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CRL A No. 753 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-01-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 753 of 2018
and
CrI.MP.No.15803 of 2018

K.Ganesamoorthy
S/o.Kuppusamy @ Kuppanan,
Proprietor,
M/s.K.G.Autos,
72, Brige Way Colony,
Near Athiparasakthi Temple,
Tiruppur, Tiruppur Taluk,
Thiruppur District.

Appellant(s)

Vs

K.Karthikeyan
S/o.Kuppusamy,
15, Muthu Gounder Street,
Bhrahmana Periya Agraharam,
Erode-5, Erode Taluk, Erode District.

Respondent(s)

PRAYER: This criminal appeal filed under Section 374(2) of CrI.P.C. to set aside the judgment dated 24.08.2018 passed in C.A.No.303 of 2017 on the file of the Second Additional District Sessions Judge, Erode reversing the judgment dated 3.11.2017 passed in S.T.C.No.163 of 2016 on the file of the Judicial Magistrate (Fast Track Court) No.1 Erode by allowing the present criminal revision petition.

For Appellant(s): Mr.S. Ismath Hajarah
For Mr.I.C.Vasudevan

For Respondent(s): Mr.John Harrison
Legal Aid Counsel
For Respondent (vide Order
Dated 26.09.2025)



JUDGMENT

This criminal appeal has been filed to set aside the judgment dated 24.08.2018 passed in C.A.No.303 of 2017 on the file of the Second Additional District Sessions Judge, Erode, reversing the judgment dated 03.11.2017 passed in S.T.C.No.163 of 2016 on the file of the Judicial Magistrate (Fast Track Court) No.1 Erode.

2.On earlier occasion i.e.15.12.2025, this Court passed the following order:

The respondent as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.163 of 2016 against the appellant/accused before the learned Judicial Magistrate, Fast Track Court No.I, Erode (trial Court) and the complaint dismissed by judgment dated 03.11.2017 acquitting the appellant/accused. Challenging the same, the respondent preferred an appeal before the learned II Additional Sessions Judge Erode in Crl.A.No.303 of 2017 (lower appellate Court) and the lower appellate Court by judgment dated 24.08.2018 set aside the judgment of trial Court and convicted the appellant/accused for offence under Section 138 r/w 142 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 respondent/complainant in default to undergo one month Simple Imprisonment. Aggrieved over the same, the present appeal is filed by the appellant/accused.



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2. Gist of the case is that on 20.10.2015 the appellant borrowed a sum of Rs.10,00,000/- (Rupees ten lakh only) from the respondent for his urgent need and issued a post dated cheque bearing No.020350 dated 20.11.2015 (Ex.P1) drawn on Bank of India, S.S.I Branch, Tiruppur. When the respondent presented the cheque (Ex.P1) for encashment on 20.11.2025, the same got dishonoured for the reason “Account Closed” on 23.11.2015. Thereafter, the respondent issued statutory notice (Ex.P4) on 30.11.2015 to the appellant. But the appellant neither sent any reply to the statutory notice (Ex.P4) nor paid the cheque amount. After following the procedure, the complaint under Section 138 of Negotiable Instruments Act, 1881 filed before the trial Court. During trial, the respondent examined himself as PW1 and marked the cheque/Ex.P1, bank challan/Ex.P2, Bank Return Memo/Ex.P3, Statutory Notice/Ex.P4, Postal Acknowledgment Card/Ex.P5 and photostat copy of sale deed dated 03.06.1972/Ex.P6. On the side of the defence, the Bank Manager of Bank of India (complainant bank) examined as DW1 and Ex.D1 marked. On conclusion of trial, the trial Court acquitted the appellant, but in the appeal, the judgment of trial Court set aside and the appellant was convicted.

3. Learned counsel for the appellant/accused submitted that the respondent admits that he gave loan of Rs.10,00,000/- on the request of the appellant primarily based on the cheque (Ex.P1) alone and no other supporting document collected. The respondent further admits that he studied upto 10th std and running a tea shop. On the other hand, the appellant was running an automobile spare part business. The respondent states that he knew the appellant for seven years and the appellant used to borrow loan of Rs.10,000/- or Rs.20,000/- without any interest due to their relationship. But there is no



explanation regarding how the cheque amount of Rs.10,00,000/- mobilized by the respondent. The respondent states that in the year 2014, he spent Rs.7,00,000/- for his daughter's marriage and ten days prior to 20.10.2015 when the appellant asked for loan of Rs.10,00,000/-, on that day the respondent had no money with him. On 19.10.2015, the respondent collected Rs.5,00,000/- from one Periyasamy, Rs.4,00,000/- from one Govindaraj and Venkatachalam all doing cotton and groundnut business collected money from them and gave loan of Rs.10,00,000/- to the appellant. None of these persons examined. When the respondent was questioned about his agriculture income, the respondent produced photostat copy of sale deed/Ex.P6 to prove he owns lands from 1972 onwards and having regular agriculture income. Merely producing the document (Ex.P6) by itself cannot be said that the land was under cultivation and the respondent was having sufficient income.

4.Learned counsel further submitted that the appellant's specific stand is that during his business, he gave various cheques, one of the cheque had come in the hands of the respondent who filled up the cheque for a huge sum and filed a case. Though the respondent's financial capability was questioned, the respondent had not taken any steps to prove that he had sufficient money to extend loan of Rs.10,00,000/- to the appellant. The variance of handwriting in the cheque is apparent. Though the respondent states that it was the appellant who handed over filled up cheque, the appellant denied the same. The appellant after receipt of the notice (Ex.P4) approached the respondent who promised he will not pursue the notice, hence, appellant not sent any reply for Ex.P4. During cross examination, the variance of handwriting in the cheque and the respondent's financial capability both questioned. The trial Court



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finding that the respondent is not a man of means to extend loan of Rs.10,00,000/- that to without any interest and also finding that the respondent himself borrowed the amount from other three persons and none of them examined and respondent failed to prove his financial capability, dismissed the complaint. But the lower appellate Court finding appellant not disputed his signature and the appellant's explanation that the cheque which was given to another person, reached the hands of the appellant, is only a suggestion without any materials to substantiate the defence and finding statutory presumptions under Sections 118 & 139 of Act not dislodged and appellant unable to probablize his defence, convicted the appellant, is not proper. The lower appellate Court ought to have gone by the principle that when the possibility of taking two views is there, one favouring the accused ought to be followed. In this case, when the judgment of acquittal is set aside, the lower appellate Court not gave any proper reason, but merely gone on statutory presumption which is not proper when the appellant questioned the financial capacity of the respondent. Hence, the appeal to be allowed setting aside the judgment of lower appellate Court.

5.Learned counsel for the respondent strongly opposed the appellant's contention and submitted that in this case, the appellant not disputed issuance of cheque (Ex.P1) and its signature, hence, statutory presumption under Sections 118 & 139 of the Act follows. Merely suggesting that the respondent had no source of source of income, is not sufficient and no materials produced to show the respondent had no means to extend a loan of Rs.10,00,000/-. On the contrary, the respondent produced sale deed/Ex.P6 to prove he had sufficient income from agriculture. Considering the past relationship, the respondent gave loan of Rs.10,00,000/-. The



respondent gave reason that he mobilized Rs.10,00,000/- from Periyasamy, Govindaraj and Venkatachalam who are all Traders in cotton and groundnut. This not specifically denied by the appellant. Further, the appellant received the statutory notice (Ex.P4) is also not denied. Considering all these aspects the lower appellate Court rightly convicted the appellant and set aside the trial Court judgment.

6.In support of his submissions, learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in the case of "**Sanjabij Tari v. Kishore S.Borcar & Anr.**, reported in **2025 SCC OnLine 2069**" and the relevant portion is extracted as follows:

"FAILURE OF ACCUSED TO REPLY TO NOTICE LEADS TO INFERENCE

29.Furthermore, the fact that the accused has failed to reply to the statutory notice under section 138 of the Negotiable Instruments Act, leads to an inference that there is merit in the appellant-complainant's version. This court in Tedhi Singh v. Narayan Dass Mahant [(2022) 6 SCC 735; (2022) 2 SCC (Cri) 726; (2022) 3 SCC (Civ) 442; 2022 SCC OnLine SC 302.] has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow [See page 740 of (2022) 6 SCC.] :

"10.The proceedings under section 138 of the Negotiable Instruments Act, is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent



materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.””

7.He further placed reliance on the decision of the Hon’ble Apex Court in the case of “**Rohitbhai Jivanlal Patel v. State of Gujarat & Anr.**, reported in (2019) 18 SCC 106” and the relevant portion is extracted as follows:

“18.In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant-accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.”



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8.He further submitted that at the time of admission, the appellant filed a petition in Crl.M.P.No.15801 of 2018 seeking suspension of sentence and this Court by order dated 27.11.2018 suspended the sentence directing the appellant to deposit a sum of Rs.5,00,000/- to the credit of S.T.C.No.163 of 2016.

9.At this juncture, learned counsel for the appellant seeks small accommodation to verify whether the appellant deposited the amount of Rs.5,00,000/- and complied with the order of this Court.

10.List the matter on 19.01.2026 on the request made by the learned counsel for the appellant.”

3.In continuation of abovesaid order passed by this Court on 15.12.2025, counsel for the appellant/accused submitted that appellant not deposited the amount of Rs.5 lakhs to the credit of S.T.C.No.163 of 2016 as per the conditional order dated 27.11.2018 passed in Crl.M.P.15801 of 2018. The appellant’s contention on merits was discussed in the earlier proceedings.

4.Counsel for the respondent/complainant submitted that both appellant/accused and respondent/complainant hail from same area, doing farming. The respondent/complainant was cultivating commercial crops, cotton and groundnut and he is a man of resources, which fact is not seriously disputed. He further submitted that the trial Court erroneously passed an order of acquittal, which was rectified and corrected by the lower appellate Court. Considering the evidence and materials produced, the appellant was unable to



give any reason how the cheque came in possession of the respondent, further, there is no serious dispute with regard to the issuance of cheque and signature.

The lower appellate Court, after considering the dispute with regard to the source of income of the respondent and the same was not seriously challenged by the petitioner, allowed the appeal and set aside the judgment's of the trial Court and convicted the appellant/accused.

5.Considering the submissions and perused the materials available on record, this Court finds that the lower appellant Court's judgment is well reasoned one, which was considered the evidence and materials and rightly set aside the trial Court judgement and this court finds no reason to interfere with the conviction of the appellant. Accordingly, the criminal appeal is dismissed. The trial Court is directed to issue warrant to secure the appellant/accused. Consequently, connected miscellaneous petition is closed.

19-01-2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
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M.NIRMAL KUMAR J.

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