IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2026

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRL A NO. 1427 of 2023

P.Raj
S/o.Palraj ... Petitioner(s)

Vs

G.Saroja
W/o.Ganesan ... Respondent(s)

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C praying to set aside the acquittal of the respondent in the above STC.No.465 of 2017 by the learned Judicial Magistrate, Fast Track Court No.II, Erode, by the Judgement dated 30.08.2023 for the offence under Section 138 of Negotiable Instrument Act.

For Petitioner(s): Mr.S.Swaminathan

For Respondent(s): No appearance

JUDGEMENT

This Criminal Appeal has been filed by the appellant / complainant seeking to set aside the acquittal order passed in STC.No.465 of 2017 dated

30.08.2023 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode.

2. Challenging the findings of the Courts below, the complainant has preferred the present appeal. Before the Trial Court, the complainant initiated proceedings under Section 138 of the Negotiable Instruments Act against the accused, stating that on 15.01.2017, for urgent family needs, the accused borrowed a loan of Rs.3,50,000/-. In order to discharge the said loan, the accused issued a post-dated cheque dated 15.04.2017 bearing Cheque No.862727 drawn on State Bank of India, Balaji Nagar Branch, Chennai.

3. At the request of the accused, the complainant presented the said cheque for collection on 18.04.2017. However, the cheque was returned unpaid with the endorsement “Funds Insufficient.” Thereafter, the complainant issued a statutory notice to the accused. Though the accused received the notice, he neither sent any reply nor repaid the cheque amount. Hence, the complainant initiated proceedings under Section 138 of the Negotiable Instruments Act and also sought compensation under Section 357 of the Code of Criminal Procedure.

4. Upon issuance of summons, the accused appeared before the Trial Court and denied the offence. During the trial, on the side of the complainant, P.W.1 was examined and Exhibits P1 to P5 were marked. On the side of the

accused, no oral or documentary evidence was adduced. During questioning under Section 313 Cr.P.C., the accused contended that he was not aware of the complaint and raised a defence that the alleged cheque had been given to one Advocate Bharath as security in connection with a civil case. He further contended that he had not borrowed any loan from the complainant.

5. On the other hand, the complainant examined himself as P.W.1 and produced the cheque, return memo, and copy of the statutory notice. Upon considering the evidence on record, the learned Trial Judge held that the complainant was residing at Chennai but originally belonged to Thoothukudi, whereas the accused was a resident of Chennai. The Trial Court observed that there was no specific averment as to how the complainant became acquainted with the accused when they were residing in different places. It was further observed that the complainant was running an electrical shop and had allegedly lent money without charging interest, which, according to the Trial Court, was unbelievable. The Trial Court also noted that the complainant admitted that the cheque was issued in the office of the one Advocate Bharath. Based on these assumptions, the Trial Court held that the defence of the accused that the cheque had been misused at the instigation of Bharath was probable and concluded that there was no legally enforceable debt. Accordingly, the complaint was dismissed. Aggrieved by the said findings, the present appeal has been filed.

6. The learned counsel for the appellant contended that the respondent/accused had not denied the signature found on the cheque and had also not disputed that the cheque was drawn from his bank account. Therefore, the issuance of the cheque by the accused stands prima facie established, which is sufficient to draw the statutory presumption under Section 118 of the Negotiable Instruments Act in favour of the complainant. It was further argued that if the cheque had not been issued towards a legally enforceable debt, it was incumbent upon the accused to rebut the presumption by adducing cogent evidence. However, the accused failed to adduce any such evidence. Despite this, the learned Trial Judge, based on assumptions, concluded that there was no proof of acquaintance between the complainant and the accused and dismissed the complaint, which is illegal and liable to be set aside.

7. The learned counsel for the appellant further submitted that the accused failed to take any steps to examine Advocate Bharath, to whom the cheque was allegedly issued, to substantiate his defence. In the absence of such evidence, the Trial Court erred in dismissing the complaint when the accused had failed to rebut the statutory presumption.

8. Despite service of notice, there was no representation on behalf of the respondent/accused in the appeal.

9. On perusal of the cheque clearly reveals that it was drawn from the account of the accused in favour of the complainant and that the signature found on the cheque was not denied. If the cheque had indeed been issued to Advocate Bharath, the accused ought to have examined him as a witness. The failure of the accused to do so clearly weakens his defence.

10. On the other hand, the complainant has prima facie proved that the cheque was issued by the accused and that the signature on the cheque belongs to him. Therefore, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act arises in favour of the holder of the cheque. The complainant had also issued the statutory notice prior to filing the complaint, which was received by the accused. However, the accused neither issued any reply nor raised any objection at the earliest point of time. If the cheque had not been issued in favour of the complainant, the accused ought to have issued a suitable reply, which he failed to do. The Trial Court failed to properly appreciate this crucial aspect.

11. Furthermore, the complainant proved that the cheque was issued by the accused towards discharge of the loan, that it was presented for collection, returned unpaid, statutory notice was issued, and the complaint was duly lodged. As the complainant is the holder of the cheque, the presumption arises

in his favour. Though the accused is entitled to rebut the presumption, no evidence was adduced on his side, nor was Advocate Bharath examined to support his defence. In the absence of any rebuttal evidence, the Trial Court erred in dismissing the complaint based on conjectures and assumptions, particularly regarding the alleged lack of acquaintance between the complainant and the accused.

12. Since the complainant has successfully discharged his burden of proof, he is entitled to the relief as prayed for. Accordingly, the findings of the Trial Court are set aside. The accused is sentenced to undergo six months' simple imprisonment, and a sum of Rs.12,25,339/- is awarded as compensation. Consequently, the appeal is allowed.

13.The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any.

05.01.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

1. The Judicial Magistrate,
   Fast Track Court No.II, Erode.

T.V.THAMILSELVI, J.

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