

Crl.A(MD)No.292 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.06.2025

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

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Devasena

... Appellant/Complainant

Vs

Elangovan

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records and set aside the order passed in Crl.A.No.05 of 2016, dated 18.10.2016 on the file of the learned II Additional Sessions Judge, Trichirappalli against CC No.25 of 2014, dated 21.02.2016 on the file of learned Judicial Magistrate, Musiri, Trichy District by allowing this Appeal.

For Appellant : Mr. A.Joel Paul Antony

For Respondent : Mr.T.Lenin Kumar

JUDGMENT

The present Criminal Appeal has been filed challenging the Judgment of the learned II Additional Sessions Judge, Trichirappalli, dated 18.10.2016 made in Crl.A.No.05 of 2016.



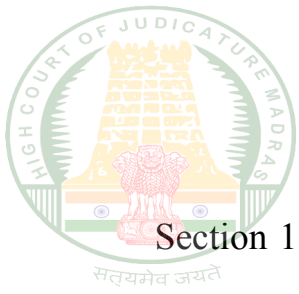
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2.The appellant is the complainant, who had filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as 'NI Act') on the allegation that on 25.06.2013, the accused/respondent had obtained a loan of Rs. 5 lakhs from the complainant and executed a pro-note. When the complainant demanded the loan amount to be returned back, the respondent has issued a cheque, dated 20.12.2013 towards discharge of the loan. The above cheque was deposited for collection with the complainant's bank, Indian Overseas Bank, Musiri on the same day and it was returned citing the 'funds insufficient'.

3.The trial Court has taken cognizance of the complaint and after observing the legal mandates, examined the witnesses of the complainant and the respondent. On the side of complainant, one witness was examined as P.W.1 and 6 documents were marked as Ex.P.1 to Ex.P.6. On the side of respondent, four witnesses were examined as D.W.1 to D.W.4 and 2 documents were marked as Ex.D.1 to Ex.D.2.

4. At the conclusion of the trial, appreciating the evidence available on record, the trial Court has found guilty of accused for the offence under



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Section 138 of NI Act and convicted and sentenced with an imprisonment for a period of 5 months along with compensation of Rs.10,000/-.

5.The appeal filed by the respondent before the II Additional Sessions Judge, Trichirappalli was allowed by setting aside the Judgment of the trial Court and acquitting the respondent. Aggrieved over that, the complainant on leave has preferred this appeal.

6. The learned counsel for the appellant submitted that the trial Court has rightly given presumption under Section 139 NI Act in favour of the complainant and the first appellate Court reversed the Judgment by recording the reason that the appellant did not have means to lend the sum of Rs. 5 lakhs. It is further submitted that the accused did not rebut the initial presumption, despite the same the first appellant Court had reversed the Judgment of trial Court without any basis.

7. The learned counsel for the respondent submitted that the defence taken by the respondent is that he had given a cheque to one Chandrasekar with whom he did not have good terms and it was Chandrasekar, who had utilized the cheque given by the respondent to him, for filing this case the cheque case



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through this complainant. In fact, there was some quarrel between the respondent and the said Chandrasekar and during the said quarrel, the Chandrasekar threatened the respondent that he would file a case and in view of that, the respondent has given a police complaint against the Chandrasekar and others. So it is claimed by the learned counsel for the respondent that the cross-examination of PW1 and the evidence of defence side witnesses, DW1 to DW4, the respondent has successfully rebutted the initial presumption under Section 139 of NI Act and it was rightly appreciated by the learned II Additional Sessions Judge in order to set aside the Judgment of trial Court.

8. I have given my anxious consideration to the submissions made on either side and carefully perused the records.

9. The very contention of the appellant raised before the trial Court is that the respondent is well known to her and due to that acquaintance, she had given a loan of Rs.5 lakhs to the respondent, on getting a promissory note for the same. The respondent did not deny the fact that he has executed the impugned cheque, dated 20.12.2013. However, he denied that the cheque was not given to the complainant, as he did not borrow any money from her.



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10. When the executant of the cheque admitted his execution, the bearer of the cheque will no doubt get the benefit of initial presumption under Section 139 of NI Act. In such case, the burden would shift upon the respondent to disprove the fact that the impugned cheque was not supported by consideration. Only when the initial presumption is not rebutted by the respondent and the evidence on the side of the complainant has been consistent and strong enough to prove the initial presumption to be culminated into a conclusive proof, it is possible for the Court to find the respondent guilty under Section 138 of NI Act.

11. On perusal of evidence of PW1, she has stated that she did not know the house address of the respondent. Her husband is working as a Lorry Driver in a private concern and his name is Dinakaran. She has further stated that she knew the accused through one Ravichandran, who is the friend of her husband. However, she has not stated these facts in her complaint. She has further stated that on 25.06.2013, when she lent a loan of Rs.5 lakhs, as alleged in her complaint, her husband was also there. Though the respondent has executed the promissory note on the same day, it was not attested by her husband. She has further stated in her cross-examination that her husband was earning Rs.15,000/- per month and he did not have any properties. They are living in a rented house and the complainant is running a Tailoring shop.

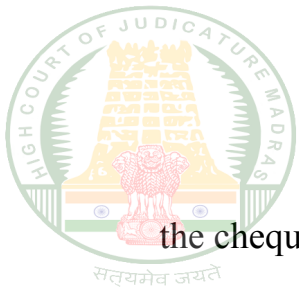


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12. While discharging the burden of rebutting the initial presumption under Section 139 of NI Act, the respondent can either let positive evidence or to rely the infirmities in the evidence of complainant in order to fulfil the requirement of preponderance of probabilities for the purpose of rebuttal.

13. In the instant case, from the very evidence of PW1 it is seen that she did not know the house address of the respondent and despite her husband was present at the time of alleged loan of Rs.5 lakhs, she did not prefer to get his attestation in the promissory note. Even the financial capability of the complainant and her husband was also confronted by the respondent during the cross examination and it is revealed that the complainant and her husband did not have enough income or property in order to lend a hefty loan of Rs.5 lakhs.

14. The respondent has examined himself as DW2 and has stated that he was running a Finance business with one Chandrasekar and due to which he had money transactions with him. During that time he had given his cheque book to Chandrasekar and it contains 10 cheques. He further submitted that after some time, there was some misunderstanding between the respondent and Chandrasekar and hence he came out of the business. But he did not get back



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the cheque book given to the said Chandrasekar.

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15. The learned counsel for the appellant submitted that despite the respondent taken up this defence, he did not choose to examine the said Chandrasekar. When the respondent stands not in friendly terms with Chandrasekar, he could not expect to summon Chandrasekar and examine him. But he has examined the witnesses DW3 and DW4 to prove that he has got acquaintance with Chandrasekar and the Chandrasekar had quarreled and threatened him that he would file cases with the help of the respondent's cheques, which are in his custody. The respondent has also lodged a complaint against Chandrasekar by alleging that the Chandrakumar had quarreled with him and during that time, the appellant's husband whose alias name Ruby was also present there. In fact, FIR was registered in this regard has been marked as Ex.D1 and in the FIR, it is seen that the Chandrasekar and the appellant's husband have been added as accused. So the respondent has produced documents to show the acquaintance between the appellant's husband and his erstwhile business partner, Chandrasekar.

16. As per the complaint, the complainant would know the respondent only through her husband and her husband is known to Chandrasekar. The respondent would establish the relationship of Chandrasekar



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to the appellant's family, though he could not examine Chandrasekar.

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17. As stated already, the standard of proof for rebuttal contemplated under Section 139 of NI Act is not proof beyond reasonable doubt. Had the trial Court appreciated the evidence in a holistic fashion, it would have missed the preponderance probabilities available in favour of the respondent for rebutting the initial presumption arose in favour of the complainant. The first appellate Court had properly appreciated the evidence and other circumstances of the case and had arrived at a conclusion that the cheque has not been given for any loan availed by the respondent from the complainant.

18. It is needless to state that once the respondent could rebut the initial presumption then the burden would shift upon the complainant. The cheque was in fact supported by consideration. But the appellant did not produce any materials to destabilise the rebuttal proved by the respondent. Unless the initial presumption arise under Section 139 of NI Act culminates into conclusive proof, the trial Court is not expected to find the respondent guilty for the offence under Section 138 of NI Act. But the trial Court did not appreciate the above position of law properly and that was rectified by the first appellant Court and consequently, the Judgment of the trial Court was set aside.



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19. As I find no error of understanding or explanation on the part of first appellate, the matter does not require any interference.

20. Accordingly,

- *this Criminal Appeal stands dismissed;*
- *the judgment of acquittal passed by the learned II Additional Sessions Judge, Trichirappalli in Crl.A.No.05 of 2016, dated 18.10.2016, is confirmed.*

09.06.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM

To

1.The II Additional Sessions Judge, Trichirappalli

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA,J.

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