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Crl.A.(MD)No.189 of 2017



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 03.06.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.A.(MD)No.189 of 2017

Nagarajan

... Appellant

vs.

Philips Sydney

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 378(4) of Criminal Procedure Code against the Judgement of the learned Additional District & Sessions Judge, Virudhunagar dated 11.07.2016 in C.A.No.50 of 2007, reversing the Judgement of the Judicial Magistrate No.I, Virudhunagar dated 09.06.2007 in C.C.No.155 of 2003.

For Appellant : Mr.S.R.Ramasamy

For Respondent : Mrs.T.Seeni Syed Amma,
for M/s.Roy & Roy Associates

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Additional District & Sessions Judge, Virudhunagar dated 11.07.2016 in C.A.No.50 of 2007, reversing the Judgement of the Judicial Magistrate No.I, Virudhunagar dated 09.06.2007 in C.C.No.155 of 2003.



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2. The appellant is the complainant, who had filed a private complaint against the respondent for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 [hereinafter referred to as 'the Act']. The Trial Court had taken cognizance of the offence in C.C.No.155 of 2003. After the conclusion of the trial, the learned Trial Judge found the respondent guilty and punished him for the offence under Section 138 of the Act and sentenced him to undergo punishment for a period of one year with a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for three months. The first appeal preferred by the respondent / accused before the Additional District and Sessions Judge, Virudhunagar District was allowed and the conviction and sentence was set aside. Aggrieved over that, the appellant / complainant has filed this appeal.

3. The learned counsel appearing for the appellant submitted that the respondent had admitted the issuance of the cheque to the appellant for a sum of Rs.7,50,000/- on 08.05.2003. Hence, the appellant can get the benefit of initial presumption under Section 139 of the Act in his favour.



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4. The defence taken by the respondent is that he had obtained a loan of Rs.50,000/- from one Krishnasamy Thevar in the year 1996 and has given a cheque as security, but the appellant who is the staff of Krishnasamy Thevar has misused it for the purpose of this case.

5. The respondent has not lodged any police complaint stating that the cheque issued by him has been misused by the appellant. The First Appellate Court has reversed the Judgement on the ground that the appellant did not have the financial capacity to give a huge sum of Rs. 7,50,000/- to the respondent.

6. It is further submitted by the appellant that the above defence was not taken by the respondent before the trial Court and it was raised for the first time before the First Appellate Court.

7. The learned counsel for the respondent submitted that the First Appellate Court has not reversed the Judgement of the Trial Court on the sole ground that the appellant did not have the financial capacity to lend the loan amount of Rs.7,50,000/-, but also, on other ground that the cheque was mutilated and old and even the signature on the cheque was not clear.



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8. The Bank Officer (PW2) has also stated in his evidence that the cheque was mutilated and the signature was not clear and that has been stated in the return Memo.

9. No doubt, when a drawer of the cheque admits the execution of the cheque, the bearer of the cheque has got the initial presumption as to the consideration under Section 139 of the Act in his favour until contrary is proved. The learned Trial Judge has given the advantage of Section 139 of the Act in favour of the appellant and arrived at a conclusion that the cheque has been issued only for discharging a liability to the tune of Rs.8,50,000/-.

10. Even though there was an initial presumption in favour of the appellant, that cannot become conclusive, if it is rebutted by the respondent. For the purpose of rebuttal, the respondent is at liberty to let any oral or documentary evidence. The standard of proof required to disprove the initial presumption is not '**beyond reasonable doubt**', but just '**preponderance of probabilities**'. In this context, it is relevant to extract the Judgement of the Apex Court in the case of **Basalingappa vs. Mudibasappa reported in (2019) 5 SCC 418** and the relevant part of



the Judgement is extracted as under:

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"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence."

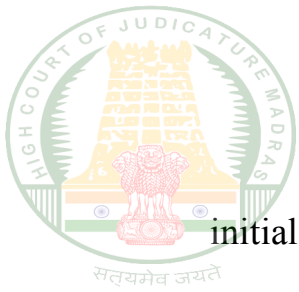
11. As held in the above case, it is not always necessary for the respondent to let in oral evidence or produce documents for rebuttal, but, he can also take advantage of the weakness of the case of the appellant as rebuttal proof. As rightly pointed out by the learned counsel for the respondent, the Bank Officer (PW2) has stated in his evidence that the Return Memo contained not only the reason of funds insufficient, but



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also, the reason that the cheque was mutilated and the signature was also not clear. The above evidence of PW2 would also support the defence of the respondent, wherein, he has stated that he had availed a loan of Rs. 50,000/- from Krishnasamy Thevar in the year 1996 and the appellant who was a staff under Krishnasamy Thevar, had misused the cheque. According to the respondent, he had given the cheque to Krishnasamy Thevar only by way of security and the appellant did not have any wherewithal to lend a huge sum of Rs.7,50,000/- as alleged by him. In order to rest on the initial presumption under Section 139 of the Act with the belief that it would transform into conclusive proof, the evidence on the side of the appellant should be strong enough without giving room to infer probability in favour of the respondent's defence.

12. It is not denied by the appellant that he was the staff of Krishnasamy Thevar. In fact, the respondent had attempted to examine Krishnasamy Thevar also by taking summons, but, he could not secure his presence and that was also noted by the First Appellate Court in its Judgement. When the evidence of the appellant itself gives room for the preponderance of probabilities in favour of the defence of the respondent that he had issued the cheque only to Krishnasamy Thevar as security for an old loan availed from him, the appellant would lose the benefit of



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initial presumption getting transformed to conclusive proof. In other words, the initial presumption that had arisen in favour of the appellant under Section 139 of the Act would expire once rebuttal proof in the form of '**weakness of the appellant's case**' is patent and is well taken and given by the respondent.

13. In such case, the burden would shift upon the appellant to prove that the cheque has been supported by consideration and it has been issued to him only for discharging any debt or liability. This is irrespective of the fact that the respondent had admitted the execution of the cheque. In that course, the appellant would get not only the burden to prove that he had lent a sum of Rs.7,50,000/- as written in the cheque but also that he had the means to lend such a huge sum. But the above important fact has not been established by the appellant and hence, the case of the appellant remains unproved. The appellant has not discharged his burden after the respondent had rebutted the initial presumption arose under Section 139 of the Act. In the absence of the said proof, it is right for the First Appellate Court to reverse the Judgement of conviction rendered by the Trial Court.



14. As the appellant has not raised any grounds worth for further hearing, this appeal does not deserve to be admitted and thus rejected.

03.06.2025

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To

1.The Additional District and Sessions Judge,
Virudhunagar.

2.The Judicial Magistrate No.I,
Virudhunagar.



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R.N.MANJULA, J.

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