BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.10.2025

PRONOUNCED ON : 27.11.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.762 of 2022

Alagarsamy .. Appellant/Complainant

Vs.

Marys Keina Flouerin .. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C, against the judgment made in C.C.No.659 of 2017, dated 17.10.2019, on the file of the Court of the Judicial Magistrate Court No.II, Sivakasi.

For Appellant : Mr.C.Jeyaprakash

For Respondent : Ms.S.Mahalakshmi

JUDGMENT

The Criminal Appeal is directed against the judgment made in C.C.No.659 of 2017, dated 17.10.2019, on the file of the Court of the Judicial Magistrate No.II, Sivakasi, in acquitting the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

2. The appellant, who is the complainant, filed a private complaint under Section 200 Cr.P.C., against the respondent/accused for the offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the trial Court.

4. The case of the complainant is that the complainant and the accused are family friends and the accused approached the complainant on 18.05.2015 and borrowed a sum of Rs.5,00,000/- from the complainant for her expenses and to clear the family debts and in order to discharge the said loan, the accused issued a cheque bearing No.275202 dated 18.06.2015 drawn on Axis Bank Limited, Madurai Branch on the date of borrowal, assuring that the said cheque will be honoured. The complainant presented the cheque for collection on 23.06.2015 through his bank Pandian Grama Bank at Erichanatham, but the same was

dishonoured and returned with an endorsement "funds insufficient". The complainant sent a legal notice dated 23.07.2015 to the accused directing him to pay the amount covered by the cheque and the accused having received the said notice, neither sent any reply nor complied with the notice demand. Hence, the complainant was constrained to file the above complaint for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act.

5. The learned Judicial Magistrate, upon receiving the complaint, recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed a *prima facie* case, took the case on file in S.T.C.No. 1945 of 2015 for the offence under Section 138 of the Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to him under Section 207 Cr.P.C., on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty. Thereafter, the case was transferred to the file of the Court of the Judicial Magistrate No.II, Sivakasi and the same was taken on file in C.C.No.659 of 2017.

6. During trial, the complainant examined himself as P.W.1 and examined one Muniappan as P.W.2 and the Manager of the Axis Bank, Sivakasi Branch Thiru.Kalyana Sundaram as P.W.3 and exhibited 5 documents as Exs.P.1 to P.5. The accused examined herself as D.W.1 and exhibited 3 documents as Exs.D.1 to D.3.

7. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned judgment dated 17.10.2019 holding that the complainant has not proved the offence under Section 138 of the Negotiable Instruments Act as against the accused beyond reasonable doubt, acquitted her under Section 255(1) Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

8. Whether the impugned judgment of acquittal passed in C.C.No.659 of 2017, dated 17.10.2019 on the file of the Judicial Magistrate No.II, Sivakasi, is liable to be set aside? is the point for consideration.

9. Before proceeding further, it is necessary to refer Sections 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption :

"118. ...

(a) of consideration ; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

139.Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

10. Section 118 and 139 of the Negotiable Instruments Act create legal presumption in favour of the holder of the negotiable instrument. Once cheques execution is admitted, the law presumes it was issued for consideration as contemplated under Sectin 118 and that the holder received it to discharge a legal debt or liability as contemplated under Section 139 of the Negotiable Instruments Act.

11. No doubt, the above presumptions are rebuttable presumptions and the accused can present evidence to prove the contrary, shifting the burden of proof to the complainant. Once, the complainant establishes the basic facts such as issuance and dishonour of cheque, the burden shifts to the accused to rebut the presumptions under Sections 118 and 139 of the Negotiable Instruments Act. The accused can rebut the presumptions by presenting evidence to show the

cheque was not for consideration or was not issued in discharge of debt. It is settled law that the accused in order to rebut the presumption, is not required to adduce any evidence and he can very well prove his probable defence through the evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

12. It is the specific case of the complainant that the accused being a family friend, borrowed a sum of Rs.5,00,000/- on 18.05.2015 for his expenses and to clear the family debts by issuing a post dated cheque dated 18.06.2015 drawn on Axis Bank Ltd., Madurai Branch, towards the discharge of the said loan, that the complainant believing the words of the accused presented the cheque for collection through his bank Pandiyan Grama Bank at Erichanatham on 23.06.2015, but the cheque was returned dishonoured for want of insufficient funds in the bank account of the accused, that the complainant sent a legal notice dated 23.07.2015 demanding the accused to pay the amount covered by the cheque, but the accused having received the notice neither sent any reply nor repaid the loan amount and that therefore, the complainant was forced to file the above private complaint.

13. The defence of the accused, as evident from the cross-examination of P.W.1 and P.W.2 and the evidence of D.W.1 is that the accused borrowed a sum

of Rs.2,00,000/- from his colleague Subburaj of Sattur, Mettamalai for which, the said Subburaj had taken signed unfilled 9 cheques and 2 promissory notes as security for the said loan, that the said Subburaj had already filed a cheque dishonour complaint and the same was pending in C.C.No.49 of 2015, on the file of the Court of the Judicial Magistrate, Sattur, that the said Subburaj set up his close relative Alagarsamy – complainant herein and by misusing one cheque issued to him, filed the present case, that the accused never borrowed any amount nor issued any cheque to the complainant and that the complainant was not having necessary wherewithal to lend such a huge amount as loan to the accused.

14. As rightly contended by the learned Counsel for the complainant, it is evident from the cross-examination evidence of P.W.1 and P.W.2 and the evidence of D.W.1 that the accused has admitted that Ex.P.1 cheque was belonging to him and also the signature found therein. But according to him, 9 blank signed cheque were issued to Subburaj as a security at the time of taking loan from him. It is pertinent to mention that the complainant as P.W.1 has given evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonour of cheque, issuance of statutory notice and the failure of the accused to pay the amount within the stipulated time. P.W.2 has also given evidence reiterating the version

of the complainant and deposed about that he witnessed the loan transaction and the issuance of cheque by the accused to the complainant.

15. Very recently, the Hon'ble Supreme Court in ***Sanjabij Tari Vs. Kishore S.Borcar*** reported in ***2025 Live Law SC 952*** has observed that once execution of cheque is admitted, presumptions under Sections 118 and 139 of the Negotiable Instruments Act arise and the relevant passage is extracted hereunder:

> *"15. In the present case, the cheque in question has admittedly been signed by the Respondent No.1-Accused . This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused."*

16. On considering the evidence of P.W.1 and P.W.2 and also the stand of the accused with regard to Ex.P.1 cheque and the signature found therein, this Court has no hesitation to draw a presumptions under Sections 118 and 139 of the Negotiable Instruments Act.

17. In ***Sanjabij's case*** referred above, the Hon'ble Supreme Court had taken judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the Negotiable Instruments Act and are treating the proceedings as another civil recovery proceedings and the relevant passage is extracted hereunder:

> *"This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged."*

18. In the case on hand, as already pointed out, the accused claimed that the signed blank cheques were given to Subburaj as security and not to the complainant. It is not in dispute that the said Subburaj had already filed a cheque dishonour case against the accused in C.C.NO.49 of 2015 and the same was pending on the file of the Judicial Magistrate, Sattur. In an attempt to prove that the accused had obtained loan only from his colleague Subburaj by giving

9 signed blank cheques and two promissory notes, exhibited the copy of the complaint filed in C.C.No.49 of 2015 and the copies of the depositions of the complainant – Subburaj and his witness Jothi Muppidathi as D.1 to D.3 respectively.

19. The learned Counsel for the complainant would mainly contend that Exs.D.2 and D.3 are the depositions of living persons, who deposed in some other case before the some other Court and such depositions cannot be admitted in evidence as the same has no legal sanctity, that the depositions can be used for contradicting the evidence of the deponents when examined in subsequent proceedings and that the depositions of a party or witness in the earlier proceedings can only be marked in a subsequent proceedings through the same party or witness and not through the party or witness of the present proceedings and that the learned trial Judge, without considering the above objections, considered the depositions under Exs.D.2 and D.3, which is legally unsustainable.

20. No doubt, the learned trial Judge did not specifically discuss Exs.D.2 and D.3., but likely relied on them to raise some doubts about the prosecution's case.

21. The learned Counsel for the complainant would rely on the decision of this Court in ***M.Srinivasan alias M.S.Vasan Vs. V.Sivakumar*** reported in ***2018 SCC Online Mad.13821***, wherein a learned Judge has observed that as per Section 33 of the Evidence Act, deposition of living person given in another proceedings cannot be marked in subsequent proceedings.

22. In the case of ***Vasanthi and others Vs. Silambana Gounder (died) and another in C.R.P.(PD)No.136 of 2009***, relied on by the learned Counsel for the complainant, a learned Judge of this Court has held that the course adopted by the trial Judge in marking the deposition of the petitioner in an earlier criminal proceedings has no sanction of law and the relevant paragraph is extracted hereunder:

> *"10. The dispute in the present matter relates to a will. It was the case of the respondent that in a previous criminal proceeding the first revision petitioner has admitted the execution of will which was denied subsequently in her statement. Therefore, it was only to contradict the evidence of the first petitioner, the respondent proposed to use her evidence given earlier in the criminal proceeding. However, the fact remains that the first petitioner was not examined as a witness. Even before examining her as a witness on the side of the petitioners/defendants the respondent has taken steps to mark her deposition as exhibit by recalling P.W.1. The proper course would be to cross-examine the first petitioner on the basis of her previous statement given in a*

judicial proceeding and to cite her attention to the relevant portion of her evidence. It is always possible for the parties to put such questions even in the form of question and answer. Therefore, I am of the view that the course adopted by the learned trial Judge in marking the deposition of the petitioner in an earlier criminal proceeding has no sanction of law. Therefore the order impugned in this Civil Revision Petition is liable to be set aside."

23. This Court in ***Kuppusamy Vs. Selvathandavam @ Thandava Mudaliar and others*** reported in ***2011(4) CTC 64***, has held that the deposition of a witness in an earlier suit can be marked in a subsequent suit only through same witness and not through any other person or witness.

24. It is not the case of the accused that the said Subburaj and his witness Jothi Muppidathi are not alive. Hence, marking of depositions of the said Subburaj and Jothi Muppidathi through the accused D.W.1 is unknown to the Evidence law. Moreover, they are not parties to the present proceedings. The only course open to the accused was to mark the contradictions if any between the evidence given in the earlier proceedings and their subsequent statements and that too while examining them in the subsequent proceedings. Considering the above, the marking of the entire depositions of the said Subburaj and Jothi

Muppidathi and that too through D.W.1 cannot be sustained and the same cannot be relied on for any purpose.

25. As already pointed out, P.W.1 has admitted that the complainant in C.C.No.49 of 2015, Subburaj is related to him. During cross-examination, P.W.1 denied the defence of the accused that the cheque issued to the said Subburaj was misused and the present complaint came to be filed and that the accused never borrowed any amount nor issued any cheque to the complainant. Moreover, P.W.1 felt ignorance about the case in C.C.No.49 of 2015 filed by the said Subburaj against the accused. The accused while giving evidence before the trial Court, for the first time has taken a stand that the dispute between her and Subburaj was settled at Lok Adalat and the accused had agreed to pay Rs.4,75,000/- towards full and final settlement for which the said Subburaj accepting the proposal, had agreed to withdraw the case filed by him and also the case filed by Alagarsamy and that though the accused had paid Rs.4,75,000/- to the said Subbiah on 04.10.2017, Alagarsamy with an evil intention to extract more amount failed to withdraw the present case. It is pertinent to mention that such defence was not taken while P.W.1 was cross-examined.

26. The learned Counsel for the accused would submit that the said Subburaj accepting the settlement arrived has agreed to withdraw both the cases,

but he filed a petition under Section 257 Cr.P.C., only in C.C.No.49 of 2015 and on that basis, the said case was dismissed as withdrawn, but he has not taken any steps to withdraw the present case filed through the complainant-Alagarsamy. Even according to the learned Counsel for the accused, the case in C.C.No.49 of 2015, by allowing the petition under Section 257 Cr.P.C., was ordered to be dismissed as withdrawn by the Court of the Judicial Magistrate No.II, Sattur on 22,10.2019. But in the present case, the learned Magistrate pronounced the judgment of acquittal on 17.10.2019.

27. As rightly contended by the learned Counsel for the complainant, even according to the accused, after passing of the judgment in the present case, the case in C.C.No.49 of 2015 filed by Subburaj recording the alleged settlement between the parties therein, was dismissed as withdrawn. As rightly contended by the learned Counsel for the complainant, the accused has not produced any iota of evidence to show that the settlement between Subburaj and the accused was arrived with respect to both the cases including the present case and that the said Subburaj had agreed to withdraw the present case also. Moreover, the accused has not produced any evidence to show that the said Subburaj had taken 9 signed blank cheques and 2 promissory notes from him. It is not the case of the accused that since one of the cheques was misused and the same was utilised

by the present complainant in filing the case, she has taken police action or any other legal action.

28. The learned trial Judge raised some doubts over the prosecution case, taking note of the answers elicited during cross-examination of P.W.1. No doubt P.W.1, in cross-examination has admitted that he had acquaintance with the accused through his advocate Haribalakrishnan while answering a specific question as to how the accused was known to him. But the learned trial Judge has commented that the complainant has not stated the particulars of the case for which the accused visited the Advocate Haribalakrishnan, that the complainant also failed to aver that the accused was known to him only through his Advocate and that the complainant has not produced any material to show, for what purpose the accused visited the office of the Advocate Haribalakrishnan or the case for which he visited that office. P.W.1 in his complaint as well as in his evidence consistently stated that himself and they were family friends and he knew the accused for more than 5 years.

29. As rightly contended by the learned Counsel for the complainant, the complainant cannot be expected to aver that were elicited during cross-examination. The learned trial Judge has also commented that P.W.2 is an interested witness. P.W.2 in cross-examination has fairly admitted that he does

not know the accused and where she was working and what she was doing, but in chief examination as well as in cross-examination, he has stated that when he went to the place of P.W.1 for ploughing, the accused came to the house of the complainant and borrowed the loan by issuing the cheque. In the impugned judgment, it is not known as to how the learned Magistrate has come to a finding that P.W.2 has given interested testimony in favour of the complainant. Moreover, he has also commented that the complainant has not stated as to the place where the amount was given to the accused and that P.W.2 was available at that time. As rightly contended by the learned Counsel for the complainant, when a specific question was put to P.W.1 as to who had accompanied the accused at the time of borrowal, he replied that no one has accompanied the accused, but P.W.2 was with him. The learned trial Judge has pointed out a contradiction that the complainant in cross-examination has admitted that though Subburaj was related to him, he was not on talking terms due to the property disputes, but Subburaj in his evidence given in C.C.No.49 of 2015, has admitted that Alagarsamy was related to him and was on talking terms till that date. No doubt, P.W.1 in his cross-examination has stated so, but in Ex.D.2 – deposition of Subburaj, he has only admitted that Alagarsamy is related to him and never stated that he was on talking terms till that date.

30. As rightly contended by the learned Counsel for the complainant, it is not known as to how the trial Judge has found such a contradiction. Moreover, the trial Judge has come to a decision that the present complaint came to be filed on the basis of one of the nine cheques given to Subburaj. But there is absolutely no evidence for coming to such a conclusion. The evidence of P.W.1 and P.W.2 regarding loan transaction and issuance of the cheque, despite cross-examination, remained unshaken and nothing was elicited by the accused in support of her defence.

31. The accused has also taken a stand that the complainant lacked means to advance the loan. However, the burden of proof lies with the accused to show the complainant's lack of financial capacity. Under Section 139, the law presumes the cheque was issued for a legally enforceable debt, and it's up to the accused to rebut this presumption.

32. The Hon'ble Supreme Court in ***Ashok Singh Vs. State of Uttar Pradesh and another*** reported in ***2025 Live Law SC 383***, has specifically held that the onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. It is also necessary to refer

the decision of the Hon'ble Supreme Court in ***Tedhi Singh vs Narayan Dass Mahant,*** reported in ***(2022) 6 SCC 735*** where it was held that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity, that the proceedings under Section 138 of the NI Act is not a civil suit and at the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.

33. In the present case also, despite the receipt of statutory notice, the accused has not sent any reply and the burden is only upon the accused to prove that the complainant had no financial capacity to lend a loan. As rightly contended by the learned Counsel for the complainant, the said burden remains with the accused to rebut the presumption of a legally enforceable debt, which she failed to do.

34. Considering the above, this Court has no other option but to hold that the accused has miserably failed to rebut the presumptions raised under Sections 119 and 139 of the Negotiable Instruments Act in favour of the complainant. The learned trial Judge, in the absence of any evidence and without any basis, by raising some doubts by itself, has come to an erroneous decision that the accused

has rebutted the presumptions. Hence, the impugned judgment of acquittal is liable to be set aside and the same is set aside. Consequently, this Court concludes that the accused is found guilty for the offence under Section 138 of the Negotiable Instruments Act.

35. Now turning to the punishment to be awarded, the Hon'ble Supreme Court in ***M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta*** reported in **(2017)3 MWN (Crl) DCC 161 SC**, has observed that the offence under Section 138 of the Negotiable Instruments Act related to a civil wrong and the same was a regulatory offence and that the object was described as punitive as well as compensatory. It is very much clear that the intention of the provision is not only to punish the accused, but at the same time, the aggrieved party is to be compensated.

36. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of Rs. 10,00,000 (twice the cheque amount) within a period of two months from the date of receipt of copy of this judgment, in default, to undergo simple imprisonment for 6 months. Upon payment, the trial court shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

37. The Criminal Appeal is accordingly allowed.

27.11.2025

Index : Yes/No

Internet : Yes/No

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To

1. The Judicial Magistrate Court No.II, Sivakasi.

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

K.MURALI SHANKAR, J.

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PRE-DELIVERY JUDGMENT MADE IN

CRL.A(MD).No.762 of 2022

27.11.2025