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Crl.R.C.No.234 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2025
PRONOUNCED ON : 19.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.234 of 2022

Balaraman

... Petitioner

Vs.

1.Balasubramaniam

2.The Public Prosecutor,
District Court,
Coimbatore.

... Respondents

PRAYER: Criminal Revision Case is filed under Section 397 and 401 of Code of Criminal Procedure, to set aside the order dated 11.08.2021 made in C.A.No.63 of 2019 on the file of I Additional District and Sessions Judge, Coimbatore reversing the order dated 23.10.2018 made in C.C.No.551 of 2017 on the file of the Judicial Magistrate, Sulur.

For Petitioner : Mr.R.Rajarajan

For R1 : Ms.S.Sridevi
Legal Aid Counsel



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ORDER

The petitioner/accused in a case filed by the respondent under Section 138 of Negotiable Instruments Act (hereinafter referred to as “NI Act”) in C.C.No.551 of 2017 was acquitted by the Trial Court by judgment dated 23.10.2018. The respondent/complainant filed an appeal in C.A.No.63 of 2019. The learned Sessions Judge by judgment dated 27.08.2019 in a haste without hearing the petitioner, set aside the judgment of the Trial Court and convicted the petitioner. Aggrieved against the same, the petitioner preferred a revision in Crl.R.C.No.389 of 2021 and this Court by order dated 13.07.2021 finding that the Lower Appellate Court had reversed the judgment of the Trial Court but failed to give opportunity and hear the petitioner to defend the case, set aside the judgment dated 27.08.2019 and remanded the case back to the Lower Appellate Court. Thereafter, C.A.No.63 of 2019 was heard afresh and the learned Sessions Judge by judgment dated 11.08.2021 reversed the acquittal of the Trial Court and sentenced the petitioner to undergo one year simple imprisonment and directed the petitioner to pay the cheque amount of Rs.14,35,000/- as compensation to the respondent. Against which, the present revision is filed.



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2.The complaint filed by the respondent is that the petitioner is in the stock market business and known to the respondent for several years. The petitioner used to borrow money from the respondent for his emergency expenses and repay them in short intervals. In the same manner, the petitioner borrowed a sum of Rs.14,35,000/- from the complainant on 29.01.2015, though assured to repay the amount within three months but failed to pay. After several requests and repeated demands, the petitioner issued a cheque bearing No.173960 dated 28.10.2016 for Rs.14,35,000/- of Union Bank, Coimbatore. The cheque was presented on 02.11.2016 by the respondent in his name at Karur Vysya Bank, Somanur, but the cheque not honored and returned on 04.11.2016 for the reason "funds insufficient." Thereafter, statutory notice issued on 09.11.2016 and the petitioner received the notice on 15.11.2016 but he neither paid the cheque amount nor sent any reply. Thereafter, complaint filed. In this case, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P8. The respondent examined himself as DW1 and marked Ex.D1 to Ex.D8.

3.The learned counsel for the petitioner/accused submitted that the Trial Court considered the evidence in its totality and found that the



petitioner had probabilized his defence and there was no loan taken by the petitioner from the accused, it was the respondent who invested in share trading business and the petitioner, as a share broker, was advising him and giving suggestions. In the share trading business, the respondent lost some money and believing that this loss was sustained only due to wrong advice of the petitioner, the respondent misused the cheque which was given by the petitioner for an earlier transaction taking a loan of Rs.45,000/-, a sum of Rs.14,35,000/- filled up and projected as though the petitioner received the same as loan. To disprove the same, the petitioner examined himself as DW1 and marked eight documents. The petitioner in his evidence as DW1 admitted that the petitioner and the respondent known to each other from the year 2006 and the respondent employed in the firm of one Moorthy who was having a share trading account with the petitioner and thereafter, the respondent shown interest in the share trading and invested in the share trading business and later suffered some loss. To prove the same, he marked the statement of accounts/Ex.D6 for the period 01.01.2015 to 24.01.2018, Ex.D7 and Ex.D8 are the Statement of Accounts of Net worth Stock Broking Limited to show that the respondent was doing stock investment through the petitioner. Ex.D1 to Ex.D4 are the copies of the cheques issued for the stock broking business. The respondent in his evidence denied any business in stock broking with



the petitioner or Net worth Stock Broking Limited, which got exposed when the petitioner examined himself as DW1 and marked documents.

The respondent could not deny the evidence of the petitioner. Further, the petitioner questioned the wherewithal of the respondent to give a loan of such huge amount. The respondent unable to give details about when, where and how this amount paid to the petitioner and further not able to produce any contemporary documents to show that he had such huge amount with him. On the other hand, the respondent produced Ex.P5 to Ex.P8/income tax returns for the period 2015 to 2017, from which, it is seen that no such amount of Rs.14,35,000/- shown as credit in the name of the petitioner. Considering all these aspects, the Trial Court rightly dismissed the complaint and acquitted the petitioner. But the Lower Appellate Court merely gone on surmises and conjunctures reversed a well reasoned judgment of acquittal and the judgment of the Lower Appellate Court is bereft of any consideration of facts. The Lower Appellate Court on perusal of case records EX.P1 to Ex.P8 and Ex.D1 to Ex.D8 gave a finding that it is a definite case of the complainant that the petitioner borrowed a sum of Rs.14,35,000/- from the respondent on 29.01.2015 and issued a cheque/Ex.P1, further referred to cross examination of DW1 wherein the petitioner admitted that he borrowed a sum of Rs.45,000/- and issued a cheque but to substantiate the same, he



had not sent any reply to the statutory notice and further referring to Section 20 of NI Act, justified that the cheque can be filled up and presented by the payee. Further Ex.P5 to Ex.P8 are the income tax returns of the complainant, from which it is seen that he is doing Textile business and thereby confirming he has got wherewithal to pay the amount of Rs.14,35,000/-, further finding statutory presumption under Sections 118 and 139 of NI Act proved, reversed the judgment of acquittal and convicting the petitioner is not proper.

4.In support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in the case of ***Chandrappa and others vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, wherein the principles regarding the power of the Appellate Court while dealing with the appeal against the order of acquittal had been codified, which is as follows:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate 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 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.



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5.The learned counsel for the petitioner also relied upon the decision of the Apex Court in the case of ***Shree Daneshwari Tradeers vs. Sanjay Jain and another*** reported in ***(2019) 16 SCC 83*** wherein it is held that *To rebut the statutory presumptions, an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. It is further held that To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant.*

6.The learned counsel for the respondent strongly opposed the petitioner's contention and submitted that the petitioner had not denied the



issuance of cheque/Ex.P1 and signature. The only defence taken by him is that for an earlier transaction of Rs.45,000/-, the petitioner issued a blank cheque which has been filled up. As rightly held by the Lower Appellate Court, Section 20 of the NI Act gives the authority to the person to fill up the cheque and present the same. In this case, the respondent had done so. Further, the respondent to prove his financial capabilities marked income tax returns/Ex.P5 to Ex.P8 and the same not seriously challenged. He further submitted that the petitioner projected as though he was doing share brokering business and the respondent invested in the share market, for which, the petitioner examined himself as DW1 and marked eight documents, but not produced any document to show that he is a authorized share broker. Ex.D1 to Ex.D5 are the copies of the cheques which are for meagre amount of Rs.10,000/- and Rs.5,000/-. In this case, Ex.P1 is for Rs.14,35,000/-. Though the respondent takes a stand that one Moorthy, a relative of respondent's employer is known to him for the past 10 years through whom the petitioner known to him, the said Moorthy was not examined in this case. Further, the respondent not informing this transaction with the petitioner to his wife and relatives are blown out of proportion. Likewise, not collecting the promissory note or other supporting documents other than the cheque for the loan is also viewed against the respondent, which is not proper. It is the petitioner who had



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claimed that he was doing business in the name of Networth Stock Broking Limited, the respondent had given a part amount of Rs.8,00,000/- of loan through a cheque, which is not seriously disputed. Further, the respondent also produced the income tax returns/Ex.P5 to Ex.P8. The petitioner, in his evidence, admits that he handed over the signed blank cheque to the respondent. The petitioner, claiming himself to be a stock exchange broker and paid commission to the respondent but not produced any supporting documents and it is highly improbable that a person who is active in stock broking business will give a blank cheque without any liability. The petitioner not denied issuance of cheque and his signature. The Trial Court misread the evidence and dismissed the complaint but the Lower Appellate Court, on consideration of evidence and materials, found the admission of DW1 issuing the cheque and not replying to the statutory notice and referred to Section 20 of NI of Act. In the absence of the petitioner not probalizing his defence with any supporting materials, the Trial Court rightly held that it is on the petitioner to discharge the onus of statutory presumption under Sections 118 and 139 of NI Act which the petitioner failed to do so and hence, set aside the judgment of the Trial Court and convicted the petitioner.



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7.In support of her contention, the learned counsel for the respondent relied upon the decision of the Apex Court in the case of ***Sanjabij Tari vs. Kishore S.Borcar and another*** reported in ***2025 SCC Online 2069*** for the point that when the financial capacity of the complainant is questioned and the complainant though produced the income tax returns to show that he is the man of means, if it is further doubted then the presumption under Sections 118 and 139 of NI Act can be rebutted by the accused examining the Income Tax Officer and Bank Officials of the complainant/drawee.

8.Considering the submissions made and on perusal of the materials, it is clear that in this case the complainant was examined as PW1 and marked eight documents. The specific case of the complainant is that the petitioner for his share market business needed money and took loan from the respondent. The respondent has a monthly income of Rs.1,00,000/- and a yearly income of Rs.12,00,000/- and hence, he has the wherewithal to give a loan. Further, he collected Rs.5,00,000/- from his friend Ramasamy and Rs.3,00,000/- from his wife Subulakshmi and with the amount available with him, had given a loan of Rs.14,35,000/- to the petitioner. In this case, neither the said Ramasamy nor Subulakshmi,



wife of respondent or the said Moorthy examined as witnesses. The respondent specifically denied in his evidence that he is not involved in share market business and he does not know what share trading is about. He admits that neither in the statutory notice nor in the complaint or in his evidence he referred to any share business. Though he states that he gave Rs.8,00,000/- to the petitioner by way of cheque, not produced any material to confirm Rs.8,00,000/- was paid to the account of the petitioner through cheque. When a specific question was put to the respondent involved in share trading business from the year 2007 to 2015, he stoutly denied the same and also feigned ignorance about the petitioner as a share broker. When a specific question was put with regard to the transfer of money from the respondent's account to Network Stock Broking Limited, then to he denied. The respondent admits that the loan given to the petitioner does not reflect in his income tax returns/Ex.P5 to Ex.P8. Further, Ex.D1 to Ex.D5, marked through the respondent, are the cheques issued for the share broking business. The respondent's wherewithal has been questioned. Added to it, in this case, the petitioner examined himself as DW1 and marked statements of accounts/Ex.D6 to Ex.D8, from which, the transaction of the Network Stock Broking Limited confirms payment received by the respondent and his wife Subulakshmi. Thus, the petitioner probalilized his defence that it was only a share



broking business, the petitioner was a share broker and the respondent who invested in the share market had a misfortune on a wrong prediction and calculation and lost some money in share trading business, later the blank cheque of the petitioner misused, clearly probabalized by way of cross-examination and by examining the defence witness and marking defence documents. These facts rightly considered by the Trial Court and thereafter, the trial court dismissed the complaint discharging the petitioner. The Lower Appellate Court had merely gone on the fact that the signature in Ex.P1/cheque is not disputed and statutory presumption under Sections 118 and 139 of NI Act, 1881 is against the petitioner without any discussion on the evidence and materials and failed to show any perversity committed by the Trial Court. In the absence of any such finding of perversity, reversing the judgment of acquittal, is not proper. In view of the above, the finding of the lower appellate Court is not sustainable and the same is liable to be set aside.

9.The Hon'ble 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, the judgment of acquittal not to be disturbed.



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10. Accordingly, this Court set aside the judgment, dated 11.08.2021 in Crl.A.No.63 of 2019 passed by the learned I Additional District and Sessions Judge, Coimbatore and confirms the judgment, dated 23.10.2018 in C.C.No.551 of 2017 passed by the learned Judicial Magistrate, Sulur.

11. In the result, this criminal revision case stands allowed.

12. This Court appreciates Ms.S.Sridevi, 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.

19.02.2026

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

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Sulur.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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