



Crl.A.No.670 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.670 of 2021

G.Kiruba Kumar

... Appellant

Vs.

Dr.Chitraselvi,
Assistant Professor,
Electrical Engineering Department,
Anna University College of Engineering,
Thirukuvalai, Nagapattinam – 610 204.

... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the acquittal judgment of the Judicial Magistrate No.I, Namakkal in C.C.No.332 of 2019 dated 25.03.2021 and to convict the respondent as per law.

For Appellant : Mr.S.Ganesh Kumar
for Mr.Jayakumar.J

For Respondent : Ms.Vrindha
Legal Aid Counsel



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JUDGMENT

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The appellant as complainant filed a private complaint against the respondent in C.C.No.332 of 2019 before the learned Judicial Magistrate No.I, Namakkal. The Trial Court by judgment dated 25.03.2021 dismissed the complaint and discharged the respondent. Against which, the present appeal filed.

2.In this case, notice was ordered to the respondent as per the address in the complaint but the same was returned with an endorsement “left”. Finding that the appeal is pending for quite sometime, this Court appointed Ms.Vrindha as legal aid counsel on 09.12.2025.

3.For the sake of convenience, the parties are referred to as complainant and accused.

4.The complainant filed a private complaint under Section 138 of Negotiable Instruments Act stating that the complainant and the accused are friends, the accused borrowed Rs.6,95,000/- as hand loan and received the



same at the complainant's house in the presence of one L.B.Senthilkumar at Thathampatty, Salem for her family needs and agreed to repay the loan amount within a month, but the same was not returned as agreed. After several requests, the accused agreed to repay the loan and issued a cheque vide No.000089 dated 30.03.2019 drawn on Karur Vysya Bank, Nagapattinam Branch for Rs.6,95,000/-. When the cheque was presented in the complainant's bank account at HDFC Bank, Namakkal Branch on 03.04.2019, the same was returned as "Payment stopped by drawer". Thereafter, statutory notice issued on 02.05.2019 calling upon the accused to pay the cheque amount within 15 days. The accused though received the notice on 09.05.2019 neither repaid the cheque amount nor sent any reply and thereafter, complaint filed. During trial, the complainant examined himself as PW1 and marked four documents, Ex.P1/cheque, Ex.P2/return memo, Ex.P3/statutory notice and Ex.P4/postal acknowledgment. The accused examined herself as DW1 and marked five documents, Ex.D1/letter given to Karur Vysya Bank for stop payment, Ex.D2/Transfer order of accused to Nagapattinam, Ex.D3/Deputation of accused to valuation work, Ex.D4/Attendance Certificate for attending valuation work at Pattukottai from 06.05.2019 to 09.05.2019 and Ex.D5/On-duty slip. On conclusion of



trial, the Trial Court finding that the accused had probalilized her defence and the complainant failed to prove the case beyond all reasonable doubt, dismissed the complaint. Against which, the present appeal filed.

5.The learned counsel for the complainant submitted that the Trial Court failed to see that the burden of disproving the presumption raised by issuance of cheque falls on the accused but the Trial Judge had given a finding that the burden of proof for the offence was on the complainant failing to consider that statutory presumption is against the accused. In this case, the accused had not denied the cheque but taken a stand as though cheque was lost and given stop payment to the Bank. On seeing Ex.D1, it is clear that the accused aware of handing over of the cheque, for that reason only she had given instruction to the bank as “in case any cheque come for collection to her account, that payment should be stopped”. One of the reason given by the Trial Court is that the complainant had not mentioned the date of lending of money or the date on which the demand for repayment of loan made and the accused agreeing to repay, these particulars not given. But the Trial Court failed to take into consideration that as per Section 118 and 139 of Negotiable Instruments Act, it is to be presumed that the cheque



issued in discharge of liability and the reckoning date is the date found in the cheque. In the statutory notice, complaint, statement and in the evidence, it is clearly mentioned that one month prior to the date of issuance of cheque the accused received the loan amount. Thus, there is no discrepancy or doubt about the date of loan. The accused taken a defence that the cheque was lost and sent a letter/Ex.D1 to the Bank, but it is significant to note that the accused had not given any police complaint for the missing cheque. The Trial Court relied upon the judgment of the Apex Court in the case of ***Rangappa vs Sri Mohan*** reported in ***(2010) 11 SCC 441*** and failed to consider that the signature in the cheque not seriously disputed. Though the accused in her evidence states that the signature in Ex.P1 is not that of her but not taken any steps to send the cheque/Ex.P1 to any Handwriting expert to confirm the same. On a bare perusal of eye sight, it is clear that the signature in the cheque and the signature found in the deposition of accused/DW1 are one and the same. Thus the Trial Court misread the entire evidence and the Trial Court acquitting the accused is perverse, hence the judgment of the Trial Court to be set aside.



6.The learned counsel for the accused submitted that in this case it is seen that there is clear variance in the date, signature in Ex.P1 and also there is difference in the ink, confirming that a lost cheque has been filled up by the complainant and filed a case. The cheque/Ex.P1 was not issued in discharge of any liability. To prove the same, the accused produced Ex.D1/letter dated 09.10.2015 given to the Manager, Karur Vysya Bank informing about missing of cheque book and one of the missing cheque leaf used in this case. She would further submit that in the statutory notice, complaint, sworn statement and in the proof affidavit filed, there is no mention about on which day the complainant gave loan to the accused. Though it is mentioned in the statutory notice that in presence of one L.B.Senthilkumar loan was given in his residence at Salem, the said Senthilkumar not examined. The further contention of the complainant is that the accused and the complainant are friends and known to each other but nowhere the complainant stated how they became friends and what was their compatability. The accused is a Professor in Anna University, the complainant admits that he studied only upto 11th Standard and doing transport business. Further the complainant deposed that the accused was introduced to him by one Veeramani of Dindigul but the said Veeramani not



examined. The complainant reconfirmed in his evidence that the accused was a Professor in Anna University, Dindigul and he was having good relationship with her, at that time only the accused requested for loan but it is to be seen that there is no Anna University in Dindigul. The complainant hails from Salem and there is no reason for the complainant having any work or acquaintance in Dindigul. Further with regard to the personal details about the accused, the complainant confirms that he is not aware about the family background, residence and any other details about the accused. In such circumstances, giving huge amount of Rs.6,95,000/- as loan is highly improbable. Further the complainant admits that he is doing transport business but when questioned about his income tax returns to show that he is capable of having huge amount, he gives an explanation that his brother is taking care of his transport business and his brother only filed income tax returns, even this document not produced. Further, the complainant submit that a sum of Rs.6,95,000/- was given in cash as loan but from where he sourced the amount and how he was holding such huge amount not explained. The accused had clearly questioned the financial capability of the complainant and thereafter to, complainant not taken any steps to show he was having Rs.6,95,000/- in cash with him. Further, the accused examined



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herself as DW1 and marked five documents, to prove accused was transferred to University College of Engineering, Nagapattinam and further, between the period 06.05.2019 and 12.05.2019, she was deputed to valuation duty at Pattukottai, confirming statutory notice not served on the accused. Thus, the accused had no knowledge about the statutory notice and hence she could not give any reply and explanation. When the complainant states that on 24.02.2019 money was borrowed by the accused but during that period the accused was posted in Nagapattinam. The Trial Court found that the complainant is unable to give any reason as to how the accused and the complainant had got acquaintance and known to each other and the complainant was unable to give any answer with regard to the family status of the accused. Further, giving a loan of Rs.6,95,000/- in cash without any security except for the cheque is highly improbable. The accused probalilized her defence by examining herself and marking Ex.D1 to Ex.D5. Considering all these facts, Trial Court rightly dismissed the complaint and discharged the accused. Hence, prayed for dismissal of the appeal.

7.In support of her contention, the learned counsel for the respondent relied upon the decision of the Hon'ble Supreme Court in the case of



Dattatraya vs. Sharanappa reported in **(2024) 8 SCC 573** and submitted that the inability of the appellant to put forth the details of the loan advanced and his contradictory statements, will not give effect of giving rise to the statutory presumption under Section 139 of NI Act. She further relied upon the judgment of the Hon'ble Supreme Court in the case of **Ramesh and another vs. State of Karnataka** reported in **(2024) 9 SCC 169**, wherein the Apex Court held as follows:

“20.At this stage, it would be relevant to refer to the general principles culled out by this Court in *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , regarding the power of the appellate court while dealing with an appeal against a judgment of acquittal. The principles read thus : (SCC p. 432, para 42)

“42. ... (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very



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strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

8.Considering the submissions made and on perusal of the materials, it is seen that in the complaint, the complainant states that a sum of Rs.6,95,000/- was given in cash as loan to the respondent but from where he sourced the amount and how he was holding such huge amount, no



explanation given. The accused had questioned the wherewithal of the complainant and thereafter duty is shifted to the complainant to prove his financial capability. The complainant hails from Salem doing transport business and the accused employed as Professor in Anna University, Nagapattinam, no explanation given as to how the complainant had acquaintance with the accused. The admitted position of complainant is that he met the accused in Dindigul when she was employed in Anna University, Dindigul. There is no such College. Further, it is seen that the accused was known to the complainant through one Veeramani and the complainant had given the loan of Rs.6,95,000/- in presence of one L.B.Senthilkumar. Both Veeramani and L.B.Senthilkumar not examined in this case. At the time of issuing statutory notice, the accused was deputed for valuation duty to Pattukottai and hence, no notice could be served on the accused. Further, when the complainant was questioned about the family background of the accused, he was unable to give any answer. Further the accused by examining herself as defence witness and marked defence exhibits, thereby probalised her defence. All these facts have been well narrated and considered by the Trial Court and rendered a well reasoned judgment. This Court finds no reason to interfere with the finding of the Trial Court.



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9.In the result, the Criminal Appeal stands dismissed.

10.This Court appreciates Ms.Vrindha Legal Aid Counsel for the respondent for her strenuous efforts in doing research and putting forth the case of the respondent effectively. The Legal Services Authority to pay the remuneration to the Legal Aid Counsel as per Rules.

02.02.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The Judicial Magistrate No.I,
Namakkal.



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M.NIRMAL KUMAR, J.

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