IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

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THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 882 of 2012

T.S.Kailasam

..Appellant(s)

Vs

M/s.P.Hemalatha ..Respondent(s)

Prayer: Criminal Appeal filed under Section 378(4) of Cr.P.C., seeking to set aside the judgment passed in S.T.C.No.73 of 2012 on the file of the learned Judicial Magistrate Fast Track Court No.1, Judicial Magistrate Level, Erode, dated 17.07.2012.

For Appellant(s): Mr.V.S.Kesavan

For Respondent(s): Mr.M.Karthick

JUDGMENT

In continuation and conjunction with the order passed by this Court on 04.02.2026 which is extracted hereunder;

"The appellant as complainant filed a private complaint in S.T.C.No.73 of 2012 against the respondent for offence under Section 138 of the Negotiable Instruments Act (in short 'N.I. Act'). The Trial Court, by judgment dated 17.07.2012, dismissed the complaint, against which, the present appeal is filed.

2. For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

3. The case of the complainant is that on 26.06.2011, the accused approached the complainant at his resident and sought loan for her urgent expenses and borrowed a sum of Rs.3,00,000/- and promised to repay the principal with interest at the rate of 18% per annum. On the same day, the accused issued six signed post-dated cheques for a sum of Rs.50,000/- each to the complainant. On the instructions of the accused, six cheques deposited by the complainant on 24.11.2011 in Union Bank of India, Erode Main Branch. Of the six cheques, four cheques drawn on ICICI Bank, Erode Branch returned with a memo dated 25.11.2011 for the reason 'Account closed'. The other two cheques drawn on Corporation Bank, Erode Branch, returned with an endorsement 'Funds Insufficient'. Thereafter, statutory notice issued on 12.12.2011. The accused evaded to receive the said notice and it was returned on 21.12.2011. Thereafter, following the statutory procedure, complaint filed.

4. During trial, the complainant examined himself as PW1 and marked Exs.P1 to P14. The accused examined herself as DW1 but no documents marked. On conclusion of trial, the Trial Court finding that accused probabilised her defence, dismissed the complaint.

5. The learned counsel for the appellant/complainant submitted that in this case, the accused is known to the complainant and had taken a loan promising to repay the *principal and interest. On the promise, the amount of Rs.3,00,000/- given and in discharge of the said liability, six signed post-dated cheques handed over by the accused. Of the six cheques, four cheques drawn on ICICI Bank, Erode Branch returned for the reason 'Account Closed' and two cheques drawn on Corporation Bank, Erode Branch returned for the reason 'Funds Insufficient'. Statutory notice was taken to the accused, she evaded receipt of notice. Thereafter following the statutory procedure, complaint filed. During trial, the complainant examined himself as PW1 and marked 14 documents.*

6. He further submitted that the specific stand of the accused during trial is that the borrowed amount was only Rs.22,000/- on one occasion. At that time, she handed over three cheques and repaid the amount. Further she borrowed another Rs.22,000/-, seven months later and at that time she handed over another three cheques. But after repayment of the loan, the complainant not returned the cheques, which was filled up and complaint filed. The accused neither denied the issuance of cheque nor the signature in the cheque. The only defence is that unfilled cheques were filled up and complaint filed. The trial Court referring to the evidence of complainant observed that the complainant in his evidence deposed that in the first instant, he had given a sum of Rs.2,00,000/- and after a month, he had given another Rs.1,00,000/-, which is contrary to the complaint and chief examination and hence the evidence of complainant becomes doubtful. The trial Court further gives a finding that there is no controversy with regard to the issuance of cheque and signature of the accused, but found that the presumption under

Section 139 of N.I. Act starring against the accused, since there were contradictory statement with regard to period and amount of loan. Further finding that the complainant not proved his case beyond all reasonable doubt, dismissed the complaint, acquitted the respondent/accused, which is perverse and needs to be interfered.

7. The learned counsel for the respondent/accused submitted that the specific case of the complainant as per the complaint is that on 26.11.2011, the accused borrowed a sum of Rs.3,00,000/- and agreed to repay principal and interest at the rate of 18% per annum. In discharge of the said liability, on the same day, she issued six signed post-dated cheques, which were presented, got dishonoured. In his chief examination also, the same is confirmed. In contrary, during cross-examination of PW1, he admits that he gave Rs.2,00,000/- at one instance and one month thereafter he gave another Rs.1,00,000/- as loan. He had not given any details for this Rs.2,00,000/- and the balance Rs.1,00,000/- was given as loan and further what is the correlation to the six cheques which is from 27.07.2011 to 24.10.2011. The complainant admits that he is into the real estate and finance business for the past five years, in such circumstances, there is no details given as to when and what is the amount given and the accused specific stand is that she repaid the amount. The accused examined herself as DW1 and gave explanation that she borrowed a loan of Rs.22,000/-, at that time, she gave three cheques and thereafter she borrowed another Rs.22,000/-, at that time she gave another three cheques. All the six cheques were signed, unfilled, which were misused by *the complainant. The accused discharged the liability of the loan. The trial Court considered all these aspects and the contradictions in the evidence of PW1/complainant, a financier, had rightly dismissed the complaint.*

8. At this stage, the learned counsel for appellant/complainant seeks time. Post on 18.02.2026."

Today, learned counsel for the respondent submitted that he is unable to get any positive answer from the respondent.

2.This Court considering that the respondent is a lady, given her an opportunity. Already, this Court on 04.02.2026 recorded the above submissions. From the submissions, and the materials, it is seen that the trial Court not considered the evidence in its totality. The complainant examined himself as PW1 and marked documents and deposed referring to the documents. The respondent had not denied the issuance of cheque and it is not one cheque, it is six cheques and that too from two different banks, and further taken a stand that borrowal of Rs.22,000/- on two occasions, these six cheques have been given, which is highly improbable and the respondent not denied her signature and not questioned the relationship or wherewithal of the appellant. Hence, the statutory presumption proved and the complainant has proved his case. The trial Court given a wrong finding which is not sustainable.

M.NIRMAL KUMAR, J.

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3.In view of the same, this Court sets aside the judgment of acquittal rendered by the trial Court, remits the matter back to the trial Court to consider the evidence, give an opportunity to both petitioner and respondent to rehear the matter and to pass a judgment afresh.

4.Registry is directed to send back the entire court records to the trial Court.

26-02-2026

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

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To.

1.The Judicial Magistrate
Fast Track Court No.1
Judicial Magistrate Level
Erode

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