



WEB COPY



Crl.A.No.822 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-01-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No.822 of 2022

M/s.Selvanayaki Selvam Textiles
Rep.by its Proprietor,
S.Selvam, Son of P.Subramanian,
1/30, karumathampattty Road,
Somanur, Coimbatore District.

Appellant/Complainant

Vs

1.K.Kathirvelu,
S/o. Kandasamy, Panaiyar Thottam,
Sokkampalayam Post,
Chennipalayampudur,
Palladam 641 662,
Palladam Police Station Limit.

1st respondent/Accused

2.The State Represented By
Public Prosecutor, Coimbatore.

2nd respondent

PRAYER : Criminal Appeal filed under Section 378(1) of Cr.P.C. praying to set aside the judgment dated 27.08.2021 passed in C.A.No.373 of 2018 on the file of the III Additional District and Sessions Court, Coimbatore reversing the conviction and sentence imposed in C.C.No.871 of 2017 dated 07.08.2018 on the file of the Judicial Magistrate Court, Sulur, Coimbatore District by allowing this criminal appeal and convict the respondent/accused.



Crl.A.No.822 of 2022

WEB COPY

For Appellant : Mr.M.Mari Mahesh
For Ms.Ilayarani Ponraj

For Respondent-1 : Mr.N.Ponraj

For Respondent-2 : Mr.S.Udayakumar
Government Advocate (Crl. Side)

J U D G M E N T

The appellant as complainant filed a private complaint in C.C.No.871 of 2017 for offence under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I. Act') against the first respondent/accused. The trial Court, by the judgment dated 07.08.2018, convicted first respondent and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further three months simple imprisonment. Aggrieved against the same, the accused preferred an appeal in Crl.A.No.373 of 2018 before the III Additional District and Sessions Judge, Coimbatore. The learned Sessions Judge, by the judgment dated 27.08.2021, allowed the appeal setting aside the conviction and sentence of the trial Court, against which, the complainant preferred the present appeal.

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



Crl.A.No.822 of 2022

3.The gist of the case is that the complainant is the Proprietor of M/s.Selvanayaki Selvam Textiles and the accused is running a business in the name of M/s.Kathir Textiles at Palladam. The complainant and the accused had business transaction for seven years. The complainant used to supply gada cloth on credit basis and the accused used to pay the amount later. Thus the accused was due to the tune of Rs.12,00,000/- and in discharge of part liability, he issued three cheques, viz., Ex.P1 for Rs.1,22,500/-, Ex.P2 for Rs.2,55,000/- and Ex.P3 for Rs.1,85,400/-, all cheques drawn on IDBI Bank, Coimbatore Branch. These cheques were presented for encashment on 03.09.2007 and the same returned for the reason 'Refer to Drawer' by return memos/Ex.P4 and P5 dated 05.09.2007 and 06.09.2007, respectively. Thereafter, complainant caused legal notice/Ex.P6 on 05.10.2007, the accused received the same on 08.10.2007 and the acknowledgement card marked is Ex.P7. Thereafter the accused sent a reply with false allegations. Hence, discarding the same, the complaint filed.

4.During trial, the complainant examined himself as PW1 and marked Exs.P1 to P8. The accused neither examined any witness nor marked any document. On conclusion of trial, the trial Court convicted the accused as



Crl.A.No.822 of 2022

stated above. The Lower Appellate Court allowed the appeal setting aside the conviction and sentence of the accused.

5.The learned counsel for the complainant/appellant submitted that the trial Court rightly convicted the accused/first respondent finding that the accused not denied cheques/Exs.P1 to P3 and his signature. Hence, statutory presumption under Sections 118 and 139 of N.I. Act is starring at him. Further, the accused neither examined any witnesses nor produced any documents to show that the cheque was not issued for any liability.

6.He further submitted that accused had taken a stand even in his reply notice/Ex.P8 stating that cheque was issued to one Shanmugam, who was doing business in the name of Sri Ganapathi Exports and Kalaivani Textiles and they had a transaction of around Rs.29,00,000/-. The accused also purchased yarn from the said Shanmugam, at that time, the accused had given blank cheques as security, which landed in the hands of the complainant, who filled the cheques and filed the above complaint. Though specific stand was taken that cheques were issued to Shanmugam, the accused neither examined Shanmugam nor produced any document in this regard.



Crl.A.No.822 of 2022

WEB COPY

7.He further submitted that the Lower Appellate Court failed to consider these aspects but referred to the cross examination of PW1 recorded that complainant admits he supplies yarn and gada clothes covered under invoice and delivery challan, but the same not produced. Further the complainant regularly paying Income Tax and Sales Tax, however, in this case no Income Tax document or Sales Tax receipts produced. Further recorded that when there is a specific questioning with regard to the sale transaction, the complainant ought to have produced these documents but failed to produce the same, hence, the accused probalised his defence and allowed the appeal setting aside the conviction, which is not proper.

8.The learned counsel for the accused/first respondent submitted that the specific case of the accused is that he had no business transaction with the complainant and he had some business relationship with one Shanmugam. During the transaction, some security cheques given to said Shanmugam, which landed in the hands of complainant and he misused the same. Further, the specific case of the complainant is that the accused was due to the tune of Rs.12,00,000/-, out of which, a sum of Rs.5,62,900/- alone paid through Demand Draft. With regard to the balance amount of Rs.6,00,000/-, the



Crl.A.No.822 of 2022

complainant admits that no steps taken for recovery. Had the due is real, the complainant would not have kept silent.

9.He further submitted that complainant admits that the supply of goods was covered under invoices and delivery challans. The complainant is also an Income Tax Assessee and Sales Tax Assessee. This aspect cross examined in detail. Further the accused filed a petition under Section 91 of Cr.P.C. seeking summoning of documents, which was dismissed by the trial Court. When the transaction is questioned, it is the duty of the complainant to produce the relevant documents but he failed to do so.

10.Though it is admitted it is a business transaction, the trial Court merely gone by the statutory presumption and failed to consider that the accused denied the business transaction and sought for the connected business documents. The trial Court failed to consider that accused probalised his defence, convicted the accused, which was rightly set aside by the Lower Appellate Court. Hence, prayed for dismissal of the appeal.



Crl.A.No.822 of 2022

WEB COPY

11.Considering the submissions made on either side and upon perusal of the materials, it is seen that the complainant examined as PW1 and marked Exs.P1 to P8. Exs.P1 to P3 are the cheques and Ex.P8 is the reply notice of the accused. In the reply notice, the accused denied any business transaction and documents and stated that the cheque was issued to one Shanmugam of Sri Ganapathi Exports. Further during cross examination, it was categorically suggested the respondent had business with said Shanmugam, given cheques as security and the said Shanmugam had come along with the complainant to the Court and was following the case. Though the complainant denied the same, he did not state that there was no such person as Shanmugam.

12.The complainant admitted that gada cloth and yarn supplied under the cover of invoices and delivery challans. He also admit. that he is an Income Tax assessee and pays sales tax. Despite cross-examination in this regard questioning the sale, the complainant failed to produce any documents to prove the sale transaction. The trial Court failed to consider that accused probalised his defence. The Lower Appellate Court rightly considered the evidence in detail, found that the accused probalised his defence, allowed the appeal setting aside the conviction of the accused.



Crl.A.No.822 of 2022

WEB COPY

13.This Court finds that the judgment of acquittal passed by the Lower Appellate Court (III Additional District and Sessions Court, Coimbatore) is a well reasoned one and needs no interference.

14.In view of the same, the Criminal Appeal stands dismissed. The acquittal of the accused/first respondent herein by the Lower Appellate Court is hereby confirmed.

09.01.2026

Index : Yes / No

Neutral citation : Yes / No

Internet : Yes/No

Speaking / Non-speaking order

rsi



Crl.A.No.822 of 2022

To
WEB COPY

- 1.The III Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Sulur, Coimbatore.
- 3.The Public Prosecutor,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.822 of 2022

M.NIRMAL KUMAR, J.

rsi

CRL A No.822 of 2022

09.01.2026