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Crl.A.No.806 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2025
PRONOUNCED ON : 19.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.806 of 2017

P.Chandran, M/A about 41 years,
Son of R.Palanisamy,
No.84, Brouph Road,
Erode-1,
Erode District.

... Appellant

Vs.

Eswaran,
Lineman,
Tamil Nadu Electricity Board (O & M),
Vijayamangalam Post,
Perundurai Taluk,
Erode District.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the order of acquittal dated 14.12.2016 made in Crl.A.No.157 of 2016 on the file of the II Addl. District Court, District and Sessions Court, Erode reversing the order dated 09.08.2016 made in S.T.C.No.205 of 2014 on the file of the Judicial Magistrate (Fast Track Court No.1), Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : Ms.J.Madhumitha, Legal Aid Counsel



JUDGMENT

The appellant as complainant filed a private complaint against the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 before the learned Judicial Magistrate (Fast Track Court No.I), Erode (trial Court). The trial Court by judgment dated 09.08.2016 convicted the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.5,000/-, in default to undergo 15 days Simple Imprisonment. Challenging the same, the respondent preferred an appeal before the learned II Additional District and Sessions Judge, Erode (lower appellate Court) in Crl.A.No.157 of 2016 and the same was allowed by judgment dated 14.12.2016 setting aside the conviction of the trial Court. Aggrieved over the same, the present Criminal Appeal is filed by the appellant/complainant.

2.Gist of the case is that the appellant and respondent were known to each other for the past five years prior to the issuance of cheque (Ex.P1). On 27.11.2013, the respondent approached the appellant/complainant at his residence and obtained a loan of Rs.3 lakhs promising to repay the principal and interest. In discharge of said liability, on the same day, the respondent issued a cheque (Ex.P1) dated



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28.01.2014 bearing No.124908 for a sum of Rs.3 lakhs drawn on Canara Bank, Erode Kacheri Main Road, Erode Branch. When the cheque presented by the appellant for encashment on 28.01.2014 in Karur Vysya Bank, Erode Branch, the same returned with a bank return memo dated 29.01.2014 (Ex.P2) for the reason “funds insufficient”. On 31.01.2014 the appellant sent statutory notice (Ex.P3) to the respondent, but the same not received and returned on 11.02.2014 with return cover (Ex.P4). Thereafter, following the statutory procedure, complaint filed before the trial Court. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P4. On the side of the defence, DW1 to DW4 examined and Exs.D1 & D2 marked. On conclusion of trial, the trial Court convicted the respondent and the same was set aside by the lower appellate Court on appeal. Challenging the same, the present Criminal Appeal is filed by the appellant/complainant.

3.Learned counsel for the appellant submitted that the contention of the respondent is that he does not know the appellant and not obtained any loan from the appellant. Earlier the respondent took loan from one Gopalakrishnan/DW1, a Financier for a sum of Rs.1 lakhs, at that time, the respondent handed over six signed blank cheques bearing Nos.903 to 908, thereafter, the respondent repaid the principal and interest of



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Rs.1,30,000/- to DW1, but the blank cheques not returned to the respondent. Due to delay in repayment of the loan, earlier Gopalakrishnan/DW1 sent notice to the respondent through his Advocate Mr.V.Sampath, who had office at No.10 Law Chamber, Sampath Nagar. The address mentioned in the statutory notice (Ex.P3) dated 31.01.2014 is one and the same. Thus, the cheque (Ex.P1), which was given to Gopalakrishnan/DW1, was misused by the appellant and filed the above case. The other ground raised by the respondent that the appellant had no wherewithal to give loan of Rs.3 lakhs, is rejected by the trial Court. Further the respondent took a stand that the statutory notice (Ex.P3) was sent to the Office of Tamil Nadu Electricity Board, Vijayamangalam, on that day, the respondent not posted there and he was working at Erode Office, hence, there is no proper service of notice in this case. The trial Court finding that the defence taken by the respondent is unacceptable and the respondent neither denied issuance of cheque (Ex.P1) nor his signature, rightly convicted the respondent.

4.Learned counsel further submitted that the primary defence taken by the respondent is that the cheque (Ex.P1) was handed over to one Gopalakrishnan/DW1 at the time of obtaining loan of Rs.1 lakhs. DW1 in his evidence confirmed that he does not know either the appellant or



the respondent and the falsity in the respondent's claim stands exposed.

The trial Court found that the respondent received the Court summon in Tamil Nadu Electricity Board Office, Vijayamangalam and contested the case. In the return cover (Ex.P4), there is clear endorsement that "Information Delivered". Considering all these aspects, the trial Court rightly convicted the respondent. But the lower appellate Court misread the evidence and took a view that the appellant not produced any document to show he had Rs.3 lakhs in cash and the appellant does not know the personal details of the respondent and the appellant was not in the finance business to lend loan of Rs.3 lakhs and the return cover (Ex.P4) was addressed to Tamil Nadu Electricity Board, Vijayamangalam address and it was returned "gone out intimation", cannot be taken as service of notice completed. Thus, on the above grounds, the lower appellate Court setting aside the conviction and acquitting the respondent, is not proper. Hence, he prayed for restoration of trial Court conviction and the appeal to be allowed.

5.Learned counsel for the respondent strongly opposed the appellant's contention and submitted that the specific stand taken by the appellant in the statutory notice (Ex.P3), complaint and evidence is that on 27.11.2013, the respondent came to appellant's residence, sought loan



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of Rs.3 lakhs and issued post dated cheque (Ex.P1). On 27.11.2013 the appellant was working as Lineman in Tamil Nadu Electricity Board, Erode from morning 08.00 a.m to evening 07.00 p.m., which is not seriously disputed. The appellant admits that he was running a small watch shop and dealing in electronic goods and, had no sufficient income attracting Income Tax, hence, he had not filed any Income Tax returns. Further, the appellant's bank statement (Ex.D2) confirmed that from 01.01.2013 the appellant had no sufficient cash balance, further on 27.12.2013, the appellant deposited the cheque bearing No.124907 for Rs.3 lakhs and the same was returned on 28.12.2013. Thereafter, on 28.01.2014, the appellant deposited the cheque (Ex.P1) bearing No.124908 for Rs.3 lakhs and the same was returned on 29.01.2014. Both the cheques is that of the respondent. What happened to the first cheque and why no action taken and how the appellant had two cheques for Rs.3 lakhs each from the respondent, no explanation given. On the other hand, the respondent examined Gopalakrishnan/DW1, a Financier, a friend of the appellant. DW1 admits that on 28.06.2014 he sent legal notice through his Advocate Mr.V.Sampath Kumar, who had an office at No.10, Law Chambers, Sampath Nagar, to the respondent. The statutory notice (Ex.P3) in this case also carries the same address. Thus, the signed blank cheque (Ex.P1) handed over to the Financier/DW1 by the



respondent, was misused and false case projected against the respondent.

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6.Learned counsel further submitted that the appellant has got no wherewithal to lend Rs.3 lakhs loan and he was not an Income Tax Assessee. Added to it, the appellant not produced any contemporary document to show he was doing good business or had sufficient money to lend Rs.3 lakhs as loan in cash to a person whose personal details he does not know. The appellant admits that he was not visited the respondent at his residence and the respondent not visited the appellant at his residence. Further without any supporting documents giving such huge amount as loan by the appellant only based on the cheque (Ex.P1) is unbelievable. The statutory notice (Ex.P3) taken and return cover (Ex.P4) would confirm that Ex.P3 was taken to the office address at Vijayamangalam. On that day, the appellant was not posted in Vijayamangalam TNEB Office, but later only he joined in Vijayamangalam TNEB Office. Thus, there is no proper service of notice. Considering these vital aspects, the lower appellate Court had set aside the trial Court conviction and acquitted the respondent.

7.To substantiate his arguments, learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in the case of **Kumar**



Exports v. Sharma Carpets reported in (2009) 2 SCC 513 for the point that *“the existence of negative evidence is neither possible nor contemplated. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances”*. In this case, by examining four witnesses DW1 to DW4 and marking two documents Ex.D1 & D2, the respondent rebutted the presumption and probablized his defence. Once such rebuttal evidence is adduced and considered by the Court, the evidentiary burden shifts back to the complainant, thereafter, the presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, will not again come to the complainant’s rescue. In this case, the appellant thereafter not took any steps to prove his case beyond reasonable doubt. In view of the above, finding of lower appellate Court to be confirmed and present appeal to be dismissed.

8.Considering the submissions and on perusal of the materials, it is seen that the appellant examined himself as PW1 and marked four documents Exs.P1 to P4. The appellant in his evidence admits that the respondent came to his residence on 27.11.2013 and obtained loan of Rs.3 lakhs which is the consistent stand taken by the appellant right from



the beginning in the statutory notice (Ex.P3), complaint and in his evidence. But in the cross examination, the appellant admits neither he visited the respondent at his residence nor the respondent visited him at his residence. The appellant further admits that he does not know the respondent's personal details like whether he is married, how many children he has etc. He further admits that he was running a small watch shop and dealing with electronic goods having meagre income, not reaching the threshold to pay Income Tax and he is not an Income Tax Assessee. Added to it, the appellant not produced any contemporary document to show he was having good business and had sufficient income to give loan to the respondent. The appellant further admits he had Rs.3 lakhs in cash which was given as loan to the respondent, but there is no contemporary document to substantiate the same. Though the appellant admits the respondent was working as Lineman at Vijayamangalam TNEB Office, he was unable to give any details. In such circumstances, it is highly improbable to lend such huge amount of Rs.3 lakhs as loan to the respondent that too in cash.

9.The specific stand of the respondent is that he obtained loan from one Gopalakrishnan/DW1, a Financier. DW1 admits that he knew the respondent who took loan from him, but he denies relationship with the



appellant. The respondent got into the box, gave explanation and probablized his defence stating that the cheque bearing Nos.903 to 908 handed over to DW1 at the time of obtaining loan. DW3, Bank Manager of Karur Vysya Bank confirms that the cheque No.124907 was earlier deposited on 27.12.2013 which was returned on 28.12.2013, thereafter, the cheque in this case bearing No.124908 (Ex.P1) was presented almost one year thereafter for Rs.3 lakhs on 28.11.2014. This confirms that the cheque (Ex.P1) which was handed over to DW1, misused by the appellant and projected a false case against the respondent.

10.In this case, the appellant's wherewithal to give loan of Rs.3 lakhs is doubted and questioned, but the appellant failed to produce any material to falsify such statement. The statutory notice (Ex.P3) and return cover (Ex.P4) confirmed that the notice (Ex.P3) was taken to appellant's office address at Vijayamangalam TNEB Office. On that day, the appellant was not posted there. Thus, the respondent got into the box as DW2, rebutted the presumption and also probablized his defence. The appellant failed to establish that the respondent had any existing liability to pay the cheque amount and failed to prove his case beyond all reasonable doubt.



11.In the case of ***Kumar Exports v. Sharma Carpets*** reported in (2009) 2 SCC 513, the Hon'ble Apex Court in paragraph No.21 held as follows:

“21.The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

12.In view of the above, this Court finds that the respondent by cross examining the appellant and by examining himself as defence witness/DW2 and marking documents (Exs.D1 & D2), probablized his defence and rebutted the presumption. Once such rebuttal evidence is adduced and accepted by the Court, the evidential burden shifts back to the complainant and thereafter, the presumptions under Sections 118 & 139 of Negotiable Instruments Act, 1881 will not again come to the complainant's rescue. The appellant unable to produce any document or



material to show he had wherewithal to pay Rs.3 lakhs in cash when the same has been questioned and disputed. In this case, the statutory notice (Ex.P3) taken to the address when the respondent was not posted in that place. Added to it, the appellant not gave any reason why statutory notice (Ex.P3) not addressed to the residential address of the respondent. All these facts confirmed and gain credence that the respondent has probablized his defence which was rightly considered by the lower appellate Court and acquitted the respondent.

13.The Hon'ble Apex Court as well as this Court time and again held that when two views possible unless there is perversity and gross miscarriage of justice, the judgment of acquittal not to be disturbed. On proper appreciation of evidence and materials, the lower appellate Court had rightly set aside the trial Court conviction and allowed the appeal.

14.In the result, this Criminal Appeal stands dismissed and the judgment dated 14.12.2016 in Crl.A.No.157 of 2016 passed by the learned II Additional District and Sessions Judge, Erode is confirmed.



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15.This Court appreciates Ms.J.Madhumitha, Legal Aid Counsel for the respondent for her meticulous arguments. The State Legal Services Authority is directed to pay the necessary fee to the Legal Aid Counsel.

19.02.2026

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

- 1.The II Additional District and Sessions Judge,
Erode.
- 2.The Judicial Magistrate (Fast Track Court No.I),
Erode.
- 3.The State Legal Services Authority,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
Crl.A.No.806 of 2017

19.02.2026