



Crl.A.No.667 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-02-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 667 of 2021

Madheswaran
S/o.Veerappa Gounder,
378/12, New S.M.S.Nagar,
Rana Nagar Backside,
Bhavani Taluk, Erode District.

Appellant/Complainant

Vs

1. M/s.Annamalai Tex Exports (Pvt.) Ltd.,
Rep by its Managing Director, Palanivel,
36/1, Peria Karukkupalayam Salai,
Olakadam Village, Bhavani Taluk, Erode
District.

2.Palanivel
S/o.Arthanari Gounder,
Sri Annamalai Tex Exports,
36/2, Peria Karukkupalayam Salai,
Olakadam Village, Bhavani Taluk, Erode
District.

3.Sasikumar
S/o.Palanivel,
Sri Annamalai Tex Exports,
36/2, Peria Karukkupalayam Salai,
Olakadam Village, Bhavani Taluk, Erode
District.

Respondents/Accused



Crl.A.No.667 of 2021

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to allow the Criminal Appeal by setting aside the judgment of acquittal dated 01.02.2020 passed in S.T.C.No.754 of 2017, on the file of Judicial Magistrate Court No.I, Bhavani.

For Appellant : Mr.S.Sriram

For Respondents : Ms.T.Harshana
Legal Aid Counsel

J U D G M E N T

The appellant as complainant filed a private complaint in S.T.C.No.754 of 2017 for offence under Section 138 of the Negotiable Instruments Act against the respondents. The trial Court, by judgment dated 01.02.2020, dismissed the complaint and discharged the respondents, against which, the present appeal is filed.

2. The complaint is that the appellant and the respondents 2 and 3 are known to each other. The second respondent is the Managing Director-cum- authorised signatory for the first respondent-company. The third respondent is the Partner of first respondent-company. On 04.03.2016, the respondents 2 and 3 came to the appellant's house and borrowed a sum of Rs.10,00,000/- for urgent business expenses and promised to repay within one month. For the amount borrowed and in discharge of the said liability, the second



Crl.A.No.667 of 2021

WEB COPY

respondent signed the cheque in presence of third respondent and the cheque dated 05.04.2016 drawn on Axis Bank, Mettunasuvampalayam Branch handed over to the appellant. After informing the respondents, the appellant deposited the cheque on 05.04.2016 in his banker's account, which was returned on 11.04.2016 for the reason 'Funds Insufficient'. Immediately the appellant contacted the respondents and demanded repayment of borrowed amount of Rs.10,00,000/-. Since the respondents gave evasive reply, not making any repayment, the appellant issued statutory notice on 07.05.2016. The respondents received statutory notice on 12.05.2016, but neither paid the cheque amount nor sent any reply. Thereafter, complaint filed.

3.During trial, the appellant/complainant examined himself as PW1 and marked Exs.P1 to P4. The respondents/accused neither examined any witness nor marked any documents. On conclusion of trial, the trial Court finding that the respondents probalised their defence, dismissed the complaint, discharging the respondents, against which, the present appeal filed.

4.The learned counsel for the appellant submitted that the trial Court failed to consider that in this case neither the cheque nor the signature in the



Crl.A.No.667 of 2021

cheque disputed. The respondents admitted the relationship but took a prevaricating stand in his reply notice and during trial. The reply notice dated 13.07.2016 not filed along with the complaint, since it was sent after 15 days time period, as stipulated in the notice/Ex.P3 and much after the complaint filed before the trial Court. The trial Court in its judgment in paragraph 16 recorded that the complaint filed on 01.06.2016. In such circumstances, expecting reply notice dated 13.07.2016 to be filed along with the complaint and finding it as suppression would not be proper.

5.He further submitted that in the reply notice the stand taken by the respondents is that the appellant and his wife applied for a loan from a Bank and a joint tenancy agreement entered between the appellant and the respondents to show that appellant's wife was doing business in the respondents' premises, using this document, loan applied to the bank, and appellant used to visit the respondents' business place frequently. Whenever the second respondent goes out of station, he used to sign and leave two or three cheque leaves for the usage of third respondent. Thus, he had left two signed cheques at the work place, which came in possession of the appellant and the appellant filled up the amount of Rs.10,00,000/- and projected a false case is the defence taken. In such circumstances, it is to be seen Section 118



Crl.A.No.667 of 2021

WEB COPY

and 139 of N.I. Act comes into play, during trial, a contra defence taken as though the appellant threatened the respondents and respondents lodged a complaint to the Andhiyur Police. Thereafter, enquiry conducted on 01.09.2015, during the police enquiry, three signed blank cheques obtained from the respondents and one of the cheques filed in the present case, which the appellant/complainant inadvertently admitted not knowing the import and consequences, which has been taken in favour of the respondents by the trial Court and given a finding that cheque/Ex.P1 was collected in police station and hence, it cannot be said to have issued in discharge of any liability.

6.He further submitted that the cross-examination is contra to the admitted position in the reply notice, since the reply notice sent after the complaint, the same not filed. The appellant now produces the reply notice and prays that the reply notice proves the respondents admitting issuance of cheque and hence, the finding of the Trial Court is liable to be set aside and respondents to be convicted in this case.

7.The learned Legal Aid Counsel for the respondents strongly opposed the appellant's contention and submitted that the appellant sent legal notice/Ex.P3, filed a complaint and proof affidavit. In none of these



Crl.A.No.667 of 2021

documents, appellant mentioned or stated anything with regard to alleged reply notice dated 13.07.2016 now produced. Had the appellant being honest and truthful, he ought to have produced this documents during trial. In this case, the evidence of PW1 completed on 02.02.2018 and he was cross-examined on 12.09.2018, which is much after the receipt of alleged reply notice. Appellant specifically questioned with regard to the business agreement entered between the respondents and the appellant's wife. Then too, appellant neither produced reply notice nor given any explanation and suppressed the same, since it would affect his case. Withholding of relevant materials proved, hence adverse inference to be drawn.

8.She further submitted that the appellant admitted that he himself requested for a business loan from the bank. In such circumstances, appellant having Rs.10,00,000/- in cash and giving it as loan to the respondents defies logic. The appellant was questioned about his financial capacity, thereafter too failed to produce any documents to show that he was having such huge amount with him prior to the loan. Further in his cross-examination, he admits that the complaint was lodged on 01.09.2015 by the respondents to the Andhiyur Police and thereafter in the police station, three signed blank cheques received by him and two cheques given to one Sakthivel, who is



Crl.A.No.667 of 2021

WEB COPY

none other than the son-in-law of the appellant. Appellant questioned not once, on several occasions with regard to collecting the cheque/Ex.P1 from the police station. Considering all these aspects, the trial Court rightly dismissed the complaint. He further relied upon the decision of the Hon'ble Apex Court in the case of *Sanjeev and another vs. State of Himachal Pradesh* reported in (2022) 6 SCC 294, wherein the Hon'ble Apex Court had given a guideline as to under what circumstances the appeal against acquittal can be overturned.

9.Considering the submissions made and on perusal of the material, it is seen that in this case, the complainant examined himself as PW1 and marked four documents. Ex.P1 is the cheque bearing No.023563 dated 05.04.2016 for a sum of Rs.10,00,000/- drawn on Axis Bank, Mettunasuvampalayam Branch, Ex.P2 is the Bank Return Memo dated 11.04.2016, Ex.P3 is the Statutory Notice dated 07.05.2016 and Ex.P4 is the Postal Acknowledgement dated 12.05.2016. In this case, the appellant in his evidence admits that on 01.09.2015, complaint lodged by the respondents in Andhiyur Police Station against the appellant, at that time, three cheques for a sum of Rs.10,00,000/- each, collected and one of the cheque filed in this case. He admits that the cheques were collected by the police and one cheque



Crl.A.No.667 of 2021

handed over to the appellant and other two cheques to one Sakthivel, son-in-law of the appellant. Thus, the appellant and his son-in-law using police force, collected three cheques from the respondents and one of the cheque was filed in this case.

10.The learned counsel for the appellant vehemently argued that the respondents were taking prevaricating stand. In the reply notice, they admitted the relationship and stated that, at the request of the appellant a joint tenancy agreement was executed as though they were doing joint business for the purpose of obtaining a bank loan. Further submitted that the appellant regularly visits the business premises of the respondents and the signed cheque of the respondents was available in the business premises, taken by the appellant during March, 2015 and misused. But in evidence DW1 deposed that on 01.09.2015, complaint lodged by the respondents, at that time, the cheque was collected.

11.Admittedly, the reply notice not marked as document in this case, further there is no reference to the reply notice in the evidence of the appellant either during chief examination or in the cross examination. In such circumstances, the contention of the appellant referring to the reply notice



Crl.A.No.667 of 2021

cannot be considered. The appellant/complainant in his evidence admits complaint dated 01.09.2015 and collecting of cheque/Ex.P1 from the Andhiyur Police. This was considered by the trial Court and thereafter trial Court dismissed the complaint.

12. In the above referred judgment of the Hon'ble Apex Court guideline given in dealing with an appeal against acquittal, the reasons which had weighed with the trial Court in acquitting accused cannot be overturned unless there is some perversity or wrong appreciation of the evidence. Further when an order of acquittal passed by the trial Court, the normal presumption of innocence in a criminal matter gets reinforced and it is also held that the Appellate Court must be extremely slow in interfering with the appeal against acquittal. On the facts of the case and on the principles enumerated by the Hon'ble Apex Court, this Court finds no reason to interfere with the finding of the trial Court.

13. Accordingly, the Criminal Appeal stands dismissed. The judgment of acquittal passed by the learned Judicial Magistrate No.I, Bhavani dated 01.02.2020 is hereby confirmed.



Crl.A.No.667 of 2021

WEB COPY

14. This Court appreciates the service rendered by Ms.T.Harshana, learned Legal Aid Counsel for the respondents. The Tamil Nadu State Legal Services Authority shall pay the remuneration to Ms.T.Harshana, Legal Aid Counsel.

05.02.2026

Index : Yes / No
Neutral citation : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
rsi

To

The Judicial Magistrate No.I,
Bhavani.



WEB COPY



Crl.A.No.667 of 2021

M.NIRMAL KUMAR, J.

rsi

CRL A No.667 of 2021

05.02.2026