



Crl.A(MD)No.256 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.07.2025

CORAM:

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

Crl.A(MD)No.256 of 2017

K. Ramani

... Appellant

Vs

K.P. Maduraisamy

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records in STC No.92 of 2012, dated 27.09.2012 on the file of learned Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai and set aside the same and allow this criminal appeal.

For Appellant : Mr. C.Susikumar

For Respondent : Mr.V.Nagendiran



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JUDGMENT

The present Criminal Appeal has been filed challenging the Judgment of the learned Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai, dated 27.09.2012 made in STC No.92 of 2012.

2.The appellant is the complainant, who had filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') on the allegation that in the year 2002 based on the close friendship between the complainant and the respondent, a loan of Rs.7,00,000/- was given to the accused for his transport business. Towards the discharge of the said loan, the responded has given a cheque for Rs.7,00,000 drawn on his Banker, Bank of Baroda, dated 28/12/2007. The same was presented by the complainant, but the same was returned for the reason of insufficient funds on 29.12.2017.

3.The trial judge after having conducted the trial and examining one witness on the side of the defacto complainant and receiving exhibits, Ex.P.1 to Ex.P.4, dismissed the complaint. Aggrieved over that, this appeal has been preferred by the complainant.



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4.The learned counsel for the appellant submitted that the respondent has admitted his signature. Hence, he is entitled to get the presumption under Section 138 of NI Act. The accused did not rebut the initial presumption and the complainant has proved the foundational facts. Despite the same, the trial Court has acquitted the accused.

5.The learned counsel for the respondent submitted that the complainant is a practicing Advocate since 2007 and it is impossible for him to lend a huge sum of Rs.7,00,000/- without getting any security or written documents. The cheque has not been presented within the period of validity. The date and month of lending the huge sum of loan has not been stated by the complainant. As the weaknesses in the case of the complainant has been taken as rebuttal circumstances by the trial Court and hence, it is wrong on the part of the complainant to state that he had proved the foundational facts. The Judgment of the trial Court is a well reasoned one and there is no need to interfere with the same.

6.Even according to the complainant, a hefty sum of Rs.7,00,000/- is said to have been given as a hand loan based upon friendship. When PW1



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was cross examined, he has stated that he did not even know where the respondent is doing his transport business along with the other partners. The trial Court has also observed that the appellant has not proved before the Court whether he had made any demand between the period from 2002 to 2007.

7.No doubt, as per Section 139 of NI Act, when execution of the cheque was admitted, then the initial presumption would be drawn in favour of the complainant that the cheque is supported by consideration. But the specific contention of the accused is that the cheque is barred by limitation. As stated already, it is a specific case of the complainant that the transaction was of the year 2002 and the cheque was also issued in the year 2002. Even though the banker has not returned the cheque as time barred and invalid, the fact remains that the cheque was presented only in the year 2007. The defacto complainant has not given any details as to the date and month during which he had lent the loan to the accused and exactly on which date, the accused had also issued the cheque.

8.The appellant has claimed that as the initial presumption is in his favour, it is for the respondent to rebut the initial presumption and prove before the Court that the cheque was not given for any discharge of legally enforceable



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debt. The initial presumption cannot be automatically drawn in favour of the defacto complainant, without establishing the fundamental facts before the Court.

9.All that the complainant has stated is that he had obtained name transfer form in respect of Mini Bus belonged to the respondent and considered that as a security for the loan. As the accused sold the vehicle to some other person, the complainant has questioned the accused and at that time, the accused had given a cheque to the complainant. But he had stated that the cheque was issued on 28.12.2007, after the respondent received the MTC forms.

10.The learned counsel for the appellant submitted that the petitioner has been making demands on several occasions between the period from 2002 to 2007. Only when he came to know that the accused is not interested in repaying the loan, he presented the cheque for collection and then filed the complaint.

11.In the cross examination of PW1, he has stated that the demand to repay the money made by him for five years was not done in presence of



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anyone and hence, no one knew about the same Even the allegation that the accused had given MTC Form to the complainant and later, he had given back the same by receiving a cheque from the accused was also not known to anyone.

12.The defacto complainant is a practicing Advocate, who knows the risk of transacting the hefty sum of Rs.7,00,000/- without obtaining any security or without the presence of any witnesses for the transaction.

13.It was suggested to PW1 that in the year 2002, there was a dispute occurred between the business partners of the accused and the defacto complainant under the pretext of resolving the dispute, received the Transport documents and kept it with himself. After the parties have settled their dispute between themselves, the complainant demanded Rs.5,00,000/- and when the accused refused to give the same, he made use of the cheque which was in his custody. In fact, in the reply note sent by the respondent also, he has stated the very same facts.

14.Even if it is presumed that the initial presumption is run lies in favour of the complainant, the rebuttal of the initial presumption by the



respondent can be done either by letting in any direct evidence or from the probabilities and infirmities in the case of the complainant.

15. In this regard, it is relevant to refer the decision of the Hon'ble Supreme Court in ***Basalingappa v. Mudibasappa***, reported in ***(2019) 5 SCC 418***, wherein, it is held as follows:

“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



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evidentiary burden and not a persuasive burden.

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

16.As there are a lot of lacunae and improbabilities in the case of the defacto complainant, that can be taken advantage by the accused as rebuttal circumstances in his favour. Once the initial presumption is rebutted by the respondent, then it is the duty of the complainant to prove that the cheque is supported by consideration also. The defacto complainant has not produced any materials to substantiate his contention that he had in fact, lent a huge sum of Rs.7,00,000/- in the year 2002. He is said to have been patiently waiting till the year 2007 to recover the same.

17.The defacto complainant has not only failed to prove the foundational facts, in order to give him the initial presumption. Even for the sake of argument, if he has been given with the advantage of initial presumption, the informalities and improbabilities and inadequacies in his evidence can still serve as a rebuttal proof in favour of the respondent and that has been properly appreciated by the trial Court.



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18.As one of the essential ingredients to fasten the criminal liability on the accused is that the impugned cheque ought to have been given to discharge a legally enforceable debt. The complainant has failed to prove that there was in fact a legally enforceable debt and it was time barred and in order to renew the same, the cheque has been issued and that it has to be considered as an acknowledgment.

19.In this regard, it is appropriate to refer the Judgment of this Court held in ***Kumaravel vs Rathinam*** reported in ***2011(3) MLJ Criminal 155***. In the said judgment, it is held that there can be an acknowledgement for a time barred debt, but drawing of a cheque itself is not an acknowledgement, unless the debt was enforceable on the date of issuance of a cheque.

20. As there is bundle of lacunae seen in the case of the defacto complainant, that can at best serve as rebuttal proof in favour of the accused. Hence, the trial Court has not committed any error in arriving at the conclusion that the accused is not guilty for the offence under Section 138 of NI Act and it does not deserve to be interfered.



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21.In fine,

- *this Criminal Appeal stands dismissed;*
- *the judgment of acquittal passed by the learned Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai in STC No.92 of 2012, dated 27.09.2012, is confirmed.*

18.07.2025

NCC :Yes/No

Index :Yes/No

Internet:Yes/No

PNM

To

1.The Judicial Magistrate No.I, Fast Track Court (Magistrate Level), Madurai

2.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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Dr. R.N.MANJULA, J.

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