IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.792 of 2019
and Crl.M.P.No.17026 of 2019

K.Sivakumar
Rep. by his Power Agent
Mr.R.Haneesh ... Appellant

Vs.

V.Shanmugasundram ... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the judgment dated 10.10.2019 passed by the learned V Additional Sessions Judge, Chennai in Crl.A.No.369 of 2018 and convict the respondent/appellant/accused by confirming the judgment dated 20.06.2018 passed in C.C.No.6664 of 2013 by the learned Metropolitan Magistrate, Fast Track Judge-III, Saidapet, Chennai.

For Appellant	:	Mr.M.Fazulul Haq for M/s.Juris and Justia
For Respondent	:	Ms.K.Meena Legal Aid Counsel

JUDGMENT

The appellant as complainant filed a private complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as "NI Act") against the respondent in C.C.No.6664 of 2013 before the learned Magistrate, Fast Track Court-III at Saidapet. The Trial Court by judgment dated 20.06.2018 convicted the respondent and sentenced him to undergo six months simple imprisonment and directed to pay the cheque amount of Rs.13,99,425/- as compensation. Aggrieved against the same, the respondent preferred an appeal before the learned V Additional Sessions Judge, Chennai. The Lower Appellate Court by judgment dated 10.10.2019 allowed the appeal setting aside the conviction of the Trial Court. Against which, the present appeal filed.

2.The complaint is that the respondent availed a loan of Rs.2,00,000/- from the complainant on 16.06.2008, again borrowed a sum of Rs.5,00,000/- on 19.01.2009 and further loan of Rs.5,00,000/- on 11.05.2009 apart from the chit amount of Rs.2,00,000/- taken by him on 25.11.2008 and agreed to repay the amount together with interest @ 18% and he owed the complainant a sum of Rs.14,00,000/- including the chit amount. The respondent in the meanwhile repaid a sum of Rs.4,01,300/- and calculating the interest as on 15.01.2013, in total a sum of Rs.13,99,425/- is due to the appellant. In discharge of the said liability, the respondent issued a cheque drawn on Allahabad Bank, Tondiarpet Branch bearing Cheque No.092032 dated 17.01.2013 for the said sum. When the cheque was presented by the complainant with his banker M/s.South Indian Bank Limited, Mylapore, Chennai on 24.01.2013, the cheque got dishonoured and returned for the reason "Funds Insufficient" by bank memo dated 28.01.2013. Thereafter, statutory notice was issued on 13.02.2013. The respondent failed to receive the notice despite intimation delivered on 18.02.2013. Thereafter complaint filed, the complainant prosecuted the case through his Power of Attorney who was examined as PW1 and marked five documents Ex.P1 to Ex.P5. The accused not examined any witness but marked Ex.D1. On conclusion of trial, the Trial Court convicted the respondent but the Lower Appellate Court set aside the conviction and acquitted the respondent.

3.The contention of the learned counsel for the appellant is that the respondent not denied the cheque and his signature in the cheque/Ex.P2. The respondent took a defence that statutory notice/Ex.P4 not served on him and the postal cover/Ex.P5 was returned for the reason 'Door locked, intimation delivered and not claimed', this would not be a proper reason and cannot be construed as notice served. The other defence is that when the respondent joined as subscriber in Sree Amrutha Ambika Chits Private Limited, Mylapore, Chennai, a signed unfilled cheque was given as security for the chit transaction which is misused. Further, he took a defence that the claim of the complainant is time barred debt when it is admitted that the amount was borrowed in the year 2008-2009 but the cheque in this case is dated 17.01.2013, hence it is a time barred. The Power of Attorney is not aware about the transaction details. The Power of Attorney deed is of the year 2013 and whether it is still in force is not proved and in view of the above, the complaint is not maintainable. The Trial Court by a detailed judgment extracted the relevant portion of the evidence, considered the contention of the respondent and given a finding that Ex.P5/postal cover was with an endorsement dated 16.02.2013 confirming that door locked and intimation delivered. Further address found in Ex.P5 and Ex.D1 are one and the same, further respondent residing in the said address and hence, there was proper service of notice. With regard to the time barred debt, PW1 denied the same. Further, explanation given that respondent for his debt of

Rs.14,00,000/- had repaid Rs.4,01,3000/- in the year 2013 which is not seriously denied or disputed and hence, it is not a time barred debt and the Trial Court referring to the judgment of the Apex Court in the case of ***A.V.Murthy vs. B.S.Nagabasavanna*** reported in ***(2002) 2 SCC 642*** and rightly rejected the defence of the accused. The defence taken by the respondent all rejected and further the respondent not denied the cheque and his signature. Hence, statutory presumption under Sections 118 and 139 of NI Act comes into play. Finding that the respondent not probabilized his defence and on the other hand, the appellant proved the case against the respondent, the Trial Court rightly convicted the respondent. But the Lower Appellate Court misread the evidence and taken a view that PW1/Power of Attorney has no personal knowledge or witnessed the transaction between the complainant and the accused. The respondent being one of the subscriber of the chit completed his chit transaction in the year 2008 and paid all the amount for which he produced Ex.D1, Chit Book of Sree Amrutha Ambika Chits Private Limited. The Power of Attorney is none other than the Manager of Sree Amrutha Ambika Chits Private Limited. Further considering that the complaint is filed not on behalf of the Chit Company but in individual capacity and the statutory notice sent to the old address of the respondent, postal cover returned and thereby giving a favourable finding to the respondent is not proper. Ex.P2/Cheque was issued in the individual name of K.Sivakumar by the respondent. Though the said K.Sivakumar might be Managing Director of Sree Amrutha Ambika Chits Private Limited, the same would not automatically mean that cheque was issued for the chit transaction. PW1 categorically stated that cheque was issued in the name of individual and the Power of Attorney was given by the said individual. Ex.D1 confirms the address of the respondent. If the respondent left the place, it is for him to inform the change of address. It is settled position that notice sent to the last known address is sufficient. In this case, notice was properly sent.

4.The learned counsel for the appellant further submitted that the Lower Appellate Court had given a finding that the Power of Attorney R.Haneesh given his office address as No.195 Kutchery Road, Mylapore, Chennai, which is the Head Office address of the Chit Fund Company and he has not given his residential address confirming that the Power of Attorney is the Personal Manager of the Managing Director of the Chit Fund Company. Further, undue importance and weightage given to Ex.P2 finding that it is a cheque with Core Banking System (CBS). Since Allahabad Bank introduced CBS cheques in the year 2011 itself, there is no possibility of Ex.P2/cheque to be issued in the year 2013. The Core Banking System will have unique account number with minimum of eight digits and maximum of ten digits and the cheque/Ex.P2 is with six digits confirming it is not a cheque of recent one. Hence the contention of the respondent that the security cheque which was given in the year 2008 is not proper. For this point, the learned counsel for the appellant relied upon the decision of the High Court of Himachal Pradesh in the case of ***Prem Lal vs. State of Himachal Pradesh and another*** reported in ***2024 Supreme (HP) 239***, wherein the Himachal Pradesh High Court referring to the judgment of this Court in ***R.Mathiyalagan vs. Jayamani*** reported in ***2016 SCC Online Mad 24818***, held that the cheque has been returned for the reason "insufficient funds" and not returned by the banker that it is not a CTS cheque, there is no prohibition or restriction in using the cheque. Hence, the finding of the Lower Appellate Court is not sustainable. The Lower Appellate Court failed to consider that there was a part payment made in the year 2013 and hence the contention of the respondent that it is a time barred debt is not sustainable. The Lower Appellate Court given a finding that how the complainant gave loan to the respondent on various dates without collecting any supporting documents and hence, the loan becomes doubtful is the subjectiveness of an individual. The respondent had relationship with the appellant as subscriber to the chit and they had good association. Believing the representation based on the cheque, loan given. Further the finding of the Lower Appellate Court that the cheque is not only old but it is time barred and the complainant could not produce any proof for the transaction subsequent to 2008-2013 is contra to Section 118 of N.I. Act and wrong reading of the evidence.

5.In support of his contention, the learned counsel for the appellant placed reliance on the following decisions:

1) ***A.V.Murthy vs. B.S.Nagabasavanna*** reported in ***2002 1 Supreme 517***

2) ***Dinesh B.Chokshi vs. Rahul Vasudeo Bhatt and another*** reported in ***2013 3 CurCC 331***

3) ***G.Thanickachalam vs. R.Jayasankar*** reported in ***2022 (2) CivCC 362***

4) ***K.Hymavathi vs. The State of Andhra Pradesh and another*** reported in ***2023 0 Supreme (SC) 843***

5) ***K.Ramesh vs. K.Kothandaraman*** reported in ***2024 0 Supreme (SC) 521***

6) ***M.Balaji vs. Perim Janardhana Rao and Others*** reported in ***2024 0 Supreme (Mad) 477***.

6.The learned counsel for the respondent strongly opposed the appellant's contention and submitted that the appellant in this case is prosecuted by a Power of Attorney, Personal Manager of K.Sivakumar, who is the Managing Director of Sree Amrutha Ambika Chits Private Limited having branch office at No.197, Kutchery Road, Mylapore, Chennai and Head Office at No.195, Kutchery Road, Mylapore, Chennai. The Power of Attorney deed (Ex.P1) is dated 22.03.2013. Admittedly, there was a chit transaction between the respondent and the appellant and it was in the year 2008. Ex.D1 confirms the chit transaction of Rs.2,00,000/-, entire chit amount paid as on 23.12.2008 and thereafter, there is no other transaction between the appellant and the respondent. Referring to the statutory notice, the learned counsel submitted that in the notice it is stated that the respondent availed loan of Rs.2,00,000/- on 16.06.2008, Rs.5,00,000/- on 19.01.2009, another Rs.5,00,000/- on 11.05.2009 and Rs.2,00,000/- during the chit transaction on 25.11.2008. Thus specific borrowal dates given and huge amount is said to have been paid to the respondent, no contemporary documents or any materials produced to prove loans gives. Ex.D1 would prove that after 23.12.2008 there is no other transaction. On 23.12.2008 receipt of the chit amount paid recorded. Had there been any dues as claimed in the statutory notice, this acknowledgment on 23.12.2008 would not have been given. Further in the statutory notice, it is stated that the respondent paid Rs.4,01,300/-, when it was paid, what is the mode and in how many installments, no details given either in the statutory notice or in the proof affidavit and evidence. Thus, the contention of the respondent that the cheque which was given in the year 2008 as security for the chit transaction and filled up for a time barred debt probabilized. Hence, prayed for dismissal of the appeal.

7.Considering the submissions made and on perusal of the materials, it is seen that in this case the appellant as complainant prior to filing of the complaint sent statutory notice/Ex.P4. From reading of the statutory notice, it is seen that the complainant projects his case as though the respondent availed loan of Rs.2,00,000/- on 16.06.2008, Rs.5,00,000/- on 19.01.2009, another Rs.5,00,000/- on 11.05.2009 and Rs.2,00,000/- during the chit transaction on 25.11.2008, agreeing to repay the loan amount with interest @ 18%. The complainant further states that the respondent paid Rs.4,01,300/- and balance of Rs.9,98,700/- to be paid with interest, for which, cheque dated 17.01.2013 for Rs.13,99,425/- was issued by the respondent. It is seen in the complaint and in the sworn affidavit, the same is confirmed. The specific stand of the respondent is that the respondent was a subscriber to the chit in Sree Amrutha Ambika Chits Private Limited, on 23.12.2008 the entire chit subscription amount paid which is proved by Ex.D1. In this case, the complainant K.Sivakumar is the Managing Director of Sree Amrutha Ambika Chits Private Limited and the Power of Attorney R.Haneesh is his Manager. When the appellant was questioned as to chit and other transactions, PW1 unable to give any details. Though he states that the loan was given on various dates but no contemporary documents produced. It is seen that the loan was availed from 25.11.2008 and lastly on 11.05.2009, in this case the cheque is dated 17.01.2013 which is well beyond three years limitation period. In the absence of any contemporary documents or materials, the cheque is for a time barred debt. Though explanation given that Rs.4,01,300/- was paid as part repayment of loan but when and how it was paid, there is no answer. The respondent denied such payment and his contention is that a signed blank cheque given in the year 2008 as security during the chit transaction was filled up, misused and a case projected as though Ex.P2 was issued in discharge of liability. In this case, the respondent denied making any part and further, the appellant is unable to give either loan details or the details of part payment. Hence, for a time barred debt, the cheque/Ex.P2 is projected. Further, it is seen that the Power of Attorney/PW1 given his office address which is Head Office of the Chit Fund Company. PW1 admits that no supporting documents collected when the loan was given to the respondent. He further admits that there is no receipts or any documents to show that there was transaction between 2008 and 2013 and admits that the Chit Fund Company is a registered organization, in such circumstances there cannot be any transaction without proper records or documents. There is no witness to the Power of Attorney Deed/Ex.P1. On perusal of Ex.D1, it is recorded that the entire amount paid and chit closed on 23.12.2008. PW1 not disputed or objected to Ex.D1. For the loan payment and repayment of part of the loan, there is no details or materials available and the appellant is unable to give any reasons. In the case of ***A.C.Narayanan vs. State of Maharashtra and another*** reported in ***2013 (4) MLJ(Crl.) 213(SC)***, the Apex Court held that the complaint can be prosecuted by a Power of Attorney but the Power of Attorney must be aware about the transaction and give details. When the Power of Attorney failed to give details, his principal ought to have get into witness box to clear the doubt, but in this case the appellant failed to do so. From the evidence and materials, it is clear that the loan transaction between the appellant and the respondent is of the year 2008 and thereafter, there have been no transactions and for the loan said to have been given in the year 2009, the cheque/Ex.P2 of the year 2013 is projected which is nothing but a time barred debt. In view of the above, it is seen that the respondent had probabilized his defence and the Lower Appellate Court rightly allowed the appeal and set aside the conviction of the Trial Court. Hence, this Court finds no reason to interfere with the finding of the Lower Appellate Court.

8.In the result, the Criminal Appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

9.This Court appreciates Ms.K.Meena, Legal Aid Counsel for the respondent for her strenuous efforts in doing research and putting forth the case of the respondent effectively. The Legal Services Authority to pay the remuneration to the Legal Aid Counsel as per Rules.

25.02.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

1.The V Additional Sessions Judge,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Judge-III,
Saidapet, Chennai.

M.NIRMAL KUMAR, J.

cse

Crl.A.No.792 of 2019

25.02.2026