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Crl.A.No.83 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.83 of 2022

Kandasamy

... Appellant

Vs.

P.Shanmugam

... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the order of acquittal dated 23.11.2021 made in Crl.A.No.165 of 2019 on the file of the III Additional District Judge, Salem reversing the judgment of conviction dated 25.06.2019 passed in CC.No.225 of 2009 on the file of the Judicial Magistrate No.II, Sankari by allowing this criminal appeal.

For Appellant : Mr.S.Ranjith Kumaran
for Mr.R.Prabakar

For Respondent : Mr.C.Anju Kavar
(legal aid counsel)

ORDER

This criminal appeal has been filed praying to set aside the order of acquittal dated 23.11.2021 made in Crl.A.No.165 of 2019 on the file of the III Additional District Judge, Salem reversing the judgment of



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conviction dated 25.06.2019 passed in CC.No.225 of 2009 on the file of the Judicial Magistrate No.II, Sankari.

2. The respondent is the accused in the complaint lodged by the appellant on the allegation that they are brothers. A Bharat Gas Agency was granted to the accused by the Government in the year of 2004 on the ground that he is physically handicapped. The accused is running the same under the name and style of 'Bharani Bharat Gas agency' at Perundurai. The accused did not have sufficient amount to start the above business. Therefore, he requested the complainant to share an amount by investment in the said business and it was also accepted by the complainant. Thereafter, the accused entered into an agreement with the complainant on 08.11.2004. According to the complainant, he had given a sum of Rs.10 lakhs to the accused for investment in the said business with agreement to take 12% interest for the said amount. As the business was going in good profit, the complainant requested the accused to repay the amount paid to him for investment with mutual consent that profit accrued so far may be used for the above said business and interest can be settled later. Thereafter, the accused issued a cheque dated 13.07.2009 for a sum of Rs.10 lakhs in favour of the complainant towards the discharge of the above said liability. The complainant presented the same for

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collection, but it was returned as 'fund insufficient' on 22.07.2009.

Thereafter, the complainant issued a notice dated 28.07.2009 to the accused calling upon him to pay the cheque amount. The accused received the above notice on 29.07.2009 and gave a reply dated 06.08.2009 by stating false allegations. Hence, the appellant filed complaint for the offence under Section 138 of NI Act.

3. In order to prove the complaint, the appellant examined himself as PW1 and marked Ex.P1 to Ex.P9. On the side of the respondent, he was examined as DW1 and marked Ex.D1 to Ex.D20. On perusal of oral and documentary evidence, the trial court found the respondent guilty for the offence punishable under Section 138 of NI Act and sentenced him to under one year simple imprisonment with fine of Rs.5,000/-, in default of which to undergo three months simple imprisonment. Aggrieved by the same, the respondent filed appeal and the III Additional District Judge, Salem reversed the judgment of the trial court and acquitted the respondent of the charge, against which the present criminal appeal has been filed by the complainant.

4. The learned counsel appearing for the appellant submitted that the appellate court acquitted the accused ignoring the decision of the

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trial court which recorded the specific finding that the signature and the issuance of the cheque were admitted and nowhere it was disputed and hence the presumption under Sections 118 and 139 of N.I Act is available to the complainant and the same has not been rebutted by the accused in the manner by plausible evidence. He further submitted that the appellate court did not consider that the accused suffered a civil court decree based on the very same cheque and he did not file any appeal challenging the same. He further submitted that the appellate court has completely ignored the legal position that the proprietorship concern is not having any separate legal entity apart from the proprietor and both proprietor and proprietorship concern are one and the same in the eye of law. Further, the appellate court failed to note that the proprietorship does not come under the ambit of Section 141 of N.I. Act requiring the proprietor as well as proprietorship concern to be made as parties separately in the proceedings.

5. The case of the respondent is that since the respondent is physically challenged, to assist him, he formally appointed the complainant as Manager, being his own brother. The son of the complainant also used to assist his father in the business. On 21.02.2009, the accused met with an accident and thereafter he was taking treatment

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as in-patient at Ganga Hospital, Coimbatore. At that time, the complainant and his son were looking after the entire business transaction of the gas agency. The above two persons only collected all the money on behalf of the agency and remitted the same into bank to the Head Office of Bharat Petroleum. On 06.03.2009, the accused was discharged from hospital and even thereafter, he could not do his work as usual and he was bed ridden. A five-month period was taken for a complete bed recovery and he used to go only by a wheel chair. When the accused was bedridden, in order to send money to the Head Office as stated earlier, the accused gave a signed blank cheque and handed it over to the complainant for the above said purpose. In this situation, on 02.03.2009, the accused issued four cheques - Nos.207408, 207409, 207410 and 207411 without filling up the same and after signing it on good faith that the complainant is the own brother. But, they were filled by the complainant in order to cheat the accused with the help of his friends. The complainant filed four cases by using the above cheques by himself and through his friends. Further, it is false to state that the accused suffered a lot without sufficient money to start the business and the complainant invested Rs.10 lakhs into the business on the basis of partnership deed entered into on 08.12.2004. It is also false to state that the accused issued the present cheque for Rs.10 lakhs on 13.07.2009 for discharging the



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alleged investment stated to be made by the complainant into the business. Further, the complainant did not invest any money into the gas agency business run by the accused. Immediately after the accused suspected the malicious intention of the complainant, he insisted to furnish the agency accounts details. However, the complainant failed to give proper accounts for the same and therefore the accused asked the complainant not to come to the agency in the year of July 2009. At that time, the complainant threatened the accused since the accused did not permit him into the business. The further case of the respondent is that the respondent/accused preferred a criminal complaint, for which a case was registered in Crime.No.902/2009 before Perunthurai Police Station. Further, the complainant took away several gas cylinders. The accused preferred another complaint in this aspect also. The complainant is a partner in the name of his wife at Balamurugan Finance at Chittoor. The complainant, using the partners of the above said Finance and his relatives filed case against the accused towards the cheque issued by the accused without filling up the same. Hence, there is no money transaction between the accused and the complainant.

6. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.



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7. On perusal of the records, it is revealed that though the complaint is very much maintainable as against the accused, who is the Proprietor of the Bharat Gas Agency, and the complainant failed to discharge his initial burden as contemplated under Section 138 of NI Act. Though the respondent admitted his signature in the cheque, it cannot be presumed that the cheque was issued for a debt. The appellant failed to prove that the amount was invested by him in Bharat Gas Agency. Further, the appellant and the respondent are brothers. The respondent is a physically challenged person. Under the quota of physical challenged person, the respondent was allotted with Bharat Petroleum Gas Agency, in which the complainant was appointed as Manager. They also entered into a partnership deed between them, and the same was marked as Ex.P7. On perusal of Ex.P7, it clearly reveals that the appellant did not even invest any single paise on his behalf as investment in the partnership firm. Further, he categorically admitted that he was appointed as Manager to look after the gas agency, that too for monthly salary of Rs.5,000/-. Further, admittedly the respondent met with an accident and he was bedridden. At that juncture, the complainant only looked after the gas agency and he used to obtain signed cheques from the respondent to manage the gas agency. Therefore, there were disputes between them and utilising the said circumstances, proceedings under Section 138 of NI Act

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was initiated as against the respondent as if he invested a sum of Rs.10,00,000/- in the gas agency and in order to repay the said amount, the respondent issued cheque. Further, the other cheques were also misused by the appellant herein by filing complaints in the name of his friends. Therefore, the appellant failed to discharge his initial burden that the cheque was issued for any legally enforceable debt. Though the appellate court acquitted the respondent on the ground that the appellant failed to add the proprietary concern as party, it cannot be sustained since the complaint is very much maintainable even as against individual capacity of the proprietary concern. However, the complainant failed to prove that the cheque was issued for any legally enforceable debt.

8. In view of the above discussion, this Court finds no infirmity or illegality in the impugned orders. Accordingly, this criminal appeal is dismissed.

04.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

- 1.The learned III Additional District Judge, Salem
- 2.The Judicial Magistrate No.II, Sankari



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G.K.ILANTHIRAIYAN, J.

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