IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2026
PRONOUNCED ON : 09.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.501 of 2017

P.S.K.Finance & Chit Funds Ltd.,
By Managing Director K.Sivakumar,
Age 39 Years,
S/o.T.K.Kuppusamy,
No.395, Bazaar Street,
Salem-1. ... Appellant

Vs.

Rajendren A1 Died
1.Balan,
Aged 55 Years,
S/o.Kannusamy Pillai,
No.38-H, Berkit Street,
T.Nagar, Chennai-17. ... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the judgment dated 18.08.2016 in C.C.No.723 of 2004 passed by the learned Judicial Magistrate No.I, Salem.

For Appellant	:	Mr.Muruganantham for Mr.A.Kandasami
For Respondent	:	Mr.Mohamed Saifullah Legal Aid Counsel

JUDGMENT

The appellant as complainant filed a private complaint against the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.723 of 2004 before the learned Judicial Magistrate No.I, Salem (trial Court). The trial Court by judgment dated 18.08.2016 dismissed the complaint and acquitted the respondent. Challenging the same, the present Criminal Appeal is filed.

2.Despite service of notice to the respondent and even after his name printed in the cause list, no representation for the respondent either in person or by any counsel. Hence, this Court by order dated 07.01.2026 appointed Mr.Mohamed Saifullah as Legal Aid Counsel for the respondent.

3.Gist of the case is that the appellant *viz.,* M/s.P.S.K.Finance & Chit Funds Limited is represented by the Managing Director Mr.K.Sivakumar. Initially, the complaint was filed by Managing Director Mr.Kuppusamy through his power agent Mr.Ramasamy against the respondent and one Rajendren and the power of attorney document in Ex.P1. After demise of Mr.Kuppusamy on 27.10.2024, his son Mr.K.Sivakumar took over as Managing Director and executed a power of attorney favouring Mr.Ramasamy on 20.12.2004 (Ex.P2). Later the said Mr.Ramasamy passed away and Mr.Sivakumar executed a power of attorney favouring Mr.Venkatachalam, Manager-cum-Cashier to prosecute the complaint. In the meanwhile, A1 Rajendren passed away, hence, the case proceeded against the respondent alone. The case is that Rajendren was a Subscriber to the chits run by the appellant Company namely Chit Group E19 (Chit No.13) and Chit Group EA12 (Chit No.24) each for Rs.1,00,000/- for a period of 50 and 25 months respectively. Rajendren was a successful bidder for the two chits, at that time, the balance amount to be paid to the appellant was Rs.68,425/- for Chit Group E19 and Rs.98,231/- for Chit Group EA12 with interest of Rs.344/-, in total Rs.1,67,000/-. The respondent as a Guarantor executed a Demand Promissory Note and Letter of Guarantee. In discharge of the said liability, the respondent as Guarantor issued a cheque bearing No.023911 (Ex.P12) dated 10.02.2004 drawn on City Union Bank, T.Nagar, Chennai for a sum of Rs.1,67,000/-. When the cheque (Ex.P12) presented by the appellant in Lakshmi Vilas Bank, Salem Town Branch, the same returned with an endorsement “Insufficient Funds” on 13.02.2004. Hence, statutory notice (Ex.P14) to Rajendren and to respondent caused on 23.02.2004. Notice sent to Rajendren returned with an endorsement Left on 26.02.2004. The respondent received the notice on 28.02.2004, but neither settled the cheque amount nor sent any reply.

Following the procedures, complaint filed before the trial Court. During trial, the appellant examined the power of attorney as PW1 and marked Exs.P1 to P16. The respondent examined one witness and marked no document. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondent.

4.Learned counsel for the appellant submitted that the trial Court completely misread the evidence and provisions of law and held that the Managing Director Mr.Sivakumar of the appellant Company though executed a power of attorney (Ex.P3) favouring his Manager and Cashier Mr.Venkatachalam, but no resolution produced. It is to be seen that the respondent not questioned and challenged the power of attorney (Ex.P3). Further the trial Court held that the cheque (Ex.P12) dated 10.12.2004 pertains to a time barred debt failing to consider that as per the Section 25(3) of Contract Act, once the liability is acknowledged and a cheque is issued in discharge of such liability, the limitation period stands extended, and the debt cannot be construed as time-barred. As per Section 118 of N.I.Act, the date found in the cheque is to be considered as the date of issuance of cheque. Since the cheque is dated 10.12.2004, there is no time barred debt.

5.He further submitted that the respondent issued the cheque (Ex.P12) in the name of M/s.Dharmasastha Travels, of which, he is the Proprietor, hence, there is no bar to proceed against the respondent in his individual name. Though the respondent took a defence that the dues to the chit repaid and the security cheque misused, but no document produced to substantiate the same. The appellant to prove the case marked Exs.P1 to P16. The appellant confirmed that he joined the company in 1970 as Cashier and later became Manager-cum-Cashier, hence, he was well aware of the transaction between the appellant and the respondent. The appellant neither disputed the Demand Promissory Note nor the Guarantee of Undertaking executed by the respondent and only taken a technical plea and the trial Court gave undue importance without considering the facts of the case. The appellant proved the statutory presumption under Sections 118 & 139 of N.I.Act and the respondent not probablized any defence. In support of his submissions, learned counsel for the appellant relied on the following decisions:

(i)Relied on the decision of the Hon'ble Apex Court in ***Punjab National Bank and others v. Surendra Prasad Sinha*** reported in ***1993 Supp (1) SCC 499*** for the point that when the Principal debtor failed to repay the debt, the outstanding debt in terms of contract can be claimed and the rules of limitation are not meant to destroy the rights of the party. Further Section 3 of the

Limitation Act, 1963 only bars the remedy but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation.

(ii)Relied on the decision of the Hon'ble Apex Court in ***National Insurance Co. Ltd., v. Seema Malhotra and others*** reported in ***(2001) 3 SCC 151*** for the point that the drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a Bill of Exchange drawn on a specified banker. A Bill of Exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

(iii)Further placed reliance on the decision of the Bombay High Court in ***Dinesh B.Chokshi v. Rahul Vasudeo Bhatt and another*** reported in ***2013 (2) Mh.L.J.130*** wherein the Hon'ble Division Bench following the decision of ***National Insurance Co. Ltd.,*** (cited supra) held that a cheque issued for discharge of a debt which is barred by law of limitation is itself a promise within the meaning of Sub-section (3) of Section 25 of the Contract Act. A promise is an agreement and such promise which is covered by Section

25(3) of the Contract Act becomes enforceable contract provided that the same is not otherwise void under the Contract Act.

(iv)Further placed reliance on the decision of Kerala High Court in ***Dr.K.K.Ramakrishnan v. Dr.K.K.Parthasaradhy & another*** reported in ***2003 SCC OnLine Ker 420*** wherein it had held that when a person issues a cheque, he acknowledges his liability to pay. In the event of the cheque being dishonoured on account of insufficiency of funds, he will not be entitled to claim that the debt had become barred by limitation and that the liability was not thus legally enforceable and he would be liable for penalty in case the charge is proved against him.

(v)Relied on the decision of the High Court of Punjab and Haryana in ***Sultan Singh v. Tej Partap in CRM-M No.39414 of 2021*** wherein it had held a debt which has become time barred can be enforced in case the ingredients of Section 25(3) of the Contract Act are fulfilled.

6.Making the above submissions and relying upon the decision of the Hon'ble Apex Court, learned counsel for the appellant prays for setting aside the judgment of acquittal.

7.The Legal Aid Counsel for the respondent submitted that admitted position is that the appellant Company is a Finance & Chit Fund registered Company, its Managing Director Mr.Sivakumar executed a power of attorney (Ex.P3) in favour of Mr.Venkatachalam, Manager and Cashier to prosecute the complaint against the respondent and Rajendren (died). When the appellant was questioned as to whether any resolution authorizing the Managing Director to execute the power of attorney produced, he admitted no such resolution produced. Learned counsel further submitted that the Memorandum of Association and Article of Association are public documents which establish that no power is granted to Managing Director in his individual capacity to execute power of attorney in favour of any person to prosecute a complaint. In the absence of any such specific authority vested with Managing Director, then the power has to be derived only by way of resolution. In this case, admittedly, no resolution produced to show the Managing Director authorized to execute power of attorney favouring the appellant. Hence, Ex.P3 is not a legally sustainable document.

8.He further submitted that Ex.P4 is the Demand Promissory Note dated 06.11.1997 executed by Rajendren, Subscriber to the Chit. The respondent's guarantee letter dated 06.11.1997 is Ex.P5. Both Rajendren and the respondent executed surety bond dated 06.11.1997 is Ex.P6. Exs.P7, P8 & P9 are the Demand Promissory Note, Guarantee Document and Asset Valuation Document for other chit. It is confirmed that the first chit was closed on 06.11.1997 and the second chit was closed on 08.01.1998. In this case, the cheque is of the year 2004, which is six years after the execution of the Demand Promissory Note and Undertaking Guarantee, hence, it is beyond the period of three years limitation. He further submitted that the appellant unale to produce any communication or undertaking of the respondent acknowledging the loan and executing the cheque. In this case, no such extension of guarantee exists. In view of the same, the cheque (Ex.P12) pertains to a time barred debt and unenforceable.

9.He further submitted that the trial Court by a well reasoned judgment framed five questions and answered the same referring to the evidence which are as follows:

(i)the first question is that the locus standi of the complainant to prosecute the complaint by way of a power of attorney. The trial Court held that, in the absence of authorization through a company resolution, the power of attorney had no authority to proceed with the complaint.

(ii)the second question is that whether the Managing Director can further delegate the power to power agent i.e., complainant. This was answered in negative.

(iii)the third question is with regard to time barred debt. The trial Court referring to the Chit Group E19 concluded on 03.09.2000 and the Chit Group EA12 concluded on 29.07.1999, held that the cheque (Ex.P12) is of the year 2004, is time barred.

(iv)the fourth question is that the cheque (Ex.P12) was drawn by the Proprietor of M/s.Sree Dharma Sastha Travels. The trial Court held that there is nothing to show that Rajendren and the respondent are Partners and in discharge of that liability, the cheque (Ex.P12) was issued.

(v)the fifth question is that the appellant not produced the company by-laws to charge beyond the chit amount along with the interest.

10.In support of his submissions, learned counsel for the respondent relied on the following decisions.

(i)Relied on the decision of the Hon'ble Apex Court in ***State Bank of Travancore v. M/s.Kingston Computers(I) P. Ltd.*** reported in ***2011 (5) MLJ 842*** wherein it had held that in the absence of producing the resolution passed by the Board of Directors of a Company giving authority to the person to prosecute the complaint, even if that person holds a high position in the company, the power of attorney is nothing more than a scrap of paper.

(ii)Relied on the decision of the Hon'ble Apex Court in ***A.C.Narayanan v. State of Maharashtra*** reported in ***2013 (4) MLJ (Criminal) 213*** wherein it had held that filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent. The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. The power of attorney holder must have witnessed the transaction as an agent of the payee/holder. The complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint. The general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. In this case, the Managing Director had no such clause in the Articles of Association for sub delegation.

(iii)Relied on the decision in ***Dilip Hariramani v. Bank of Baroda*** reported in ***2022 SCC OnLine SC 579*** wherein the Hon'ble Apex Court had laid down the principles that the provisions of Section 141 imposes vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm.

(iv)Relied on the decision in ***M/s.Sonali Power Equipments Pvt. Ltd. v. Chairman, Maharashtra State Electricity Board, Mumbai & Ors.*** reported in ***2025 LiveLaw (SC) 721*** wherein the Hon'ble Apex Court held that the parties may also enter into a contract for repayment of a time-barred debt, which is recognised under Section 25(3) of the Contract Act. In such cases the Limitation Act does not apply and time barred cases are excluded. In this case, there is no contract for repayment of time barred debt.

11.Making the above submissions and relying upon the above decisions, learned counsel for the respondent prays for dismissal of the appeal and to confirm the judgment of the trial Court.

12.Considering the submissions and on perusal of the materials, it is seen that in this case, the appellant is a power of attorney of M/s.P.S.K.Finance & Chit Funds Limited and prosecuted the case based on the power of attorney (Ex.P3) executed by the Managing Director. When the appellant was questioned as to whether any resolution authorizing the Managing Director to execute the power of attorney produced, he admitted no such resolution produced. In the absence of a resolution authorizing sub-delegation, the power of attorney (Ex.P3) executed for that purpose is not valid. Hence, in this case, Ex.P3 is of no significance. In this case, the power of attorney (Ex.P3) is the foundational document by which the case prosecuted by the authorised representative against the respondent. When the foundation falls, the entire structure bound to fall. In view of the above, the entire case falls. Added to it, Exs.P4 to P9 are the Demand Promissory Notes, Guarantee Letter and undertaking given by Rajendren and the respondent. All these documents are of the year 1997 and 1998. The trial Court on the evidence and materials found that Chit Group E19 concluded on 03.09.2000 and Chit Group EA12 concluded on 29.07.1999, hence, the transaction gets over on those dates. In this case, admittedly, the cheque (Ex.P12) is dated 10.02.2004 which is beyond the period of limitation of three years.

13.The appellant neither in his evidence nor produced any document to show that there was any undertaking or contract for repayment of the time barred debt, which is recognized under Section 25(3) of Contract Act. In the absence of the same, it cannot be construed that the cheque was issued for discharge of the debt barred by law of limitation and it cannot be treated as extended.

14.Thus, the trial Court by a well reasoned judgment framed five questions and answered the same referring to the evidence. Out of the five questions framed, except question No.4, all other questions rightly answered. In any event, the trial Court rightly came to the conclusion that the appellant failed to prove the case legally beyond all reasonable doubt and the respondent probablized his defence. Hence, this Court is not inclined to interfere with the impugned judgment of the trial Court.

15.In the result, this Criminal Appeal stands dismissed and the judgment of acquittal dated 18.08.2016 in C.C.No.723 of 2004 passed by the learned Judicial Magistrate No.I, Salem is affirmed.

16.This Court places its appreciation to the Legal Aid Counsel for thorough preparation and vehemently put for the case of the respondent. The Legal Services Authority, Madras High Court is directed to pay entitled remuneration to the learned counsel Mr.Mohamed Saifullah.

09.04.2026

Speaking order/Non-speaking order
Index: Yes/No
Neutral Citation: Yes/No

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To

The Judicial Magistrate No.I,
Salem.

<u>Copy To</u>:

The Legal Services Authority,
Madras High Court.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
Crl.A.No.501 of 2017

09.04.2026