IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-02-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 929 of 2022

J.Kasper
S/o.Jabamalai,
No.21, Otteri Salai,
Puluthivakkam,
Chennai - 600 091.

..Appellant(s)

Vs

A.Rosali @ Rose
W/o.Arulsami @ James,
No.9/2, Mangammal Lane,
Seven Well, Chennai - 600 001.

Doing Business at
Avila Fast Food,
New No.12, Old No.506,
Mint Street, Chennai - 600 079.

..Respondent(s)

PRAYER: The criminal appeal filed under Section 378 of Constitutional procedure Code to set aside the Impugned Judgment and order of Acquittal dated 13.07.2022 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur in C.C.No.119/2017 and the accused/respondent be convicted for having committed an offence u/s 138 of Negotiable Instrument ACT 1881.

For Appellant(s):	Mr.S. Vikirdeesh for Mr.G.Balaji Venkateswaran
For Respondent(s):	Mr.K.Prasanthan

JUDGMENT

The appellant as complainant filed a private complaint under Section 138 of Negotiable Instruments Act in C.C.No.119 of 2017 against the respondent/accused. The trial Court by judgment dated 13.07.2022 dismissed the complaint discharging the accused, against which, the present appeal filed.

2.The complaint is that the respondent is relative of the appellant and she approached the appellant for financial assistance to develop her business and also meet out her daughter's education expenses. Hence, on various dates, she borrowed money from the appellant, which accumulated to Rs.7,55,000/-. In discharge of said loan liability, the respondent issued cheque dated 19.02.2017 for Rs.7,55,000/-. The cheque presented with the appellant's bank namely Indian Overseas Bank, Madipakkam Branch, Chennai -600 091, it was returned by the respondent's bank namely State Bank of India, Mint Terminus (Chennai) Branch, for reason "Funds Insufficient" with a return memo dated 21.02.2017. Thereafter, statutory notice issued on 28.02.2017 demanding the cheque amount. The respondent received the same on 02.03.2017 and neither paid the cheque amount nor sent any reply. Following Statutory procedure, complaint filed.

3.During trial, appellant/complainant examined himself as PW1, marked four documents Ex.P1 to P4. The respondent/accused examined herself as DW1 and her daughter examined as DW2, marked two documents Ex.D1 & D2.

4.The contention of the learned counsel for the appellant is that The trial Court finding is that the appellant admits that he gave loan on various dates for the educational expenses of the respondent's daughter but in his evidence, the appellant unable to give the break up of amounts and the dates. Further, how the amount of Rs.7,55,000/- accumulated, no explanation given and the appellant is unable to give the period of respondent's daughter studying her medical course in Romania. When it was suggested to him that the respondent's daughter was studying medical studies in Romania country during the year 2007 to 2013, it feigns ignorance. The respondent supported her daughter's medical studies by getting money from her mother and later, selling her ancestral property. In support of the same, she produced Ex.D1 and the eligible test passed by her daughter in the year 2018 as Ex,D2.

5.Further, the trial Court had given a finding that Exs.D1 and D2 are not supporting the defence. The other defence considered by the trial Court is that for the proof of respondent borrowing Rs.7,55,000/- from the year 2010 to 2015, the appellant is unable to establish the payment details, no documentary evidence produced and other than the cheque Ex.P1, there is no other document in support of the appellant's contention. The appellant's financial capacity to give huge amount as loan was also questioned, hence, took a view that the statutory presumption rebutted and it was for the appellant to prove his financial capability to give such huge amount as loan. Further, DW1 & DW2 examined in this case and they probabilised the defence in the finding of the trial Court. Further, yet another stand taken is that DW2, the daughter of DW1 admitted that a cheque for an amount of Rs.3,36,000/- was signed and given by her to the appellant previously and the cheque was returned, it was not seriously disputed. When there is already subsisting loan due, it is highly improbable to return the cheque of Rs.3,36,000/-. Hence, considering all these aspects, the trial Court dismissed the complaint failing to consider respondent not disputed the cheque and the signature and also admits that she took loan of Rs.20,000/- and given a signed blank cheque and once the same is admitted under section 20 of the NI Act comes into play and this facts have not been considered by the trial Court.

6.The trial Court finding is that as per Income Tax Act, more than 20,000/- has to be paid only through cheque and not by cash is not proper and for this point, he had relied upon the judgment of the apex Court in

Crl.A.No.1755 of 2010, wherein in paragraphs 19 & 20, the apex Court held that if any transaction above Rs.20,000/- is required to be made only through cheque and in case of violation, it may attract consequences under the Income Tax Act, the same would not render the transaction illegal or void. Therefore, it does not fall outside the definition of a legally enforceable debt, and such a contention cannot be countenanced.

7.Counsel for the respondent strongly objected to the appellant's contention and submitted that the appellant and the respondent are relatives and initially, there was some misunderstanding between the two families. Only when the appellant's father was not well, the respondent visited ailing father and thereafter, they renewed their relationship. It is further submitted that the appellant is running a push cart tiffin business along with her husband and making small earning. With great difficulty, she sent her daughter to study medical course abroad in Romania and she is not that well educated and knows only to sign her name. On perusal of Ex.P1 cheque, it is clear that the signature and the writings do not go together. The appellant is not conversant in English, whereas, the cheque filled up in English. Though the appellant is a Central Government Employee and a salaried person, he has not produced any material to show that he had given huge amount of Rs.7,55,000/- with him to give loan to the respondent's daughter's education. The respondent's daughter completed her medical education in the year 2013.

8.Initially, the respondent's mother supported her daughter's education and later, respondent supported her. The respondent sold her ancestral property in the year 2016 and she paid her daughter's expense. Thus, when questioned about the course pursued by the respondent's daughter and period of education, the appellant was unable to give any proper explanation. Further, there is no document produced by the appellant to show that he had Rs.7,55,000/- with him to give as loan. Once, the financial capacity of the appellant is disputed, the statutory presumption stands gets rebutted and reverts to the appellant who has to necessary prove his wherewithal, to give the such huge amount as loan. The appellant failed to produce any documents or materials in this regard. The trial Court considering all these aspects had rightly dismissed the complaint.

9.In support of his contention, the learned counsel for the respondent relied upon the decision of the apex Court in the case of ***Basalingappa Vs. Mudibasappa*** reported in ***(2019) 5 Supreme Court Cases 418,*** wherein, the Apex Court held that Sections 118(a) and 139 of NI Act is statutory presumption, which can be rebutted in the following manner:

“25.We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 138, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The Presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3.To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. . . . .

25.5.. . . .”

and held that to rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the appellant in order to raise probable defence.

10.In this case, the respondent raised probable defence and thereafter, the appellant failed to prove his case. Considering all these aspects, the trial Court rightly dismissed the complaint and discharged the respondent to be sustained.

11.Considering the submissions made and on perusal of the materials available on record, it is seen that the appellant and the respondent are relatives. The appellant is a Central Government Employee. The appellant, on various dates, had given loan for education expenses of the respondent's daughter and developing the business of the respondent. However, not produced any documents or materials to show that he had the necessary financial wherewithal to give such amounts. The appellant is not aware of the course pursued by the respondent's daughter or during period of course and he was unable to give any particulars with regard to the respondent daughter's education in Romania. On the other hand, the respondent examined herself as DW1, deposed that her daughter's education was supported by her mother substantially and thereafter, she supported her daughter. The other daughter examined as DW2 also corroborated the evidence of DW1. Thus, by way of cross examination and by defence evidence, the respondent probablised her defence. The trial Court considering all these aspects, dismissed the complaint. The Apex Court as well as this Court time and again had held that when two views possible unless there is perversity and gross miscarriage of justice, a judgment of acquittal not to be disturbed. In this case, the trial Court judgment does not suffer from any perversity.

12.In view of the above, this Court is not inclined to interfere with the Judgment dated 13.07.2022 passed in C.C.No.119 of 2017 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur and accordingly, the criminal appeal is dismissed.

16-02-2026

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

To

1.The learned Judicial Magistrate,
Fast Track Court (Magisterial Level),
Alandur.

M.NIRMAL KUMAR, J.

sms

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