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Crl.A.No.871 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.871 of 2012

Uttam Chand Kumar Gulecha
S/o. Late Pukhrajji Gulecha
No.402, Mint Street,
Chennai – 600 079.

... Appellant

Vs.

J.Vijayakumar
S/o.Mr.J.Jughraj,
No.47-A, Naidu Stret,
Kottu Garden,
Chennai – 600 085.

... Respondents

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgement dated 30.10.2012 by VIII Metropolitan magistrate George Town, Chennai, in C.C.No.5471 of 2006 and allow the Criminal Appeal.

For Appellant : Ms.A.Reshma

For Respondent : Mr.J.Suresh

JUDGMENT

This Criminal Appeal has been filed as against the order dated 30.10.2012, passed by the learned VIII Metropolitan Magistrate, George Town, Chennai, in C.C.No.5471 of 2006, thereby acquitting the

Page 1 of 6



Crl.A.No.871 of 2012

respondent from the charges under Section 138 of the Negotiable Instruments Act (hereinafter referred to as “the NI Act”).

2. The petitioner is the complainant and he lodged complaint as against the respondent alleging that the respondent had borrowed the loan from the appellant on various dates and settling the same on 17.11.2004, Thereafter, the respondent borrowed a sum of Rs. 31,00,000/- and towards principal and interest, the respondent issued two cheques for a sum of Rs.5,00,000/- and Rs.26,00,000/-. Both were presented for collection and the same were returned dishonored for the reason insufficient funds. After causing statutory notice, the petitioner lodged complaint and the same has been taken cognizance by the Trial Court.

3. In order to prove the complaint, the appellant himself examined as P.W.1 and marked documents in Ex.P.1 to Ex.P.9. On the side of the respondent, he examined D.W.1 and marked documents in Ex.D.1 to Ex.D.4. On perusal of the oral and documentary evidences, the Trial Court found the respondent not guilty and acquitted him from the charge under Section 138 of the NI Act. Aggrieved by the same, the petitioner filed the present appeal.



Crl.A.No.871 of 2012

4. The learned counsel appearing for the appellant submitted that the respondent never denied the issuance of cheque and the signature found in the cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the NI Act. Though it is rebuttable in nature, the respondent did not rebut the same and the trial Court mechanically acquitted the respondent.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the records and on the submission made by the learned counsel appearing on either side, it is revealed that in order to rebut the presumption, the respondent he himself examined as D.W.1 and marked documents in Ex.D1 to Ex.D.4. On perusal of the reply notice which was marked as Ex.D.4, the respondent denied the issuance cheque. He further stated that both the cheques were issued for security purpose at the time of purchase of gold from the appellant herein by the respondent. It was also categorically admitted by the appellant herein. Further the appellant did not even whisper about the date on which the respondent borrowed the money.



Crl.A.No.871 of 2012

7. Further the respondent had executed a mortgage deed for a sum of Rs.4,00,000/- in favour of the petitioner and the same was marked as Ex.D.1. That apart, both the parties had entered into Memorandum of Understanding, which was marked as Ex.P.5. After settling the amount, the cheques which were issued as security purpose were misused by the petitioner and presented before the bank. As per their business practice, the respondent had issued two cheques for security purpose since, the respondent had purchased jewels and gold on credit basis. After entering into the Memorandum of Understanding, the entire dues to the tune of Rs.4,00,000/- was settled by the respondent. In fact, the Memorandum of Understanding did not even whisper about the mortgage deed which was marked as Ex.D.1. The respondent categorically rebutted the presumption and the appellant failed to prove the charge under Section 138 of the NI Act by let in evidence. Therefore, the trial Court rightly acquitted the respondent and this Court finds no infirmity or illegality in the order passed by the Trial Court.

8. Accordingly, the Criminal Appeal stands dismissed.

23.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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Page 4 of 6



Crl.A.No.871 of 2012

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To

1.The VIII Metropolitan Magistrate,
George Town, Chennai.



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Crl.A.No.871 of 2012

G.K.ILANTHIRAIYAN, J.

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Crl.A.No.871 of 2012

23.03.2026