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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 354 of 2022

CNR: {HCMA010401262022}

Dominic Savio

Case QR ..Appellant(s)

Vs

Nedunchezhian

..Respondent(s)

Prayer: The Criminal Appeal is filed under Section 372 Cr.P.C., to set aside the Judgment in C.C.No.42 of 2014 passed by the learned Judicial Magistrate No.1, Tindivanam, allow this appeal and pass conviction and sentence the respondent besides fine and compensation double the amount of the cheque in accordance with the NI Act.

For Appellant(s): No appearance
For Respondent(s): Mr.A.N.Rajan

JUDGMENT

The appeal challenges the Judgment passed in CC.No.42 of 2014 acquitting the respondent of the offences under Section 138 of the NI Act.

2.It is the case of the appellant that the accused, who was known to the appellant, had approached him on 20.01.2014, for a loan of Rs.8,00,000/-, for his urgent personal needs; that he had promised to return the said amount within two days; that on the same day, he had issued a cheque bearing no.11020076

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for the said sum; that the appellant presented the said cheque for collection on 22.01.2014 and the same was returned by a memo/Ext,P2; that on 10.02.2014, the appellant issued a lawyer's notice and the same was received by the respondent on 14.02.2014; and since the respondent had not made any payment, a complaint was filed under Section 138 of the NI Act.

3.Before the trial Court, the appellant examined himself as PW1 and the bank manager as PW2 and marked Exs. PW1 to PW18. The respondent examined himself as DW1 and marked Exs.D1 to D8.

4.The trial Court acquitted the respondent on the ground that the complaint filed by the appellant was premature inasmuch as the appellant had not granted 15 days time to the respondent for making the payment; that the appellant had also not established that he had the capacity to lend a sum of Rs.8,00,000/- in cash to the respondent; and therefore, the respondent had rebutted the statutory presumption.

5.The appellant had initially filed an appeal before the Principal District and Sessions Judge, Villupuram in C.A.No.354 of 2017 and pursuant to an order passed by this Court, the appeal was transferred to the file of this Court and numbered as above.

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6.On 18.07.2026, when the matter was called, the appellant was called absent. On 10.11.2026, the appellant was not ready and sought for time. Today, the appellant is not present.

7.Hence, this Court is inclined to decide the appeal based on the records and the submissions of the learned counsel for the respondent.

8.The main ground of challenge of the appellant as could be seen from the grounds of appeal is that the respondent had not denied the signature in the cheque; that the appellant had established that the cheque, when presented for collection, was returned for the reason 'funds insufficient'; and since the appellant had established the foundational facts, it was not necessary for the appellant to establish his capacity to lend a sum of Rs.8,00,000/- at the first instance. It is further the contention of the appellant that the respondent's version that the cheque was stolen has not been established and that in view of the false plea raised by the respondent, the trial Court ought not to have held that the respondent had rebutted the statutory presumption.

9. The learned counsel for the respondent would submit that the Judgment of the trial Court is justified; that the appellant had not challenged the finding that the complaint filed by him was premature; that the trial Court had rightly relied upon the Judgment of the Hon'ble Supreme Court in ***Yogendra Pratap***

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Singh Vs. Savitri Pandey and another reported in ***(2014) 10 SCC 713*** and held that the complaint is premature and hence, is not maintainable; that the trial Court had also gone into the merits of the case and held that the appellant had not proved that he had the capacity to lend a sum of Rs.8,00,000/-; and that his version that the respondent had promised to return the amount within two days is also improbable.

10.It is the specific case of the appellant that the respondent had obtained a loan on 20.01.2014 and issued a cheque on the same day promising that he would return the loan amount within two days. This version of the appellant, on the face of it, appears to be improbable. Even assuming it to be true, it is seen from the impugned Judgment that the appellant had issued the statutory notice on 10.02.2014, which was received by the respondent on 14.02.2014. The complaint was lodged immediately on 20.02.2014. The complaint has been filed before the expiry of 15 days. The Hon'ble Supreme Court in ***Yogendra Pratap Singh case*** (cited supra) has held as follows;

> *"37. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause(c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action, the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been*

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committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause(c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has eloped. ...If the period prescribed in clause(c) of the proviso to Section 38 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint u/s 138 of the NI Act."

11.Therefore, the trial Court was right in holding that the complaint which was filed prematurely was not maintainable. The trial Court had also gone into the merits of the case and held that Exs.P5 to P11, which was marked on behalf of the appellant, to prove his capacity, did not in fact prove the capacity of the appellant to lend such a huge sum by cash. The appellant had not produced any document to establish the fact that he had lent the said sum in cash. That apart, the trial Court had also held that it is unbelievable that the respondent obtained a loan and issued a cheque on the same day to be repaid in two days. Therefore, the trial Court held that the respondent had rebutted the statutory presumption. However, the appellant had failed to discharge his burden of establishing that he had lent a sum of Rs.8,00,000/- by cash to the

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respondent. Therefore, the trial Court was right in acquitting the respondent. This Court finds no reasons to interfere with the impugned Judgment.

12. It may be noted here that pending the appeal before the Sessions Judge, the appellant had filed a petition under Section 391 Cr.P.C., seeking to adduce additional evidence. However, the appellant has not shown any interest to examine himself or adduce additional evidence and as stated above his counsel has been continuously absent.

13. Hence, the Appeal is dismissed.

11-11-2026

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

TSG

To

The Judicial Magistrate No.1,
Tindivanam

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SUNDER MOHAN, J.

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