



Crl.A.No.254 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2026

PRONOUNCED ON : 16.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.254 of 2022

G.Raja

... Appellant

Vs.

V.S.Selva Vinayagam

... Respondent

PRAYER: Criminal Appeal is filed under Section 378(5) of Code of Criminal Procedure, to call for the entire records from the file of the Judicial Magistrate, Thiruvotriyur in S.T.C.No.2562 of 2017 and order to set aside the judgment dated 22.11.2021 and order to convict the accused and also impose compensation under Section 357 of Cr.P.C.

For Appellant : Mr.T.Jaishankar

For Respondent : Mr.V.Paarthiban for Mr.N.Jayabalan

JUDGMENT

The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.2562 of 2017 against the respondent before the learned Judicial Magistrate, Thiruvotriyur



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(trial Court). The trial Court by judgment dated 22.11.2021 dismissed the complaint and acquitted the respondent. Against which, the present Criminal Appeal is filed.

2.Gist of the case is that the appellant and the respondent are family friends. The respondent orally agreed to sell the property situated at No.62A, New Street, Kaladipet, Thiruvotriyur, Chennai for sale consideration of Rs.20,00,000/- (Rupees twenty lakhs only) by cash on various dates. On receipt of the said amount, the respondent again demanded further excess amount of Rs.10,00,000/- (Rupees ten lakhs only) from the appellant, thereby the respondent wantonly evaded registration of sale deed. On repeated demand and request made by the appellant, the respondent not agreed for registration of sale deed, instead returned the sale consideration of Rs.20,00,000/- by way of cheque (Ex.P1) bearing No.428762 dated 02.02.2017 drawn on ICICI Bank, Anna Nagar West Extension, Branch, Chennai in favour of the respondent, towards discharge of the liability. When the appellant presented the said cheque for encashment in Canara Bank, Thiruvotriyur Branch, Chennai, the same returned for the reason “Payment Stopped by the Drawer” on 04.03.2017. Thereafter, the appellant issued statutory notice (Ex.P3) dated 24.03.2017 to the respondent, received by him on 25.03.2017,



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and sent an evasive reply dated 11.04.2017 (Ex.P5). Ignoring the same, complaint under Section 138 of Negotiable Instruments Act, 1881 filed.

During trial, the appellant examined himself as PW1 and marked Exs.P1 to P5. On the side of the defence, no witness examined but the plaint copy in O.S.No.50 of 2017 and O.S.No.48 of 2017 marked as Exs.D1 & D2. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondent.

3.Learned counsel for the appellant submitted that the trial Court gave a finding that the cheque (Ex.P1) and the signature of the respondent is not disputed, hence, statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881 is proved. Having come to such conclusion, the trial Court dismissing the complaint, is not proper. He further submitted that the trial Court disbelieving the case of the appellant on the ground that merely on oral agreement such huge amount paid without any contemporary documents, is not proper. In this case, the appellant and the respondent known to each other for the past 17 years. According to the appellant, he was a tenant under the respondent for two portions in Door Nos.62/1 and 62A. Due to long acquaintance, the respondent agreed to sell the property at Door No.62A for total sale consideration of Rs.20,00,000/-. The appellant initially paid



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Rs.10,00,000/- and thereafter paid Rs.50,000/- per month, totalling Rs.18,00,000/-. The respondent himself calculated and confirmed the receipt of amount of full sale consideration of Rs.20,00,000/- and agreed to sell the property. Despite receipt of such huge amount, the respondent later demanded additional Rs.10,00,000/-, as a result of which, the sale could not be concluded. In discharge of the liability, the respondent issued a cheque (Ex.P1) for Rs.20,00,000/- to the appellant. This fact not properly considered by the trial Court.

4.He further submitted that the respondent in the reply notice (Ex.P5) admitted the relationship with the appellant, but propounded a new theory that the appellant was taking care of the respondent's properties, by collecting rents from the co-tenants and handing them over to the respondent, and later failed to hand over the rents collected from the co-tenants. Further the appellant also collected rents for Mudichur flat and Thoraipakkam flat and not paid the amount and it is the appellant who has to pay a sum of Rs.10,36,400/- to the respondent, but in the reply notice (Ex.P5), the respondent admitted the long association with the appellant.



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5.He further submitted that the trial Court placed reliance on the civil suits filed by the appellant in O.S.No.48 of 2017 and O.S.No.50 of 2017 and rent control proceedings filed by the respondent in R.C.O.P.No.9 of 2017. The suits filed during March 2017, hence, issuance of the cheque (Ex.P1) in February 2017, is not possible. In the suits, the appellant took a stand that he paid a lease amount of Rs.7,50,000/- for the property at No.62/1 and Rs.10,00,000/- for the property at No.62/A. In such circumstances, the trial Court found that the question of purchasing the respondent's property, handing over the sale consideration to the appellant and issuing the cheque (Ex.P1) in discharge of the liability would not arise.

6.He further submitted that the trial Court failed to consider that as per the civil suits, the appellant already paid Rs.17,50,000/- to the respondent and also paid Rs.50,000/- monthly, totalling Rs.20,00,000/- is proved. In such circumstances, questioning the wherewithal of the appellant is not proper. The trial Court failed to consider that the respondent admits that he filed R.C.O.P.No.9 of 2017. The respondent's explanation that a signed blank cheque given to the appellant for the purpose of obtaining metro water connection, was filled up and misused, which is false since the metro water connection and sewage connection already provided as early as 2005. In such



circumstances, handing of blank signed cheque (Ex.P1) in the year 2017 would not arise. The trial Court finding that the appellant is unable to produce any account or document to substantiate he paid the amount to the respondent, is not proper. In support of his submissions, learned counsel for the appellant relied on the following decisions:

(i) Relied on the decision of the Hon'ble Apex Court in ***D.K.Chandel v. M/s.Wockhardt Ltd., & Anr., reported in (2020) 13 SCC 471*** wherein it had held that production of account books/cash books can be relevant in civil Court but not to be so in criminal cases filed under Section 138 of Negotiable Instruments Act, 1881.

(ii) Further relied on the decision of the Hon'ble Apex Court in ***T.Vasanthakumar v. Vijayakumari reported in (2015) 8 SCC 378*** wherein it had held that when the issuance of the cheque and its signature is not disputed, the presumption mandated under Section 139 includes a presumption that there exist a legally enforceable debt or liability. Though it is in the nature of the rebuttal presumption, it has to be raised by the accused in defence and the initial presumption always favours the complainant.



(iii)Placed reliance on the decision of the Hon'ble Apex Court in

C.S.Prasad v. C.Satyakumar and others reported in Criminal Appeal No.140

of 2026 for the point that it is settled principle in criminal jurisprudence that civil liability and criminal liability may arise from the same set of facts and that the pendency and conclusion of the civil proceedings does not bar prosecution where the ingredients of the criminal offence are disclosed.

(iv)Further placed reliance on the decision of the Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh reported in (2023) 10 SCC 148*** for the point that once the presumption under Section 139 given effect to, the Court ought to have proceeded on the premise that the cheque was issued in discharge of debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused.

(v)Referring to the decision of the High Court of Calcutta in the case of ***Kausik Barui v. Kartick Chandra Basu & Anr. in C.R.R.No.969 of 2015 dated 28.01.2026*** for the point that even in the absence of the written agreement, the complainant has established its claim and the liability of the Petitioner, the complaint is well maintainable unless it is rebuttable.



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7. Making the above submissions and relying upon the above decisions, learned counsel for the petitioner prays for setting aside the trial Court judgment.

8. Learned counsel for the respondent submitted that in this case, the appellant was a tenant under the respondent. The respondent initially resided at Thiruvotriyur and later shifted his residence to Anna Nagar for education of his children and he got employed abroad. Hence, the appellant, who was initially a tenant for a shop, later became tenant for residential portion at Door No.62/1. Further, the appellant was a tenant right from the year 2005, hence, they had good relationship. Since the respondent moved out of Thiruvotriyur, the appellant permitted to collect rents from the co-tenants of Thiruvotriyur property. Since the appellant gained confidence, he was entrusted with the property viz., Mudichur Flat and Okkiyam Thoraipakkam Flat. Later, it came to know that the appellant collected the lease amount from the Mudichur flat but not informed or paid the lease/rent amount to the respondent. Similarly, lease amount for Thoraipakkam property not paid. Hence, dispute arose in this regard from the year 2015. The respondent sent a lawyer notice on 18.03.2017 calling upon the appellant to pay the collected tenancy amount of Rs.10,36,400/- in respect of the respondent's properties, which was received



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on 20.03.2017 and not seriously disputed. Further in the reply notice (Ex.P5), the respondent gave details of how the properties purchased and from which period, the appellant became a tenant of the shop and thereafter of the residential portion. The respondent shifted his residence from Thiruvotriyur to Anna Nagar in the year 2005, hence, the appellant permitted to collect the rent from the co-tenants. It is to be seen that in the year 2009, the appellant asked for a loan and received Rs.3,00,000/- which was paid through cheque. In the reply notice (Ex.P5) in para 11, the details of the amount payable by the appellant was set out. These facts not seriously disputed by the appellant,

9.Learned counsel further submitted that the respondent marked Exs.D1 & D2 the plaint copy of the civil suits filed by the appellant. In the plaint copy, the admission by the appellant is that he took the property at Door No.62/A on lease on 09.02.2015 by paying a lease amount of Rs.10,00,000/- and also took the property at Door No.62/1 by paying the lease amount of Rs.7,50,000/- on 09.02.2015. This clearly shows that the appellant is a tenant. Whether any amount received is a matter to be decided by the civil Court. The admission of the appellant is that he was on lease and paid Rs.17,50,000/- as lease amount to the respondent. The appellant not denied filing of R.C.O.P.No.9 of 2017 by the respondent. Hence, the appellant and the



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respondent had a landlord tenant relationship and the property was never intended to be sold to the appellant. In the reply notice (Ex.P5), the appellant was called upon to return the signed blank cheque handed over to him for payment towards metro water pipeline connection. This cheque (Ex.P1) filled up, misused and false case projected against the respondent. Though the trial Court found that the cheque (Ex.P1) and its signature not disputed and that the statutory presumption under Sections 118 & 139 of N.I. Act comes into play, the trial Court rightly found that the respondent probablized his defence and the appellant failed to prove the case beyond all reasonable doubt based on the cross examination and defence exhibits. In view of the above, the present criminal appeal is liable to be dismissed.

10.Considering the submissions and on perusal of the materials, it is seen that the landlord-tenant relationship between the appellant and respondent is not disputed. The appellant's own admission in Exs.D1 & D2 is that he took the respondent's property on lease. It is not in dispute that the respondent filed R.C.O.P.No.9 of 2007 against the appellant. The appellant is in possession and still occupied the respondent's property as tenant is also not disputed. Only when the appellant vacates the premises, he is entitled for the lease amount if any paid to the respondent. In this case, in the reply notice (Ex.P5), the



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respondent gave the details of the purchase of properties bearing Door No.62/1 and 62/A in the year 1993 and 2003. Further, the appellant initially became a tenant for one shop portion and thereafter, when the respondent shifted his residence to Anna Nagar in the year 2005, the appellant took the residential portion at Door No.62/1 on tenancy. The appellant collected the lease amount from Mudichur flat but not informed the respondent nor paid the lease amount or rent. Similarly, lease amount relating to Thoraipakkam property collected but not paid to the respondent and there was dispute in this regard from the year 2015.

11.It is to be noted that the respondent stood as a surety for the appellant to purchase a taxi in June 2016. Thereafter, the respondent found that the appellant misappropriated the rents collected for his properties, not only at Kaladipet but also for flats at Mudichur and Thoraipakkam, and issued a notice dated 18.03.2017, received by the appellant on 20.03.2017. These facts are recorded in the reply notice (Ex.P5). The appellant admits that after receipt of Ex.P5, no rejoinder sent to the reply. In cross examination, all these facts put in detail to the appellant and Exs.D1 and D2 marked. Considering all these facts and finding that the respondent probablized the defence and the appellant failed to prove the case beyond all reasonable doubt, the trial Court rightly



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dismissed the complaint and acquitted the respondent.

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12.In view of the above, this Court finds no reason to interfere with the judgment of acquittal dated 22.11.2021 in S.T.C.No.2562 of 2017 passed by the learned Judicial Magistrate, Thiruvotriyur and the same is hereby affirmed.

13.The decisions relied upon by the learned counsel for the appellant is not at all applicable to the facts and circumstances of the present case.

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

16.04.2026

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

The Judicial Magistrate,
Thiruvotriyur.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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16.04.2026