



Crl.A.No.568 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2026

PRONOUNCED ON : 25.03.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.568 of 2017

S.Ramgopal,
Prop.Dwarakaa Calendering Mills,
D.No.396, Ashokapuram,
Bhavani Main Road,
Erode-4.

... Appellant

Vs.

1.D.Murugesan,
Prop.Lakshmi Enterprises,
S/o.Devarajan Mudaliar,
D.152, S.S.D.Road,
Tiruchengode,
Namakkal dt.

2.State of TN,
By Public Prosecutor

... Respondents

PRAYER: Criminal Appeal is filed under Section 378(4) of Code of Criminal Procedure, to set aside the order of acquittal passed in Crl.A.No.132 of 2015 before the II Additional District and Sessions Judge of Erode, dated 29.02.2016 and confirm the judgment passed by the Judicial Magistrate No.I of Erode in STC.No.1416 of 2012 dated 22.09.2015.



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For Appellant : Mr.V.S.Kesavan

For R1 : Mr.M.Guruprasad

JUDGMENT

The 1st respondent convicted *vide* judgment dated 22.09.2015 in S.T.C.No.1416 of 2012 by the learned Judicial Magistrate No.I, Erode (trial Court) and sentenced to undergo Simple Imprisonment for a period of three months for offence under Section 138 of Negotiable Instruments Act, 1881. Challenging the same, the 1st respondent preferred an appeal before the learned II Additional Sessions Judge, Erode (lower appellate Court) in Crl.A.No.132 of 2015 and the same was allowed by judgment dated 29.02.2016 setting aside the conviction of the trial Court. Aggrieved over the same, the appellant/appellant filed the present criminal appeal.

2.Gist of the case is that on 10.04.2009 the 1st respondent borrowed a sum of Rs.2,45,000/- from the appellant for his urgent business needs. In discharge of the liability, the 1st respondent issued two post dated cheques (Exs.P1 & P2) bearing Nos.000081 & 880340 dated 16.07.2009 & 15.07.2009 for a sum of Rs.2,00,000/- and Rs.45,000/- respectively drawn on City Union Bank, Erode Branch. When the appellant presented the cheques (Exs.P1 & P2)



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for encashment through the City Union Bank, Erode Branch, the same returned for the reason “Account Closed”. Thereafter, the appellant issued a legal notice (Ex.P4) dated 24.07.2009 to the 1st respondent demanding to pay the cheque amount within 15 days from the date of receipt of Ex.P4. Despite receipt of Ex.P4, the 1st respondent neither returned the cheque amount nor sent any reply. Thereafter, following the procedure, the appellant filed a complaint before the trial Court.

3. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P5 [(i) Cheque dated 16.07.2009 for Rs.2,00,000/-, (ii) Cheque dated 15.07.2009 for Rs.45,000/-, (iii) Return Memo dated 17.07.2009, (iv) Legal Notice dated 24.07.2009 and (v) Acknowledgment Card dated 27.07.2009.]. On the side of the defence/accused, Branch Manager of Indian Overseas Bank examined as DW1 and the 1st respondent examined himself as DW2 and Exs.D1 to D4 marked [(i) Statement of Account of the appellant from 01.05.2011 to 11.08.2015, (ii) Account Opening Form, (iii) Mandate holder letter and (iv) Reply notice dated 31.07.2009]. On conclusion of trial, the trial Court convicted the 1st respondent, on appeal, the conviction set aside by the lower appellate Court. Against which, the present criminal appeal is filed.



4.Learned counsel for the appellant submitted that the lower appellate Court holding that the appellant failed to prove the case by producing the books of account is completely on misreading of evidence on the facts of the case. In this case, the appellant was running a M/s.Proprietor Dwarakaa Calendering Mills, but not a financier. The 1st respondent availed loan from the appellant, in discharge of the liability, he issued two cheques (Exs.P1 & P2) for Rs.2,00,000/- and Rs.45,000/- respectively. In this case, the 1st respondent not denied issuance of cheques (Exs.P1 & P2) and further the signature in the cheques is admitted that of his second son, the mandate holder. Hence, Sections 118 & 139 of N.I. Act comes into play and the presumption is against the drawer of the cheque. In the decision referred by the lower appellate Court in *Sri Murugan Financiers v. P.V.Perumal* reported in **2004 SCC OnLine Mad 908** this Court held that being a financier partnership firm, it is excepted in the finance business to maintain certain books of account. Insisting on the same requirement in all cases, is not proper.

5.He further submitted that the lower appellate Court not properly appreciated the presumption under Section 139 of N.I.Act, wherein it shall be presumed, unless the contrary is proved that the holder of a cheque received it



for the discharge, in whole or in part of any debt or liability. In this case, the appellant examined himself as PW1 and marked five exhibits Exs.P1 to P5.

The 1st respondent examined the Manager of Indian Overseas Bank as DW1 and himself as DW2 and marked Exs.D1 to D4. The stand taken by the 1st respondent is that Vijayakumar is the mandate holder who misused the cheques (Exs.P1 & P2) without his knowledge. It is not in dispute that once the mandate has been given to a person, that person thereafter becomes liable for all the acts and actions of the mandate holder. In this case, the reason given is that the 1st respondent's second son Vijayakumar had a love marriage, due to which, there was misunderstanding and dispute. To take revenge against the 1st respondent, the cheques (Exs.P1 & P2) handed over to the appellant who misused the same and projected as though the cheques (Exs.P1 & P2) issued for the legally enforceable debt.

6.Learned counsel further submitted that the statement of account (Ex.D1) produced by the 1st respondent for the period from 01.05.2011 to 11.08.2015 confirm that from 25.03.2008 until closure of bank account on 03.06.2009, the 1st respondent's second son Vijayakumar was in good terms with his father/1st respondent and there were withdrawal and transactions in the account, thus, the 1st respondent's claim that he had no relationship with his



second son since 2006 is falsified. Further the 1st respondent admits that he has not surrendered the cheque book and cheque leaves and also not took any action against his second son Vijayakumar on coming to know about misusing of cheques (Exs.P1 & P2). Considering all these aspects, the trial Court by a well reasoned judgment rightly convicted the appellant. But the lower appellate Court wrongly understood the proposition of law and misread the evidence and held that it is the appellant who failed to prove his case, failing to consider that the statutory presumption under Sections 118 & 139 of N.I. Act is proved.

7.In support of his submissions, learned counsel for the appellant relied on the following decisions:

(i)***Raghu Lakshminarayanan v. Fine Tubes reported in (2007) 5 SCC 103*** and ***M.Hemalatha v. D.Kannan reported inn 2016 (2) CTC 669*** for the point that as far as a sole proprietorship was concerned, it was only the sole proprietor who could be held liable under Section 138 NI Act for dishonour of a cheque drawn on the account of the sole proprietorship. In this case, the 1st respondent is the sole proprietor of M/s.Lakshmi Enterprises. Since the proprietary concern and the proprietor are one and the same person, merely because the proprietor concerned is the drawer of the cheque will not



exonerate from the criminal liability.

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(ii) ***M.Vairavan v. T.M.Selvaraj reported in 2010 (3) MWN (Cr.) DCC***

136 wherein this Court had held that non production of the books of account and Income Tax Return would not affect the case of the appellant and its facts.

8.Making the above submissions and relying upon the decision, learned counsel for the appellant prays for setting aside the judgment of lower appellate Court.

9.Learned counsel for the 1st respondent submitted that in this case, the cheques (Exs.P1 & P2) signed by Vijayakumar, mandate holder and issued in the name of M/s.Lakshmi Enterprises, which is admitted by the 1st respondent. The appellant in his evidence stated about the 1st respondent taking loan, issuance of cheque (Ex.P1) in discharge of loan liability, dishonour of cheque for the reason “Account Closed”, issuance of statutory notice (Ex.P3), but suppressed the reply notice (Ex.D4). In the reply notice (Ex.D4), the 1st respondent gave the reason that the cheques not issued in discharge of any legally enforceable debt or liability. This suppression cannot be brushed aside as an oversight. The trial court merely relied upon the statutory presumption and convicted the 1st respondent without properly considering the facts and



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materials on record. The lower appellate Court, on independent analysis of the evidence and materials, rightly allowed the appeal. Hence, the appeal to be dismissed and the acquittal of lower appellate Court to be confirmed.

10.Considering the submissions and on perusal of the materials, it is seen that the appellant in his evidence clearly deposed that the 1st respondent borrowed a sum of Rs.2,45,000/- for his business needs on 10.04.2009, thereafter, in discharge of liability, issued two cheques dated 16.07.2009 & 15.07.2009 for Rs.2,00,000/- and for Rs.45,000/- respectively. Both cheques presented, got dishonoured, thereafter, statutory notice (Ex.P4) issued. The 1st respondent received the statutory notice (Ex.P4), thereafter, the complaint filed. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P5. The 1st respondent examined the Manager of Indian Overseas Bank as DW1 through him Exs.D1 to D3 marked. The 1st respondent examined as DW2 and marked the reply notice (DW4). In the reply notice (Ex.D4), the specific stand is that the 1st respondent's second son Vijayakumar, mandate holder of the cheque, misused the cheques (Exs.P1 & P2), but the 1st respondent neither took steps against his second son Vijayakumar nor examined him as a witness in this case. From the bank documents (Exs.D1 to D3), it is seen that the 1st respondent's second son Vijayakumar as mandate



holder actively operated the bank account from 25.03.2008 till 30.06.2009 and that the 1st respondent and his second son Vijayakumar were in good terms and the said Vijayakumar operated the account till 30.06.2009. Hence, the 1st respondent's defence that his second son misused the cheques (Exs.P1 & P2) is false. The trial Court considered all these aspects and referred to the judgment of the Hon'ble Apex Court and rightly convicted 1st respondent. The lower appellate Court wrongly understood the proposition of law, misread the evidence and gave a finding that the appellant not produced the books of account, despite the appellant running a finance business in which all loans are recorded. In this case, the appellant was doing calendering business and not a financier. Due to acquaintance, the loan was given. In this case, the 1st respondent not denied the cheques (Exs.P1 & P2) and the signature of the mandate holder. Added to it, the 1st respondent failed to examine his second son Vijayakumar to probablize his defence.

11.In view of the above, this Court finds that the appellant proved the case beyond all reasonable doubt and the 1st respondent failed to prove that the cheques (Exs.P1 & P2) were not issued for legally enforceable debt or liability and to probablize his defence.



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12.In the result, this Criminal Appeal stands allowed. The judgment dated 29.02.2016 in Crl.A.No.132 of 2015 passed by the learned II Additional Sessions Judge, Erode is set aside and the judgment dated 22.09.2015 in S.T.C.No.1416 of 2012 passed by the learned Judicial Magistrate No.I, Erode is restored and confirmed.

13.The trial Court is directed to secure the 1st respondent for sufferance of sentence imposed. Though no compensation was ordered by the trial Court in the sentence, in the event the 1st respondent comes forward to return the cheque amount and to compound the offence, the same can be entertained by the trial Court and the case can be compounded.

25.03.2026

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

1.The II Additional Sessions Judge,
Erode.

2.The Judicial Magistrate No.I,
Erode.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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