012. The accused has taken a specific stand in the notice issued in STC No.382 of 2018. Therefore, according to the learned counsel for the accused, there is no legally enforceable debt for this Ex.P1 and for the transaction in STC No.382 of 2018, this complaint in STC No.383 of 2018 was filed with the cheque given as security for the loan transaction in STC No.382 of 2018.

6.This Court considered the rival submissions and perused the materials placed on record.

7.Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme



Court in ***V.Sejappa v. State [(2016) 12 SCC 150]***, wherein, the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730]***. The guidelines issued in the said decision are extracted hereunder:

“23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view,



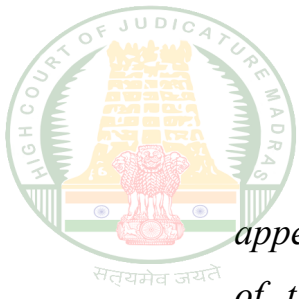
interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

8. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

“(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', good and sufficient grounds', 'very strong circumstances', distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an



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appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.”

9. In this case the cheque Ex.P1 was issued by the accused for a sum of Rs.1,00,000/-. The instrument Ex.P1 was admitted by the accused that the cheque belongs to her. She has also not disputed the signature found in ExP1, however she has disputed the contents of Ex.P1 that the contents of the cheque are filled up in different inks. Even assuming the contents are filled up, it has to be presumed that the instrument was given in discharge of legally enforceable debt. The cheque presented for collection was returned as insufficient funds. The complainant has issued legal notice Ex.P.3, calling upon this accused to

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make payment, as required under Section 138 (c) of the NI Act. Section 138(c)

of the NI Act reads as under :

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

.... ...

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”



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10.The condition required under Section 138(c) of the NI Act is that

the notice must be issued for the said amount of the instrument. Admittedly notice Ex.P3 in this case was issued demanding Rs.25,000/-, whereas the instrument has the value of Rs.1,00,000/-. The complainant has stated in the complaint that it has been mistakenly mentioned as Rs.25,000/- instead of Rs.1,00,000/-. However this mistake has been corrected in the complaint alone, but has not been corrected by issuing a rectified legal notice as required under Section 138(c) of the NI Act.

11.The copy of the complaint in STC No.383 of 2018 dated 05.12.2012 is also placed before this Court. It appears that this mistake of amount in Ex.P3 is not due to oversight, it was also reflected in the complaint filed in STC No.383 of 2018. The complainant in his complaint has stated that the accused received a sum of Rs.25,000/- on 27.06.2012 and issued this cheque Ex.P1 on 27.09.2012 in discharge of the said amount. The said amount of Rs. 25,000/- is mentioned both in numerical and in letters in the complaint. However, the amount mentioned both in numerical and letters, have been corrected.



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12.The presumption under Section 138 of NI Act is a rebuttable one.

If it is rebutted by the accused, the burden shifts on the complainant.

The accused can rebut the presumption by preponderance of probabilities.

The trial Court has noted that apart from this complaint, the complainant has also filed another complaint as against the accused in STC No.382 of 2018.

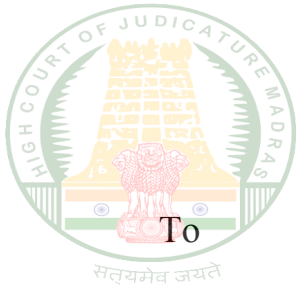
In the said complaint the accused has taken a defence that certain blank cheques have been issued by her as security for the loan availed from the complainant in STC No.382 of 2018. The petitioner has also pointed out the difference in the inks used in Exp1 and the conduct of the complainant in lending money of Rs.50,000/- on 17.06.2012 by receiving a cheque bearing No.0977035 and lending further amount of this case on 27.06.2012 based on a post dated cheque No.0977032 ie., 27.09.2012. Therefore, the accused has raised a doubt as to the amount which can be legally enforceable and there is no demand for the complaint sum of Rs.1 lakh as required under Section 138(c) of the NI Act.

13.In view of the above discussion this Court is not inclined to entertain this appeal on the grounds raised by the appellant herein. Accordingly this criminal appeal is dismissed.

13.03.2025

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To

The Judicial Magistrate,
Fast Track Court No.II,
Nagercoil.



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B.PUGALENDHI, J.,

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