



Crl.A.No.699 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2025
PRONOUNCED ON : 30.01.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.699 of 2017

M.Vasuki,
Proprietor,
M/s.M.V.Transport,
W/o.V.G.Mohankumar,
1/20, Telephone Nagar,
Kualankuttai,
Collectorate Post,
Erode District.

... Appellant

Vs.

V.Bhuvaneswari,
Proprietor,
M/s.Wintrack Transport,
W/o.P.C.Vijayakumar,
12-B, Balaji Nagar,
Rasampalayam Road,
Villarasampatti Post,
Erode District.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the judgment dated 18.09.2017 passed in C.A.No.162/2017 on the file of the Court of Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode reversing the judgment dated 02.06.2017 passed in S.T.C.No.449/2013 on the file of the



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Judicial Magistrate, Fast Track Court No.I, Erode by allowing the present appeal and convict the respondent in accordance with law.

For Appellant : Mr.M.Karthick for Mr.I.C.Vasudevan
(Appeared through Video Conference)

For Respondent : Mr.M.Guruprasad

JUDGMENT

The respondent was convicted by the learned Judicial Magistrate, Fast Track Court No.I, Erode (trial Court) in STC.No.449 of 2013 for offence under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo six months Simple Imprisonment and to pay the cheque amount of Rs.10,00,000/- (Rupees ten lakh only) as compensation to the appellant/complainant, in default to undergo Simple Imprisonment for one month. Challenging the same, the respondent preferred an appeal before the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode in Crl.A.No.162 of 2017 and the same was allowed by judgment dated 18.09.2017 setting aside the judgment of the trial Court. Against which, present criminal appeal filed by the appellant/complainant.



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2. Gist of the case is that the respondent approached the appellant/complainant, requested loan of Rs.10,00,000/- to clear his loans and for other expenses and promised to repay within short period. Believing the same, the appellant gave Rs.10,00,000/- to the respondent on 26.11.2012 and in discharge of liability, the respondent issued a cheque of Indian Overseas Bank bearing No.621754 (Ex.P1) dated 12.12.2012 for Rs.10,00,000/-. On getting instructions from the respondent, when the cheque (Ex.P1) presented by the appellant in Indian Overseas Bank, Soorampatti Branch on 04.01.2013, the same returned for the reasons "Insufficient Funds" on 05.01.2013 with a bank memo (Ex.P2). Thereafter on 30.01.2013, the statutory notice (Ex.P2) issued to the respondent who received the same on 07.02.2013 and sent a reply notice (Ex.P6) on 18.02.2013 with false allegations. Ignoring the same, the complaint under Section 138 of Negotiable Instruments Act, 1881 filed before the trial Court. During trial, the appellant examined herself as PW1 and Income Tax Officer as PW2 and marked Exs.P1 to P8. The respondent examined three witnesses viz., DW1 is the Chief Manager, DW2 is the husband of the appellant and DW3 is the Sub Inspector of Police, Erode North Police Station and marked Exs.D1 to D6. On conclusion of trial, the trial Court convicted the respondent but the lower appellate had set aside the conviction. Against which, present criminal appeal is filed.



3.Learned counsel for the appellant/complainant submitted that in this case, the appellant examined herself as PW1 and marked Exs.P1 to P8. The appellant in her evidence stated that the respondent is her sister-in-law and the appellant was doing business in the name of M.V.Transport and residing in her own house. The appellant took housing loan and repaid the entire loan amount. This was projected against the appellant that when the appellant herself taken housing loan whether it will be possible for her to give loan to the respondent/accused. The respondent attempted to project that the appellant had a bad patch of business during the year 2012 and she and her husband took loan for various businesses from Indian Bank especially for bricks, yarn and other businesses. When the appellant herself was in need of money, it is not possible for her to give loan to the respondent, is not proper on the factual aspect. Learned counsel further submitted that the respondent is none other than sister-in-law of appellant *i.e.*, the respondent is the sister of appellant's husband. The appellant and respondent had independent businesses and also had joint ventures, since the respondent not paid the amount of Rs.10,00,000/-, financial crisis arose to the appellant. Learned counsel further submitted that the appellant sold properties and repaid the loan amount. Initially the respondent took a defence that the appellant had no source of income at that point of time and other defence is that when the appellant's husband and the



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respondent's husband both jointly having textile loom business, at that time, the respondent left some signed cheque in the loom industry which was misused by the appellant and false complaint filed. Added to it, the respondent's husband gave a Police complaint against the appellant's husband, enquiry conducted, during enquiry, both the appellant's husband and respondent's husband gave statements to resolve the issue. As per settlement, out of 60 looms, 40 looms took away by the appellant and 20 looms retained by the respondent's husband, further the respondent's husband agreed to repay the loan of Rs.8,00,000/- which was taken from a financial firm. Thus, the issue resolved and there was no liability for the respondent to pay the appellant, is not proper. The trial Court on proper appreciation of evidence and materials rightly convicted the respondent. But the lower appellate Court heavily relied upon the complaint given by the respondent's husband to Sub Inspector of Police, North Police Station, Erode/DW2 on 29.06.2012, enquiry conducted, settlement arrived and held that when the issue resolved on 29.06.2012, there cannot be any further loan during November 2012, further the lower appellate Court failed to consider the loan transactions mentioned in the Income Tax Returns (Exs.P7 & P8). In view of the above, the lower appellate Court judgment to be set aside and trial Court conviction to be restored.



4.Learned counsel for the respondent strongly opposed the appellant's contention and submitted that in this case, the appellant and respondent are close relatives *i.e.*, the respondent is the sister of appellant's husband. In this case the appellant's husband examined as DW2. The appellant admits that she was having a business in the name of M/s.M.V.Transport and the respondent having business in the name M/s.Wintrack Transport. Both the appellant and respondent along with their respective husband and others were running business together in the name of M/s.Envion Bricks. Further, the respondent's husband and appellant's husband were jointly having 60 textile looms. Initially in the transport business, the appellant and her husband made good profit transporting coal ash from Mettur Thermal Plant. Since the policy of the Government changed, there was some downfall in the transport business which had a cascading effect in other business activities. The appellant admits the transport business had a down slide, both appellant and respondent had repayment issues with the bank and only after sale of properties, the bank dues could be settled. The specific stand of the respondent is that the respondent's husband and appellant's husband were jointly running 60 textile looms, but they had difference of opinion, to give quietus to all issues between them, talks held and issues resolved, as a result, 40 looms handed over to the appellant's husband and balance 20 looms left with the respondent's husband who was to



continue the loan and pay the amount of Rs.8,00,000/- to VCR Finance. The statement of appellant's husband and respondent's husband marked as Exs.D4 & D5. Exs.P7 & P8 were marked by the appellant to show the loan amount of Rs.10,00,000/- recorded in the Income Tax Returns. Referring to Exs.P7 & P8, learned counsel submitted that the returns filed on 30.01.2015 for the financial year 2012-13 which is belated and an afterthought document created for the purpose of the case.

5.Learned counsel further submitted that the evidence of DW2, husband of the appellant proved that the appellant made false allegation and she deposed without knowing the true facts and business transaction in the family. DW3, Sub Inspector of Police, Erode North Police Station confirmed the complaint (Ex.D3) received from the respondent's husband, enquiry conducted, issues resolved, complaint closed by closure report (Ex.D6) dated 29.06.2012. Such being the factual position, no prudent person would give any loan in the month of November 2012 of Rs.10,00,000/-. The trial Court had merely gone on the statutory presumption not considering the facts and merits of the case. On the other hand, the lower appellate Court on proper appreciation of evidence and materials rightly found that the respondent probablized his defence and proved the case beyond all reasonable doubt and



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allowed the appeal. In view of the above, the appeal to be dismissed and the lower appellate Court judgment to be confirmed.

6.Considering the submissions and on perusal of the materials, it is seen that the respondent is none other than the sister of appellant's husband and they are close relatives. The appellant was running a business in the name of M/s.M.V.Transport and respondent was running a business in the name of M/s.Wintrack Transport. The respondent, appellant and their respective husband were doing businesses in different names in a joint family. Initially, they were doing transport business for quite sometime, thereafter the business had a downfall, later the issue got resolved, loans taken from the bank settled by selling some properties. The appellant admits that a plot purchased, house constructed after taking loan from the bank during the relevant period, she defaulted in repayment of the bank loan, steps taken to attach the property to realize the loan amount, thereafter, loan settled. Likewise with regard to brick business, again there was default in loan, but later it was paid.

7.It is also seen that the appellant was running a M/s.M.V.Transport, but her husband/DW2 was managing the said transport business. The appellant was transporting coal ash from Mettur Thermal Plant, due to tender policy, the



transport business had a downfall. Since the financial cycle got affected, an obstacle in one business had a cascading effect on the other causing a downfall which severely impacted textile loom business. This was during the month of June 2012. To resolve the issue, the appellant's husband used some force to take away 20 looms which were entrusted with the respondent's husband and further the undertaking given to repay the finance firm not paid. This fact proved by examining DW2 and marking defence exhibits. Thus, it is clear that the dispute got resolved during June 2012 and there was some commitment and payments to be made by the respondent's husband. This being so, during November 2012, the respondent approaching the appellant seeking loan of Rs.10,00,000/- that to after a short period of five months, thereafter, not paying the loan amount, cheque dishonored and filing of the complaint, is highly improbable.

8.The facts and circumstances of the case is clear that the respondent probablized his defence by examining defence witnesses and marking documents. The trial Court merely gone on the statutory presumption and failed to consider the presumption rebutted by the respondent. But the lower appellate Court on proper appreciation of evidence and materials rightly found that the respondent probablized his defence and acquitted the respondent by a



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well reasoned judgment which needs no interference.

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9.In view of the above, the judgment dated 18.09.2017 in Crl.A.No.162 of 2017 passed by the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode acquitting the respondent is hereby confirmed.

10.In the result, this Criminal Appeal stands dismissed.

30.01.2026

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

1.The Additional Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court),
Erode.

2.The Judicial Magistrate,
Fast Track Court No.I, Erode.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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