IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2026
PRONOUNCED ON : 07.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.447 of 2021

G.E.Nelsan Nesakumar (Died),
S/o.T.Gilpert Ebinesar,
No.4, Gupta Nagar,
Ganthi Nagar Post,
Udumalpet, Tiruppur District.

1.Mrs.Irene Geetha (aged about 64 years),
W/o.Late Nelson Nesakumar,
WB/176, No.4, Gupta Layout, Udumalaipet Village,
Post: Gandhinagar, Sub-Dist: Udumalpet,
Tiruppur District.

2.Mr.Andrew Nelson (aged about 33 years),
S/o.Late Nelson Nesakumar,
No.F28/2A, Srree Daksha Kshipta,
Sowripalayam to Nanjundapuram Road,
Near Don Bosco School,
Vellalore, Coimbatore District.

3.Mr.Danny Nelson (aged about 30 years),
S/o.Late Nelson Nesakumar,
WB/176, No.4, Gupta Layout, Udumalaipet Village,
Post: Gandhinagar,
Sub-Dist: Udumalpet, Tiruppur District. ... Appellants

[Sole Appellant died and his legal heirs are substituted as Appellants 1 to 3 as per order dated 28.07.2025 in Crl.A.No.447 of 2021.]

Vs.

P.Gopalakrishnan,
S/o.G.T.K.Parthasarathy,
M/s.Parthasarathy Spinning Mills,
No.30, Cooperative Housing Colony,
Perks Complex Main Road,
Coimbatore-15. ... Respondent

PRAYER: Criminal Appeal is filed under Section 378 r/w 4 of Code of Criminal Procedure, to set aside the order of acquittal dated 11.08.2018 passed by the learned Judicial Magistrate-I, Udumalpet in C.C.No.242 of 2016.

For Appellants : Mr.A.Immanuel

For Respondent : Mr.S.Ramachandran

JUDGMENT

The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.393 of 2009 before the learned Judicial Magistrate No.III, Coimbatore against the respondent. Later it was transferred to the file of the Judicial Magistrate Court No.I, Udumalpet (trial Court) and renumbered as C.C.No.242 of 2016. The trial Court by judgment dated 11.08.2018 dismissed the complaint and acquitted the respondent. Challenging the same, the appellant preferred appeal before the learned District and Sessions Judge, Tiruppur along with a petition for condonation of delay in Crl.M.P.No.1966 of 2018, but the same was dismissed by order dated 14.12.2020 for non-prosecution and consequently, the appeal was not taken on file. Thereafter, the appeal got transferred to the file of this Court pursuant to the order of this Court dated 03.02.2020 in Crl.R.C.Nos.494 & 536 of 2019. Subsequently, the appeal presented before this Court along with a petition for condonation of delay in Crl.M.P.No.4706 of 2021 in Crl.A.SR.No.7486 of 2021 and the delay condoned on 28.06.2021. Thereafter, leave petition in Crl.M.P.No.11297 of 2021 in Crl.A.SR.No.7486 of 2021 was filed, and by order dated 21.09.2021, leave was granted and the present appeal was taken on file.

2.During the pendency of the present appeal, the appellant *viz.,* G.E.Nelsan Nesakumar died, hence, his legal heirs *viz.,* wife and two sons substituted as appellants 1 to 3 by order dated 28.07.2025.

3.Gist of the case is that the respondent was running a spinning mill in the name of M/s.K.Parthasarathy Spinning Mills and the appellant *viz.,* G.E.Nelsan Nesakumar (Died) worked as Superintendent in the spinning mill for some time and was doing yarn conversion for the respondent between 2000 and 2001, raised bills for a sum of Rs.12.25/- lakhs. Since the respondent's company became sick during February 2003, M/s.Soundaraja Finance, attempted to remove the machineries for non-payment of the loan. At that time, the respondent borrowed Rs.3,00,000/- as hand loan from the appellant on the promise to repay with the rate of interest of Rs.12% P.A. and also to repay the due amount for the conversion work done by the appellant and issued post dated cheque. The respondent made part payment of the dues from March 2003 to January 2007. On every part payment by cash, the respondent used to collect the previous cheque from the appellant and issue fresh cheque. Since the respondent was not having cheques with him, at that point of time the respondent issued a cheque of his wife Mrs.Vinitha Gopalakrishnan drawn on Standard Chartered Bank in cheque No.042652 dated 09.10.2009 for a sum of Rs.10,61,000/-. This cheque got dishonoured, after dishonour of this cheque, the respondent paid Rs.65,000/- and issued the cheque No.058674 dated 22.10.2007 (Ex.P1) drawn on Central Bank of India, Udumalpet Branch for a sum of Rs.9,96,000/-. On instruction from the respondent, when the cheque (Ex.P1) presented for collection by the appellant on 29.10.2007, the same returned for the reason "Funds Insufficient". Thereafter, the statutory notice (Ex.P3) issued on 27.11.2007 which was received by the respondent on 30.11.2007 and a reply notice (Ex.P5) sent with false and untenable allegations. Ignoring the same, the complaint under Section 138 of Negotiable Instruments Act, 1881 filed before the trial Court. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P13. On the side of the defence, no witness examined but one document marked as Ex.D1. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondent.

4.Learned counsel for the appellant submitted that the appellant was running a business in the name of M/s.Sri Venkateshwara Conversions and to prove the business transaction with the respondent, the appellant marked carbon copies of invoices and challans Exs.P7 & P8. M/s.Sri Venkateshwara Conversions is a partnership firm, and one Rajagopal and the appellant signed Exs.P7 & P8. He further submitted that since the cheque (Ex.P1) issued in the individual name of the appellant, the complaint filed by the appellant in his individual capacity. The finding of the trial Court that in the invoices (Ex.P7 series) there is no signature of the respondent, is against the normal business practice. In fact, the copy of the invoices (Ex.P7 series) maintained by both parties. It was the respondent's responsibility to take the finished goods from the appellant after completion of the job work, and all business dealings were conducted with the knowledge, consent and advice of the respondent. The trial

Court failed to consider that M/s.Venkateshwara Conversions initially a partnership firm, became a proprietorship concern after all partners retired from the firm in 2000. In this case, the respondent neither examined himself nor examined any witness to give explanation with respect to hand loan of Rs.3,00,000/- during the month of February 2003 and M/s.Soundaraja Finance attempted to remove the machineries from M/s.Parthasarathy Spinning Mills. The appellant initially working as Superintendent in the respondent's spinning mill, a letter doing conversion work on job work basis during the relevant time.

5.Learned counsel further submitted that the respondent defence is that appellant was in-charge of business and acting as Cashier and had stolen the respondent's cheques, but no materials produced to prove the same except for a suggestion. In this case, the issuance of cheque (Ex.P1) and the signature not disputed, hence, the statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881 comes into play. The trial Court failed to consider the documents produced by the appellant to prove that on 16.10.2007, there was an outstanding payment of Rs.9,96,000/- by the respondent. The appellant established his case by way of documentary and oral evidence which the trial Court not considered. The respondent failed to let in any evidence before the trial Court in support of his defence. The trial Court failed to consider that though the respondent previously lodged a complaint regarding the theft of Standard Chartered Bank cheque of his wife and disputed the signature therein, he has not raised any such objection or defence with respect to the cheque in the present case. The trial Court gave undue importance to the case in Crime No.58 of 2007 dated 23.10.2007 on the file of the District Crime Branch, Coimbatore. The appellant was managing the accounts and banking affairs of M/s.Saradhamani Spinning Mills Private Limited and M/s.Parthasarathy Spinning Mills, both were functioning in the same address. Though the respondent claimed that he settled the entire dues to the appellant, but not produced any material before the trial Court. On the other hand, the appellant produced Exs.P1 to P13 to prove the cheque was issued in discharge of legally enforceable debt.

6.He further submitted that when the respondent was silent with regard to the signature found in the cheque (Ex.P1), it is confirmed that the appellant discharged his initial burden, thereafter, the burden shifted to the respondent to establish that the cheque was not issued in discharge of any legally enforceable debt or liability. Such rebuttal must be made by way of cogent evidence and materials, and cannot be done merely by filing written submissions. The appellant marked the undertaking letter given by M/s.Parthasarathy Spinning Mills to the Superintendent of Central Excise (Ex.P6) to confirm that the job work entrusted to the appellant and the appellant undertook to pay the amount due towards cotton yarn. Ex.P9 is the cheque of the respondent's wife drawn on Standard Chartered Bank and Ex.P11 is the letter given by the appellant to the District Crime Branch regarding handing over of the cheque of the respondent's wife. Thus, the appellant produced all relevant documents including the invoices and challans (Exs.P7 & P8) and SMS details with regard to conversion of materials and the dues thereof to be paid by the respondent. Thus the appellant proved the case beyond all reasonable doubt. But the trial Court not considered the same and dismissed the complaint, is not proper. Hence, the judgment of the trial Court is liable to be set aside. 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 ***Rajesh Jain v. Ajay Singh*** reported in ***(2023) 10 SCC 148*** for the point that firstly, there is a presumption is in favour of the complainant when the drawer of the cheque admits its issuance/execution of the cheque and secondly, where the complainant proves that the cheque was issued/executed in his favour, the burden under Section 139 of the Negotiable Instruments Act, shifts to the accused.

(ii)Further placed reliance on the decision in the case of ***K.Ramachandran v. Gopi and another*** reported in ***2025 SCC OnLine Ker 3767*** for the point that as per Section 7 of the N.I.Act, a person named in the instrument is the one to whom, or to whose order, the money is by the instrument directed to be paid. In this case, the appellant is the person named in the instrument.

7.Learned counsel for the respondent submitted that the complaint itself is not maintainable since it was filed beyond the prescribed period of limitation. In this case, after return of the cheque, the statutory notice (Ex.P3) issued on 27.11.2007, which was served on the respondent on 30.11.2007, is admitted by the respondent. But the complaint filed on 21.01.2008 is beyond 45 days. It is further admitted that no condone delay petition filed, hence, taking cognizance of the complaint itself is bad in law, on that score alone, the complaint ought to be dismissed by the trial Court. He further submitted that the appellant admits that in the invoices (Ex.P7 series), there is no signature of acknowledgement by the respondent. The appellant further admits that he has not produced any document to show he had wherewithal to give loan to the respondent and not provided any details, when the amount paid and in what manner it was paid. The appellant further admits that he had no knowledge and nothing to do with M/s.Soundaraja Mills, except that mill was functioning in Dindigul. He further admits that he is unable to produce any materials to show that the machineries of M/s.Parthasarathy Mills were attempted to be seized and taken away. The appellant admits that Police complaint given by the respondent on 18.10.2007 to the District Crime Branch, Coimbatore with regard to theft of Standard Chartered Bank cheque of the respondent's wife. When there was dispute and a complaint lodged against the appellant, it is improbable that the cheque dated 29.10.2007 could have been issued by the respondent. The FIR in Crime No.58 of 2007 marked as Ex.D1. The appellant failed to produce any Income Tax return to show that the respondent is a Creditor. The appellant admits that Ex.P8 does not confirm the amount due. It was specifically suggested to the appellant that when he was employed as Superintendent in M/s.Parthasarathy Mills, he stole the cheques of the respondent. In the reply notice (Ex.P5), the respondent denied the liability and stated about criminal case pending against the appellant in Crime No.58 of 2007 on the file of the District Crime Branch, Coimbatore. Thus, the consistent defence of the respondent is that the appellant had stolen the cheque of the respondent when he was employed as Superintendent in M/s.Parthasarathy Mills and filled up and misused the cheque and that there is no legally enforceable debt or liability.

8.He further submitted that the appellant during trial, after closure of the evidence, filed 391 Cr.P.C petition to summon the closure report of the District Crime Branch, Coimbatore in Crime No.58 of 2007. The specific complaint made against the appellant is for stealing of two cheques of Standard Chartered Bank and the appellant misusing and signing the same in the name of the respondent's wife. During investigation, the cheque sent to Forensic Laboratory and the Handwriting Expert confirms that the signature found in the cheque is not that of the respondent's wife. But the case in Crime No.58 of 2007 closed as Mistake of Fact on the ground that the appellant had taken the portion of M/s.Parthasarathy Spinning Mills on lease and was running the mill, further the forged cheque was not honoured and there was no misappropriation and cheating. The appellant stealthily removed the cheque and forged the signature of the respondent's wife is proved. In view of the respondent having lodged the complaint to the District Crime Branch on 18.10.2007, it is impossible that the cheque (Ex.P1) could have been issued on 22.10.2007 by the respondent. Considering all these aspects, the trial Court rightly found that the respondent probablized his defence and the appellant failed to prove the case beyond all reasonable doubt and dismissed the complaint. Hence, the judgment of the trial Court is a well reasoned one, needs no interference. 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 ***John K.John v. Tom Varghese and another*** reported in ***(2007) 12 SCC 714*** for the point that the Court was entitled to take notice of the conduct of the parties and when the complainant not approached the Court with clean hands and when his conduct was not that of a prudent man, in such situation then it is to be taken the respondent has discharged his burden of proof cast on him under Section 139 of N.I Act. This principle followed by this Court in ***V.Ezhilvanan v. R.Pugazhendhi*** reported in ***2023(2)MWN (Cr.) DCC 20 (Mad.)***.

9.Considering the submissions and on perusal of the materials, it is seen that on the respondent's complaint, dated 18.10.2007 against the appellant, a case in Crime No.58 of 2007 (Ex.D1) for offence under Sections 409, 420 & 471 IPC registered. The complaint is that the respondent and his wife

Mrs.Vinitha Gopalakrishnan are Directors of M/s.Saradhamani Spinning Mills Private Limited and M/s.Parthasarathy Spinning Mills and the Administrative Office of both the concern at the same premises. The Account Department was handling the bank accounts of concerns and the family members of the concerns. The respondent and his wife entrusted the banking transaction to the Accounts Department and the appellant was working as Technical Supervisor in M/s.Parthasarathy Spinning Mills from 1993 to 2003, having reposed confidence in him. The appellant was dealing with all financial matters operating bank accounts of the concerns and was in custody of the cheque books. Since the respondent company suffered financial strains, it was closed in April 2003, thereafter, there was no transaction between the respondent and the appellant. The appellant terminated from the service in 2003 and all his accounts settled and got transferred his P.F. Account. The respondent thereafter shifted his residence to Coimbatore. This being so, the respondent's wife received information from Standard Chartered Bank that the cheque bearing No.042652 dated 09.10.2005 for Rs.10,61,000/- issued in the name of the appellant came for collection. On enquiry, found that the signature of the respondent's wife forged. Hence, a Police complaint lodged, investigation commenced and disputed cheque handed over to the District Crime Branch, Coimbatore, who sent it to Forensic Laboratory and the Handwriting Expert confirmed the signature of the respondent's wife is forged. This forged cheque in possession and deposited by the appellant in his account maintained in Central Bank of India is also not disputed. Thus, a forged cheque was used by the appellant is proved. But the case was closed as "Mistake of Fact" for the reason that no money paid and there was no misappropriation or cheating. The SMS messages which were produced by the appellant along with Ex.P13 confirms there were no SMS messages sent or received to the respondlent. Added to it, SMS messages not supported with 65B certificate. In this case, Ex.P1 cheque is dated 22.10.2007, hence, the foundational fact of issuance of the cheque (Ex.P1) in discharge of legally enforceable debt or liability by the respondent, is doubtful. Added to it, the appellant relied upon Ex.P7 & P8 series, the conversion charges receipt of M/s.Sri Venkateshwara Conversions. The appellant failed to produce any material to show that how he is connected with M/s.Sri Venkateshwara Conversions and the respondent not signed in any of these documents and how the amounts referred in Exs.P7 & P8 series correspond to the cheque (Ex.P1) no explanation. The respondent on receipt of statutory notice (Ex.P3) sent a reply (Ex.P5) disputing the transaction with the appellant and further specifically alleged that the appellant had stolen valuable instrument, fabricated records for illegal gain and also informed that a case was registered against him in Crime No.58 of 2007 by the District Crime

Branch, Coimbatore. In the cross examination, these facts specifically put to the appellant.

10.It is to be seen that the appellant's cross examination conducted in detail, completed, and the appellant's side evidence closed on 12.10.2010. The respondent also marked Ex.D1. Thereafter, a petition under Section 391 Cr.P.C. filed and Ex.P13 the closure report marked. This closure report has no way improves the case of the appellant. The appellant's claim in his evidence is that the respondent repaid the due amounts regularly from the year 2000 to 2007 and replaced the cheque, but not produced any materials to substantiate the same. When there was dispute and a complaint was lodged against the appellant, it is highly improbable that the cheque dated 29.10.2007 issued by the respondent in discharge of legally enforceable debt or liability becomes doubtful. Considering all these aspects, the trial Court rightly found that the appellant had not come with clean hands and failed to prove his case, on the other hand, the respondent by way of cross examination and marking Ex.D1 probablized his defence and rightly dismissed the complaint, which needs no interference.

11.In the result, this Criminal Appeal stands dismissed and the judgment of acquittal dated 11.08.2018 in C.C.No.242 of 2016 passed by the learned Judicial Magistrate No.I, Udumalpet is affirmed.

07.04.2026

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

The Judicial Magistrate No.I,
Udumalpet.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
Crl.A.No.447 of 2021

07.04.2026