



Crl.A(MD)No.169 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.07.2025

CORAM :

THE HONOURABLE DR. JUSTICE R.N.MANJULA

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M.Ramaiah	...	Appellant/Complainant
	Vs.	
P.Ilangovan	...	Respondent/Accused

PRAYER: Criminal Appeal filed under Section 419 BNSS, to call for the entire records pertaining to the judgment delivered by the learned Judicial Magistrate, No.I, Fast Track Court (Magisterial Level), Madurai in S.T.C.No.822 of 2016 dated 26.11.2024 and set aside same.

For Appellant : Mr.Chellapandian
for Mr.C.Ramesh

For Respondent : Mr.C.M.Arumugam
for Mr.R.Rajmohan

JUDGMENT

This Criminal Appeal has been preferred by the complainant against the judgment of acquittal dated 26.11.2024 passed by the learned Judicial Magistrate, No.I, Fast Track Court (Magisterial Level), Madurai, in S.T.C.No.822 of 2016.



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2. The brief case of the complainant are as follows:

(i) The complainant and the accused are known to each other for several years as they are residing in the same area; The complainant is a farmer and used to have liquid cash in his hands; Knowing this well, the accused approached the complainant in the year 2014 and asked hand loan of Rs.14 lakhs for the construction of upstairs of his house situated at Srinagar, Madurai; He has stated that it is only a stop gap arrangement , because he had already arranged a bank loan. Believing the words of the accused, the complainant gave Rs.14 lakhs in cash in the month of May 2014; The accused had finished the construction of upstairs of his house in the year 2015; Thereafter, the accused did not repay the loan amount as agreed and was telling reasons over reasons; In the month of July 2016, the accused informed the complainant that he had got bank loan and issued three cheques with the following values:

a) Cheque No.384801, dated 13.07.2016 for a sum of Rs. 4 lakhs IOB;

b) Cheque No.384802, dated 13.07.2016 for a sum of Rs.5 lakhs IOB, District Court Building, Melur Road, Madurai;



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c) Cheque No.384803, dated 13.07.2016, for a sum of Rs.5 lakhs IOB District Court Building, Melur Road, Madurai.

(ii) The above cheques were issued towards discharge of the loan amount availed by him; The complainant presented the cheques through Corporation Bank, Kulamangalam Branch, Madurai, on 03.08.2016; All the three cheques were dishonored with an endorsement "Funds Insufficient" on the same day by the Indian Overseas Bank, District Court Branch, Madurai; After complying the legal mandates as per the Negotiable Instruments Act, the complainant filed the private complaint under Section 138 of Negotiable Instruments Act.

3. After conclusion of the trial, the accused was found not guilty and was acquitted. Aggrieved over that, the complainant filed the present appeal.

4. The learned counsel for the appellant/complainant submitted that despite the cheques were admitted to be executed by the accused, the



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trial court shifted the burden upon the shoulders of the complainant and he failed to rebut the initial presumption, which has been drawn in favour of the accused. He further submitted that the respondent has not proved that he had made payment of Rs.2 lakhs as alleged by him.

5. The learned counsel for the respondent/accused submitted that the burden of rebuttal on the part of the accused has been discharged successfully and the court has also appreciated the same. As the complainant has not proved that the cheques were supported by consideration, the accused was rightly acquitted. The judgment of the trial court does not warrant interference by this Court.

6. I gave anxious consideration to the submissions made on either side and carefully perused the materials available on record.

7. During the relevant point of time, as alleged by the complainant, the accused did not put up any construction and the three unsigned cheques of the accused were given only when he availed loan of Rs.2



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lakhs from the complainant. The cheques were given for the purpose of keeping them as security. In fact, the accused had repaid the loan to the complainant through bank transfer from the bank account of one Lingeshwari, who had purchased the family property in the name of the daughter of the accused. Thereafter, the complainant did not give back the cheques and misused it for the purpose of this case.

8. The fact that the accused has issued cheques and the cheques contained the signature of the accused is not denied. So, without any doubt, the initial presumption on considerations of the cheques would be drawn in favour of the complainant under Section 139 of the Negotiable Instruments Act. While the accused claims that he had rebutted the initial presumption successfully, the complainant claims that there was no rebuttal and the trial court has not appreciated the evidence properly. It was the categorical submission of the complainant that he had lent a loan of Rs.14 lakhs to the accused for the construction of upstairs of his house situated in Srinagar, Madurai. The complainant examined himself as P.W.1 and the branch manager of the Bank, who had returned the cheque,



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was examined as P.W.2. The documents produced by the complainant has been marked as Ex.P.1 to Ex.P.10. The accused has also examined six witnesses as D.W.1 to D.W.6 on his side and marked thirteen documents as Ex.D.1 to Ex.D.13.

9. Therefore, the exhaustive exercise undertaken by the respondent/accused appears that he did not intend to pick up faults on the side of the complainant as a rebuttal circumstance. Instead, the accused attempted to give direct evidence. Before proceeding to assess the fairness of the appreciation of the evidence on the side of the accused for the purpose of rebuttal, it needs to be seen what kind of standard of proof is needed to rebut the initial presumption.

10. The position of law on this aspect has been well settled by the Hon'ble Supreme Court in *Basalingappa vs. Mudibasappa* reported in **2019(1) MWN (Cr.) DCC 145(SC)** in which references have been made to various judgments of the Hon'ble Supreme Court. It is held in the judgment that the standard of proof required for the rebuttal is



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preponderance of probability. So, there is no strict liability fastened on the accused to disprove the initial presumption beyond reasonable doubt. All that the accused need to do by way of rebuttal is to show that preponderance of probability is either available or tilted in his favour. The principles summarized by the Hon'ble Supreme Court in **Basalingappa's** case cited *supra*, in this regard, is extracted herein under:

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

(i) 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.

(ii) 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.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or 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.



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(iv) 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.

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

11. Now, it has to be scrutinized from the judgment of the trial court that whether the court was really satisfied on the materials that there was preponderance of probability in favour of the accused. The learned counsel for the appellant submitted that the accused did not even choose to send any reply notice to the statutory notice sent by the complainant immediately after the impugned cheques were dishonored. The Hon'ble Supreme Court has already held that the courts should not be unduly influenced by the non-sending of the reply notice to deny the cause of action of cheque or legal liability, in case, there are evidences produced before the court to disprove the initial presumption. As stated already, the accused examined six witnesses and marked eighteen documents on his side. Even during proceedings under Section 313(b) Cr.P.C, the accused gave a statement alleging that he had availed a hand loan of Rs.2 lakhs from the complainant and for which he had given



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three unfilled but signed cheques as security to the complainant. He further stated that the said Rs.2 lakhs has been settled to the complainant through bank transaction by the purchaser of the family properties from the daughter of the accused.

12. One Sankarasubramani, the Branch Manager of the State Bank of India, CTO Complex, was examined as D.W.1 and he has stated in his evidence that a sum of Rs.5,83,000/- has been given as house loan to the accused for building the first floor of his house in the year 2006. The address of the house of the accused also tallies with the details given by D.W.1. The Bank Manager asserted that the loans could be discharged from stage to stage and only after each stage is completed, at the last stage, the last portion of the loan has been discharged on 16.11.2016 and after completing the building, completion letter was issued to the accused, which has been marked as Ex.D.5. Apart from Ex.D.5, the loan account details and consent letter for giving housing loan have been marked as Ex.D.3 and Ex.D.4. The housing loan was repaid in



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installments and the loan has been completely repaid on 27.11.2015 by paying a sum of Rs.95,542/-.

13. The complainant stated that he gave a hand loan of Rs.14 lakhs during April 2014 and it was assured by the accused that he would make arrangement with the bank and once the bank loan is sanctioned he would repay it to the complainant. The evidence of P.W.1 on this aspect has been rebutted through the evidence of D.W.1, where the accused has proved that the housing loan for the first floor of his house was sanctioned as early as in the year 2006 and the construction itself has been completed in the same year and for which the promoters also issued completion letter, Ex.D.5 dated 14.11.2006. D.W.1 was not cross-examined by the complainant.

14. In fact, D.W.2 is the Official from the Madurai Corporation Zone-II, who had assessed the house tax for the respondent's house. The house tax was assessed from the year 2011. The cross-examination of



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D.W.2 does not demolish the evidence adduced by D.W.2 in his examination in chief.

15. The other witness D.W.4 has stated in his evidence about the electricity connection given to the house of the accused and the related assessment. His evidence along with the evidence of D.W.1 and D.W.2 also supportive to the fact pleaded by the accused that the loan could not have been given to the accused for the purpose of constructing house.

16. D.W.2 also produced the house tax receipts of the house of the accused and they have been marked as Ex.D.8 and Ex.D.9. D.W.3- Surendra Kumar, has produced the sale deed dated 10.03.2017 executed by one Shenbagam to Lingeshwari. The seller Shenbagam's father's name is mentioned as P.Ilangovan. The above witness has been examined to show that the daughter of the accused sold the property on 10.03.2017 in favour of one Lingeshwari.



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18. Having got an amount of Rs.2 lakhs from Lingeswari, P.W.1 denied in his evidence that he did know who was Lingeswari. If an unknown person transferred money to the complainant, can it be presumed that the person, known to the accused, whom he indicated as the one who discharged the loan of Rs. 2 lakhs, had availed the loan from the complainant?



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19. During the cross-examination also P.W.1 has evasively stated that a sum of Rs.2 lakhs could have been credited in his account on 29.03.2016. But thereafter he accepted that the bank transaction is from Karur Vaisya Bank account of one Lingeswari and Venkateswaran and the entries to that effect in the bank passbook of D.W.1 has been marked as Ex.D.2.

20. The above positive evidence and also the admission of the complainant himself would not only probabilize but also prove the contention of the accused that he did not avail any loan from the complainant for the purpose of putting up any construction and a sum of Rs.2 lakhs has been paid by one Lingeswari on behalf of him to the complainant towards discharge of the loan availed by the accused. When the accused had given preponderance to satisfaction of the court about his defence, then, the burden would naturally shift upon the complainant. And the complainant has to prove that the cheques are supported by consideration as alleged by him, irrespective of the rebuttal proof. The complainant did not have any supporting documents to show that lending



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of hefty amount of Rs.14 lakhs to the accused and that the impugned cheques have been issued only towards the discharge of the loan. In other words, the complainant has got the burden to prove that the cheques have been issued only towards discharge of a legal liability of the accused. As per the wordings of Section 139 of the Negotiable Instruments Act, initial presumption would travel along with the complainant only until the contrary is proved. As reiterated, the standard to prove the contrary need not be a strict liability for the accused, it can be just a preponderance of probability.

21. The learned counsel for the appellant submitted that just because the purpose has been stated mistakenly, that cannot deprive the complainant from claiming that the cheques have been issued for legal liability. According to the complainant, the contradiction in the alleged purpose for the loan could have been a minor one and that should not affect the case of the complainant.



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22. It may be true that a mistake in narrating the purpose for which the loan was issued cannot defeat the entire transaction, provided, the liability is established. However, it differs from case to case depending on its own facts. In the instant case also, had the complainant proved that the cheques are supported by consideration, the contradiction in narrating the purpose would not be viewed seriously. But the complainant could not show any record to substantiate the fact that he had lent Rs.14 lakhs during April 2014 as alleged by him.

23. If a small sum is alleged to have been given by the complainant, it can be presumed it would be kept for sundry expenses or to meet out any urgent needs. When hefty sum of Rs.14 lakhs is alleged to have been lent by the complainant, then, it demands some practical background supporting the transaction. If the complainant has not stated any other purpose other than the construction of the house as the purpose and neither had he got a sum of Rs.2 lakhs from the accused, though he lent a huge sum. In such unrealistic context, it is acceptable to look into the financial wherewithal of the complainant also to test the veracity of



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his submissions. The complainant has stated that he is an agriculturist by profession and it was not his contention that he was getting some other income other than the agricultural income. During the cross examination of P.W.1, he has stated that there is no other transaction except the alleged transaction between himself and the accused. So it is difficult to believe that for a person, who had no previous money transaction with the complainant, is capable of getting huge sum of Rs.14 lakhs as a hand loan, more particularly, when the said transaction has not been done through bank. During the cross-examination, P.W.1 had stated that he will produce his income tax proof as he is a financially sound person and had sufficient income to lend huge loan of Rs.14 lakhs as hand loan to the accused. Is it believable that any reasonable person would lend such a large sum of money without any supporting document or witness to the transaction, relying solely on the cheques issued by the opponent? As the rebuttal proof required for the accused can be shown not only from his direct evidence but could also be built up from the inadequacies and infirmities of the complainant's case.



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24. Once the benefit of initial presumption as per Section 139 of Negotiable Instruments Act is broken by the accused, the complainant has to rebuild a reliable case for him. If the complainant fails to do so, then, the rebuttal proof neutralizes the initial presumption by stopping it from culminating into a conclusive proof. In the absence of conclusive proof, it would be simply claimed by the complainant that the court has not appreciated the principles of initial presumption under Section 139 of the Negotiable Instruments Act in a proper perspective.

25. The holistic reading of the judgment of acquittal by the trial court would show that the court is clear about not only the principles of initial presumption, but also the shifting of burden to prove and had rightly held that the complainant had not proved the impugned cheques are issued to enforce legal liability. When the fundamental records are not proved, then, the trial Judge has no other option to record the finding that the accused is not guilty and to acquit him.



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26. Even though both sides have produced several citations, those citations either repeatedly assert the principles already settled or they are not required for the purpose of this case.

27. In fine,

(i) This Criminal Appeal filed is dismissed;

(ii) The judgment passed in S.T.C.No.822 of 2016 dated 26.11.2024 on the file of the Judicial Magistrate No.I, Fast Track Court (Magisterial Level), Madurai, is confirmed.

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Index : Yes/No
Internet : Yes/No
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To,

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

2.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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Dr. R.N.MANJULA, J

CM

Judgment made in
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