



CRL.A(MD).No. 753 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 15.10.2025

Delivered on : 28.11.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 753 of 2022

G.Sivasubramaniayn

: Appellant

Vs.

K.Parthasarathi @ K.P.Sarathi

: Respondent

Prayer : This Criminal Appeal is filed under Section 372 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Sivakasi in C.C.No.241 of 2014, dated 02.04.2018.

For Appellant : Mr.Lakshmi Gopinathan

For Respondents : Ms.Karthika,
for Mr.R.Venkatesan.

JUDGMENT

This Criminal Appeal is directed against the judgment made in C.C.No.241 of 2014, dated 02.04.2018 on the file of the Court of the Judicial Magistrate No.I, Sivakasi, in acquitting the respondent/accused for the offence under Section 138 of Negotiable Instruments Act.



CRL.A(MD).No. 753 of 2022

WEB COPY

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

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

4.The complainant's case : The complainant having good acquittance with the accused used to advance loans to him. The complainant, who was possessing Mahendra Scorpio vehicle bearing Registration No.TN-20-Q-0718 belonging to his father-in-law, agreed to sell it to the accused and the accused agreed to settle the amount of Rs.2,50,000/- due to Srithandapani Finance and to pay Rs.2,00,000/- to the complainant. The accused, for paying the amount of Rs.2 lakhs, issued two cheques, one bearing No.000101 dated 22.03.2014 for Rs.10,000/- and other bearing No.000108, dated 27.03.2014 for Rs.1,90,000/- drawn on Karur Vysya Bank. The accused had taken the vehicle for making some alterations and gave it to Srikumaran Motors at Sattur Road, Sivakasi. The accused informed the complainant that since the bank financial year was ending, requested to



CRL.A(MD).No. 753 of 2022

present the cheque on 10.04.2014 and promised that the cheque would be honored. The complainant believing the words of the accused, presented the cheque for collection through his Bank of Baroda, Sivakasi, but the cheque was returned dishonored as 'funds insufficient'. The complainant sent a legal notice, dated 25.04.2014, demanding the amount covered by the cheque of the accused for his residential as well as office address and having received the both notices, the accused sent a reply notice with false and untenable allegations. Since the accused has not paid the amount within the stipulated period, the complainant was constrained to file the above complaint for the alleged offence under Sections 138 r/w 142 of 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 C.C.No.241 of 2014 for the offence under Section 138 of 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 of Cr.P.C., on free of cost. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.



CRL.A(MD).No. 753 of 2022

WEB COPY

6. During trial, the complainant examined himself as P.W.1 and exhibited 7 documents as Ex.P.1 to Ex.P.7. The accused adduced neither oral nor documentary evidence.

7.The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment, dated 02.04.2018 holding that the complainant has not proved the offence under Section 138 of Negotiable Instruments Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) of 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.241 of 2014, dated 02.04.2014 on the file of the learned Judicial Magistrate, Sivakasi, is liable to be set aside ? is the point for consideration.

9.Before entering into further discussion, it is necessary to refer Section 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption.



WEB COPY “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. It is the specific case of the complainant that the complainant agreed to sell the Mahindra Scorpio vehicle bearing Registration No.TN-20-Q-0718 to the accused for a sum of Rs.4,50,000/- and the accused agreed to settle the amount of Rs.2,50,000/- due to Srithandapandi finance with whom the vehicle was pledged and to pay the remaining amount of Rs.2 lakhs to the complainant, that when the complainant demanded the balance amount, the accused issued two cheques one dated 22.03.2014 for Rs.10,000/- and the other dated 27.03.2014 for Rs.1,90,000/- under Ex.P.1 and Ex.P.2 respectively; that when the said cheques were presented for collection as stated by the accused through his Bank viz., Bank of Baroda, Sivakasi



CRL.A(MD).No. 753 of 2022

Branch, the cheques were returned dishonored for want of sufficient funds in the bank account of the accused vide Bankers' memo (Ex.P.3); that the complainant sent a legal notice, dated 25.04.2014 under Ex.P.4 to the accused directing him to pay the amount covered by the cheques, that the accused having received the legal notice under Ex.P.5 and Ex.P.6 post acknowledgement card, sent a reply notice dated 14.05.2014 under Ex.P.7 with false and untenable allegations and that since the accused has not complied with the notice demand, he was forced to file the above complaint.

11. The defence of the accused, as evident from his reply notice, dated 14.05.2014 under Ex.P.7 is that a complaint under Section 138 of Negotiable Instruments Act was filed against him in S.T.C.No. 209 of 2013 on the file of the Fast Track Court, Palani and the complainant being an Advocate appeared for the accused in the above case in S.T.C.No.209 of 2013; that the cheque amount involved in S.T.C.No.209 of 2013 was Rs.1,55,000/- and the matter was settled between the complainant therein and the accused and in pursuance of the same, the accused issued a cheque for Rs.1,90,000/ for setting the case and another cheque for Rs.10,000/- towards the advocate fees for the complainant; that the complainant had misused both the cheques and filed the above false complaint; that the accused never borrowed any



CRL.A(MD).No. 753 of 2022

amount nor issued any cheque in favour the complainant, that the accused never agreed to purchase any car from the complainant and that therefore, the liability alleged in the complaint cannot be considered as legally enforceable debt or liability.

12. As rightly contended by the learned counsel for the complainant, it is evident from Ex.P.7/reply notice that the accused has specifically admitted that Ex.P.1 and Ex.P.2 cheques were belonging to him and also the signatures found therein. But according to the accused, both the cheques were issued for settling the case in S.T.C.No.209 of 2013 pending on the file of the Fast Track Court, Palani.

13. It is pertinent to note that the complainant as P.W.1 gave evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of the cheques therefor, dishonor of cheques, issuance of statutory notice and the failure of the accused to pay the amount within stipulated time.

14. On considering the evidence of P.W.1 and also the admission of the accused with respect to Ex.P.1 and Ex.P.2 cheques and the signatures



CRL.A(MD).No. 753 of 2022

found therein, this Court has no other option, but to draw a presumption under Section 118 and 139 of Negotiable Instruments Act. At this juncture, it is necessary to refer the decision of Hon'ble Supreme Court in **Krishna Janardhan Bhat Vs. Dattatraya G.Hegde** reported in (2008)4 SCC 54, relied on by the learned counsel for the accused, wherein the Hon'ble Apex Court has observed as follows :

32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on records. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.

33. In Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal [(1999) 3 SCC 35] interpreting Section 118(a) of the Act, this Court opined:

“Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-



existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt .”

34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard



of proof so as to prove a defence on the part of an accused is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.

35.A statutory presumption has an evidentiary value. The question as to whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In a case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration.

15. The learned counsel for the accused would also rely on the another decision of the Hon'ble Supreme Court in the case of ***M.S.Narayana Menon Alias Mani Vs. State of Kerala and another*** reported in ***(2006) 6 SCC 39*** and the relevant passages are extracted hereunder :

30.Applying the said definitions of 'proved' or 'disproved' to principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes



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that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

...

32. The standard of proof evidently is pre-ponderance of probabilities. Inference of pre-ponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances upon which he relies.

16. No doubt, as rightly contended by the learned counsel for the accused, the presumption available under Sections 118 and 139 of Negotiable Instruments Act are always rebuttable in nature. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, 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 probability.



CRL.A(MD).No. 753 of 2022

17.As rightly pointed out by the learned counsel for the complainant, the learned trial Judge, without considering the evidence available on records, has erroneously commented that the complainant has not produced any evidence to show that the Scorpio vehicle referred by him was belonging to his father-in-law and the said vehicle was pledged with Dhandapani finance for Rs.2,50,000/- and that the complainant has failed to examine his father-in-law to prove the said aspects. But the learned trial Judge, while narrating the arguments of the accused side, has specifically observed that they have admitted that the Mahendra Scorpio vehicle bearing Registration No.TN-20-Q-0718 was owned by the complainant's father-in-law, but the same was in possession of the complainant and that the said vehicle was pledged with Dhandapani Finance and obtained loan of Rs.2,50,000/-.

18. As rightly contended by the learned counsel for the complainant, since the accused has himself admitted the above aspects, there is absolutely no need or necessity for the complainant to prove the above aspects. It is admitted by both the sides that the owner of the Ellammal Paper Board Company filed a complaint under Section 138 of Negotiable Instruments Act in S.T.C.No.209 of 2013 against the accused and the same is pending on the



CRL.A(MD).No. 753 of 2022

file of the Fast Track Court, Palani. It is not in dispute that the cheque involved in S.T.C.No.209 of 2013 is for Rs.1,55,000/- and that the complainant has previously appeared as the counsel for the accused in the said case.

19. As already pointed out, the main defence of the accused is that the complainant in S.T.C.No.209 of 2013 had entered into a compromise in the presence of the present complainant and the accused had agreed to pay Rs. 1,90,000/- towards final settlement and also agreed to pay Rs.10,000/- as advocate fee for the complainant and accordingly, Ex.P.1 and Ex.P.2 came to be issued.

20. The learned counsel for the complainant would submit that the case in S.T.C.No.209 of 2013 is still pending and that the accused has not taken any steps to settle the said case till now.

21. Even assuming the complainant misused the cheques meant for settling STC No.209 of 2013, the accused has not explained why the case remains unsettled for over 11 years. As rightly contended by the learned counsel for the complainant, there is no evidence of a compromise between



CRL.A(MD).No. 753 of 2022

the complainant and accused in STC No.209 of 2013 agreeing on Rs.1,90,000/- payment.

22. The learned counsel for the complainant would submit that the cheque in S.T.C.No.209 of 2013, for Rs.1,55,000/-, was issued in the year 2013 and Ex.P.2 cheque for Rs.1,90,000/- was issued during March 2014 within a period of six months and no one will accept that a sum of Rs. 35,000/- was paid as interest for a sum of Rs.1,55,000/- for a period of six months.

23. Admittedly, the accused has not furnished any particulars about the interest agreed between himself and the complainant in S.T.C.No.209 of 2013 and as to how and what basis Rs.35,000/- was agreed to be paid in addition to the cheque amount of Rs.1,55,000/-.

24. Crucially, as rightly contended by the learned counsel appearing for the complainant, the accused's claim that the disputed cheque was issued to settle STC No.209 of 2013 is hard to believe, as it's unlikely someone would accept cheques during a pending cheque dishonour case.



CRL.A(MD).No. 753 of 2022

WEB COPY

25. According to the complainant, the accused after issuing two cheques towards sale price for the Car, had taken the vehicle and gave it to Sri Kumaran Motors, Sivakasi for making some alterations. The learned counsel for the complainant would submit that since the accused has not paid the charges claimed by the Sri Kumaran Motors, they have also filed a case in C.C.No.245 of 2014 and the same is pending on the file of the same Court.

26. During cross examination, P.W.1 would say that the accused had taken the vehicle and made alterations and that since he has not paid the amount demanded by the mechanic, he filed a complaint and the same is pending in C.C.No.245 of 2014 on the file of the same Court. As rightly pointed out by the learned counsel for the complainant, the accused while cross examining P.W.1, never disputed the above facts nor any suggestion was made disputing the same.

27. As rightly pointed out by the learned counsel for the complainant, the learned trial Judge, without any evidence, mechanically accepted the contention of the accused. Even assuming that the cheques were issued



CRL.A(MD).No. 753 of 2022

towards sale price of this scorpio car, the learned trial Judge has commented that the complainant being an Advocate could have approached the police station and the arguments in this regard by the defence deserved to be accepted.

28. As rightly contended by the learned counsel for the complainant, the trial Court's assumption that the complainant, being an advocate, could have approached the police is unfounded. The defence failed to extract anything substantial from P.W.1's cross-examination to support their case.

29. Upon reviewing the evidence, particularly P.W.1's cross-examination, it's evident the accused failed to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. The learned trial Judge overlooked crucial aspects, leading to an erroneous acquittal. Therefore, the impugned judgment, is set aside, and the accused is held guilty under Section 138 of the Negotiable Instruments Act.

30. 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 (CrI) DCC 161



CRL.A(MD).No. 753 of 2022

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.

31. Taking into account the nature of the offence and the cheque amount, the accused is sentenced to pay a fine of Rs. 4,00,000 (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.

32. The Criminal Appeal is accordingly allowed.

28.11.2025

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CRL.A(MD).No. 753 of 2022

K.MURALI SHANKAR,J.

das

To

- 1.The Judicial Magistrate No.I, Sivakasi.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
CRL.A(MD).No. 753 of 2022

28.11.2025