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Crl.A.No.172 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2025
PRONOUNCED ON : 19.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.172 of 2021

M.R.Balaji (Male/46 Years),
S/o.Ramamurthy,
Proprietor – M/s.Balaji & Co.,
No.23, 4th Main Road,
Tamil Nadu Housing Board,
Walajapet, Vellore District.

... Appellant

Vs.

Chengaia Babu,
No.65, 4th Main Road,
Tamil Nadu Housing Board,
Walajapet, Vellore District.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the judgment dated 29.10.2020 made in S.T.C.No.19 of 2018 on the file of the Judicial Magistrate No.II, Walajapet, Vellore District acquitting the respondent/accused from the offence committed under Section 138 of Negotiable Instruments Act, 1881.

For Appellant : Mr.T.P.Prabakaran

For Respondent : Ms.Harshana.T, Legal Aid Counsel



JUDGMENT

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The appellant as complainant filed private complaint against the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.19 of 2018 before the learned Judicial Magistrate No.II, Walajapet (trial Court). The trial Court by judgment dated 29.10.2020 dismissed the complaint and acquitted the respondent. Against which, the present criminal appeal is filed.

2.Despite service of notice and the respondent's name printed in the cause list, there was no representation for the respondent either in person or by any counsel. Hence, this Court by order dated 22.09.2025 appointed Ms.Harshana.T as Legal Aid Counsel for the respondent.

3.Gist of the case is that during the month of July 2017, for urgent business requirement, the respondent approached the appellant for loan of Rs.5,00,000/- and promised to repay within three months. Believing the same, the appellant gave loan of Rs.5,00,000/- in cash. In discharge of liability, the respondent issued a cheque (Ex.P1) dated 10.10.2017 bearing No.919736 drawn on State Bank of India, Walajapet. When the appellant presented the cheque (Ex.P1) for encashment in Indian Bank, Walajapet on 10.10.2017, the same returned on 11.10.2017 for the reason



“Insufficient Funds” with a bank memo (Ex.P2). Thereafter, statutory notice (Ex.P3) issued to the respondent on 04.11.2017 which was received on 08.11.2017, thereafter, the respondent sent a reply notice (Ex.P5) with false allegations. Ignoring the same, complaint filed before the trial Court. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P5. On the side of the defence/respondent, no witness examined but two documents marked as Exs.D1 & D2 (sale deed) through PW1/appellant. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondent, against which, the present criminal appeal filed by the appellant/complainant.

4.Learned counsel for the appellant/complainant submitted that the appellant and respondent are known to each other. For urgent business needs, the respondent during the month of July 2017 obtained loan of Rs.5,00,000/- in cash from the appellant, at that time, the respondent issued a post dated cheque (Ex.P1) dated 10.10.2017 in discharge of liability. In this case, the said post dated cheque (Ex.P1) marked as Ex.P1, bank return memo dated 11.10.2017 marked as Ex.P2, statutory notice dated 04.11.2017 marked as Ex.P3, postal acknowledgement marked as Ex.P4 and reply notice marked as Ex.P5. The trial Court on the evidence and exhibits marked though found that *prima facie* case



Crl.A.No.172 of 2021

made out and statutory presumptions under Sections 118 & 139 of Negotiable Instruments Act, 1881 proved, thereafter, it is for the respondent to probablize his defence, but acquitted the respondent, is not proper.

5.Learned counsel further submitted that the respondent not got into the box and examined himself as witness, but marked two documents (Exs.D1 & D2) through the appellant and took a stand that the respondent and appellant had a business transaction with one Mani, a flower vendor, who owns some land, laid a layout and plotted lands. Both the appellant and respondent joined together, approached Mani to sell the plotted lands in Lakshmi Nagar, at that time, Mani demanded Rs.20 lakhs as initial payment. The appellant paid Rs.10 lakhs and the respondent paid only Rs.5 lakhs, the balance Rs.5 lakhs paid by the appellant on behalf of the respondent to Mani, at that time, the appellant received signed blank cheque from the respondent. The defence taken is that this cheque misused and false case filed against the respondent, is not proper. To prove the business transaction, the respondent marked Exs.D1 & D2 viz., the sale deed executed by Mani to appellant and another sale deed executed by Mani to respondent. The respondent contended that this earlier transactions not disclosed by the appellant in the statutory notice



(Ex.P3), complaint and in the evidence and during cross examination, these facts brought out by the respondent and probablized his defence, is not proper. In this case, the respondent neither disputed issuance of cheque (Ex.P1) nor his signature. It is seen that the appellant paid Rs.10 lakhs to Mani and got Ex.D1 registered. The respondent paid only Rs.5 lakhs and the balance Rs.5 lakhs paid by the appellant for the respondent. Ex.D1 is the sale deed executed for a value of Rs.8,45,000/- and Ex.D2 is for the value of Rs.8,25,000/- which proved that Rs.5 lakhs amount paid to Mani by the appellant on behalf of the respondent and the cheque (Ex.P1) issued in discharge of this liability. But the trial Court misreading the evidence, dismissing the complaint, is not proper.

6.In support of his contention, learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in the cases of ***Hiten P.Dalal v. Bratindranath Banerjee*** reported in ***(2001) 6 SCC 16*** and ***Krishna Janardhan Bhat v. Dattatraya G.Hedge*** reported in ***(2008) 4 SCC 54*** for the point that once the statutory presumption proved, it is for the accused to disprove the same and the burden shifts upon him. In this case, the respondent not brought any acceptable evidence to probablize his defence. In the absence of any such evidence, the presumptions under Sections 138 & 139 of Negotiable Instruments Act, 1881 stands proved.



Further for the point that Section 138 of Negotiable Instruments Act, 1881 amended to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential. In view of the above, the appeal to be allowed and the respondent to be convicted.

7.Learned counsel for the respondent strongly opposed the appellant's contention and submitted that the appellant had not come with true facts and clean hands, suppressed all material facts, which got exposed during cross examination of appellant and by marking defence documents. In the statutory notice (Ex.P3), complaint and in the evidence, the appellant suppressed the facts and was silent about earlier transaction between appellant, respondent and Mani. The appellant and respondent as business partners entered into agreement with Mani who had plotted out plots. During cross examination, the appellant admitted that on 22.08.2013, an agreement entered by both appellant and respondent with Mani for selling plots in Lakshmi Nagar, for this transaction, the appellant and respondent paid Rs.20 lakhs to Mani. To prove the same, the respondent marked two sale deeds (Exs.D1 & D2). The appellant admits that he was a Civil Contractor and the respondent



Crl.A.No.172 of 2021

was a Realtor. The cheque (Ex.P1) drawn favouring Shri.Balaji.R & Co.

What is the constitution of Shri.Balaji & Co., and whether it is a company or a proprietary concern, there is no details or any document or evidence produced. Admittedly, the complaint filed in an individual capacity. The appellant admits on the compulsion of the respondent he entered into the business with Mani. Finding that the appellant suppressed vital facts and further he admitted the business relationship with Mani along with the respondent which was proved by cross examination of appellant and marking defence exhibits, the trial Court came to the conclusion that the respondent probablized his defence and rebutted the statutory presumption.

8.Learned counsel further submitted that the appellant failed to prove the cheque (Ex.P1) was issued in discharge of liability. In this case, the respondent questioned the appellant's wherewithal of the appellant and thereafter, shifted the burden to the appellant to prove he had sufficient means to give loan of Rs.5,00,000/- to the respondent. Hence, the trial Court dismissing the complaint and acquitting the respondent, needs no interference. Hence, the appeal to be dismissed.



9.Considering the submissions and on perusal of the materials, it is seen that prior to issuance of cheque (Ex.P1), the appellant and respondent entered into an agreement with one Mani to act as Agent to sell the plots in Lakshmi Nagar, which is admitted by the appellant in his cross examination. Since the appellant paid Rs.5 lakhs to Mani on behalf of the respondent, the cheque (Ex.P1) was issued in discharge of this liability by the respondent, is the contention of the appellant. On the contrary, there is nothing mentioned in the statutory notice (Ex.P4), complaint and in the evidence about this transaction and projected a case as though the respondent took loan of Rs.5,00,000/- for his business needs. The respondent denied receiving Rs.5 lakhs from the appellant from the early stage by sending reply notice (Ex.P5). To deny the same, no rejoinder sent by the appellant. Added to it, the appellant not disclosed this fact till he was cross examined by the respondent. From the defence documents (Exs.D1 & D2), it is probablized that the respondent and appellant acted as Agent for Mani to sell out the plots in Lakshmi Nagar. The appellant admits that the said Mani executed the sale deeds (Exs.D1 & D2) in favour of the appellant and respondent for the amount paid to Mani and also admits that he was a Civil Contractor and the respondent was a Realtor.



10. In this case, during joint business, there might be some set back in the real estate, but not disclosed any such fact till the appellant cross examined in this regard. There is no evidence to prove the cheque (Ex.P1) issued in discharge of liability. Added to it, the cheque issued in the name of Shri.Balaji.R & Co. and the complaint filed in the individual capacity and in the name of the appellant. The trial Court considering all these aspects rightly came to the conclusion that the respondent by cross examination and by marking Exs.D1 & D2, rebutted the presumption and probablized his defence.

11. In the case of ***Kumar Exports v. Sharma Carpets*** reported in ***(2009) 2 SCC 513***, the Hon'ble Apex Court in paragraph No.21 held as follows:

“21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the



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Crl.A.No.172 of 2021

presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

12.In view of the above, this Court finds that the respondent by cross examining the appellant and marking defence exhibits (Exs.D1 & D2), probablized his defence and rebutted the presumption. Once such rebuttal evidence is adduced, then the evidential burden shifts back to the complainant and thereafter, the presumptions under Sections 118 & 139 of Negotiable Instruments Act, 1881 will not again come to the complainant's rescue.

13.The Hon'ble Apex Court as well as this Court time and again held that when two views possible unless there is any perversity and gross miscarriage of justice, the judgment of acquittal not to be disturbed. In this case, on proper appreciation of evidence and materials, the trial Court rightly dismissed the complaint and acquitted the respondent.

14.In view of the above, this Court is not inclined to interfere with the judgment of acquittal dated 29.10.2020 in S.T.C.No.19 of 2018 passed by the learned Judicial Magistrate No.II, Walajapet and the same is hereby confirmed. Accordingly, this Criminal Appeal stands dismissed.



Crl.A.No.172 of 2021

15.This Court appreciates Ms.Harshana.T, Legal Aid Counsel for the respondent for her meticulous preparation and arguments. The State Legal Services Authority is directed to pay the necessary fee to the Legal Aid Counsel.

19.02.2026

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

The Judicial Magistrate No.II,
Walajapet.

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The State Legal Services Authority,
Madras High Court.



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CrI.A.No.172 of 2021

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY JUDGMENT IN
CrI.A.No.172 of 2021

19.02.2026