



Crl.A.No.701 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2026
PRONOUNCED ON : 26.03.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.701 of 2015

Zahir B.Irani

... Appellant

Vs.

Babu Raj

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the judgment of acquittal in C.C.No.4983 of 2010 dated 10.10.2015 passed by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-600 001 and allow the above appeal.

For Appellant : Mr.B.Balanchander for
Mr.Ashok Menon

For Respondent : Dr.V.Suresh



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JUDGMENT

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The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 against the respondent in C.C.No.4983 of 2010 before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai (trial Court) and the same was dismissed by judgment dated 10.10.2015. Challenging the same, the present criminal appeal is filed.

2.Gist of the case is that the appellant and the respondent are known to each other. The respondent approached the appellant for financial assistance to meet his urgent expenditure and borrowed a sum of Rs.50,000/-. In discharge of liability, the respondent issued a cheque (Ex.P2) No.396336 dated 06.04.2010 for Rs.50,000/- in favour of the appellant drawn on State Bank of Hyderabad, Second Line Beach, Chennai on undertaking that the cheque (Ex.P2) would be presented for collection in the last week of July 2010. As per the undertaking the cheque (Ex.P2) presented with the appellant's bank viz., Axis Bank, Anna Salai, Chennai on 30.07.2010, the same dishonoured and returned for the reason "Payment stopped by the Drawer" on 31.07.2010. Thereafter, the appellant issued a statutory notice (Ex.P4) dated 10.08.2010 which was not received by the respondent and returned on 16.08.2010 with an



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endorsement “Intimation Delivered and Unclaimed”. Following the procedures, the complaint filed before the trial Court by the power of attorney Mr.Bomman M.Irani.

3.During trial, the power of attorney Mr.Bomman M.Irani examined as PW1 and marked Exs.P1 to P5. On the side of the defence, no witness examined but marked Exs.D1 to D4. 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 failed to note the fact that the respondent not denied the cheque (Ex.P2) and his signature in it, but taken a stand the there was tenancy dispute between the appellant and the respondent and a civil case (R.C.O.P.No.452 of 2011) was filed by the appellant against the respondent in June, 2011 for default in payment of monthly rent from January 2010, hence, the question of the respondent approaching the appellant for a loan in April 2010 and thereafter issuing the cheque (Ex.P2) does not arise. He further submitted that since the civil suit filed in June 2011 and after receipt of summons from the civil Court, the cheque, which was given as security at the time of entering tenancy, filled up and projected as though the cheque (Ex.P2) issued by the respondent in



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discharge of legally enforceable liability or debt, is not proper. The trial Court holding that the respondent probablized his defence by producing Exs.D1 to D4 [(i)the petition copy in R.C.O.P.No.452 of 2011, (ii)summons from civil Court, (iii)Interlocutory Application filed by the respondent and other document], is not proper. When the respondent not denied the issuance of cheque (Ex.P2) and his signature, the statutory presumption under Sections 118 & 139 of N.I. Act comes into play. In this case, the respondent neither sent the reply notice nor entered the witness box to probablize his defence. Merely suggestions put to the appellant during cross examination cannot be taken as sufficient to establish or probablize the defence. Hence, the trial Court erred in concluding that the respondent probabilized his defence and in dismissing the complaint. In support of his submissions, learned counsel for the appellant relied on the following decisions:

(i)Placed reliance on the decision of the Hon'ble Apex Court in ***K.Bhaskaran v. Sankaran Vaidhyan Balan and another reported in AIR 1999 SC 3762*** for the point that when the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of N.I Act can be legally inferred. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability.



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(ii)Placed reliance on the decision of Andhra Pradesh High Court in

Rotakonda Raghu Naidu v. Kolla S.Prasad reported in 2004 (4) Crimes 295

for the point that once an accused admits his signature on the dishonoured cheque, the presumption under Sections 118 & 139 can be drawn.

(iii)The Hon'ble Apex Court in ***Krishna Rao v. Shankargouda reported in 2018 SCC OnLine SC 651*** referring to plethora of judgments held that the respondent to adduce the evidence to rebut the presumption but mere denial regarding existence of the debt shall not serve any purpose.

(iv)Placed reliance on the decision of the Hon'ble Apex Court in ***Bir Singh v. Mukesh Kumar reported in ABC 2019 (II) 235 SC*** for the point that the existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act.

5.Making the above submissions and relying upon the above decisions, learned counsel for the appellant prays for setting aside the judgment of trial Court.



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6.Learned counsel for the respondent strongly opposed the appellant's submissions and submitted that the respondent not obtained any loan of Rs.50,000/- from the appellant. He further submitted that the appellant's father is the owner of the property, in which, the respondent was a tenant and he was running a small tea shop therein. Since there was dispute with regard to the tenancy, the respondent filed a civil suit in O.S.No.6191 of 2010 before the civil Court and summons served on the appellant's father and they appeared before the civil Court on 13.07.2010. Getting enraged over filing of civil suit, the cheque (Ex.P2), which was given as security during the tenancy, misused, filled up and projected as though the respondent issued the cheque (Ex.P2) in repayment of loan. It is not in dispute that the respondent entered into the tenancy agreement in the year 2008 and running a small tea shop in the said premises. At the time of entering into the tenancy, a sum of Rs.2,50,000/- was paid to the appellant's husband, accepting the same, the appellant's husband executed a document, which is admitted by the appellant's husband/PW1 during the cross examination. Further filing of civil suit in O.S.No.6191 of 2010 by the respondent and the appellant's husband appearing before the civil Court is not disputed. In this case, the cheque (Ex.P2) presented for collection on 30.07.2010 which was subsequent to the appearance of the appellant's husband before the civil Court.



7.Learned counsel further submitted that it is projected that during April 2010, the loan of Rs.50,000/- obtained by the respondent. When the admitted position is that there was a tenancy dispute and default in payment of the monthly rent from January 2010, it is highly improbable that a loan can be given on the request made by the respondent during April 2010. The petition in R.C.O.P.No.452 of 2011 filed by the appellant's husband marked as Ex.D1 in which the admitted position is that from January 2010, the respondent committed default in payment of rent. Ex.D4 is the agreement dated 25.12.2009, wherein it is recorded that a sum of Rs.2,50,000/- was collected as security towards the tenancy, but, the same projected as loan in this case. In such circumstance, there is no need or necessity for the respondent to avail loan from the appellant's husband. Considering all these aspects and referring to the judgment of the Hon'ble Apex Court, the trial Court rightly dismissed the complaint. In support of his submissions, learned counsel for the respondent relied on the decision in *Dattatraya v. Sharanappa reported in (2024) 8 SCC 573* wherein the Hon'ble Apex Court following the decision of *Rangappa v. Sri Mohan reported in (2010) 11 SCC 441*, held that the test of proportionality laid down the interpretation of Section 139 of N.I. Act and it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. Further, on the facts of



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the case, the Hon'ble Apex Court considered the existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists. The stress is on the prudent man. In this case, the accused deposited Rs.2,50,000/- as advance in the name of loan which is recorded in Ex.D4 and there is tenancy dispute from January 2010. In such circumstances, taking loan in April 2010 and issuing cheque (Ex.P2) in July 2010 would defy the conduct of normal prudent man. In view of the above, the appeal to be dismissed and the trial Court acquittal to be confirmed.

8.Considering the submissions and on perusal of the materials, it is seen that in this case, the relationship between the appellant's father/power of attorney and the respondent is that of landlord tenant. The respondent entered into the tenancy in the year 2008. Ex.D4 dated 25.12.1999 confirms that a sum of Rs.2,50,000/- has been shown as loan received by the appellant's husband and there is a tenancy dispute between the appellant's father and the respondent. The respondent filed a civil suit in O.S.No.6191 of 2010 is not disputed and the summons in that case served on the appellant's husband and he entered appearance on 13.07.2010 before the civil Court, thereafter, the cheque (Ex.P2) said to have presented on 30.07.2010. In such circumstances, it is highly improbable that the respondent availed loan of Rs.50,000/- during



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April 2010, in discharge of liability, issued the cheque (Ex.P2) in July 2010.

Thus, the respondent by cross examination of the appellant's husband and production of defence exhibits (Exs.D1 to D4) probablized his defence. The trial Court by the well reasoned judgment dismissed the complaint holding that the appellant failed to prove its case beyond all reasonable doubt and the respondent probablized his defence. This Court finds no reason to interfere with the same.

9.In the result, this Criminal Appeal stands dismissed and the judgment of acquittal dated 10.10.2015 in C.C.No.4983 of 2010 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai is hereby affirmed.

26.03.2026

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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