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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27-10-2026

CORAM

THE HON'BLE MRS.JUSTICE M.D.SUMATHI

CRL RC(MD) No. 410 of 2019

CNR:{HCMD010390432019}

A. Sekar ..Petitioner

Vs

Karthikeyan ..Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the judgement dated 07.06.2018 in C.A.No.94 of 2017on the file of the I-Additional District and Sessions Judge (PCR), Tiruchirappalli confirming the acquittal order passed in S.T.C.No.3189 of 2016 on the file of the Judicial Magistrate, Manapparai, dated 21.08.2017 and set aside the same.

For Petitioner: Mr.N.Ananda Kumar

For Respondent: Mr.D.Rameshkumar

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ORDER

This Criminal Revision Case has been filed under Sections 397 read with 401 of the Code of Criminal Procedure, challenging the judgment dated 07.06.2018 passed by the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli, in C.A. No.94 of 2017, whereby the appellate Court confirmed the judgment dated 21.08.2017 passed by the learned Judicial Magistrate, Manapparai, in S.T.C. No.3189 of 2016, acquitting the respondent of the offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The specific case of the complainant before the trial Court was that the respondent/accused had borrowed a sum of Rs.8,00,000/- on 17.05.2016 and a further sum of Rs.9,00,000/- on 25.05.2016, totalling Rs.17,00,000/-, and had executed a promissory note dated 25.05.2016 in respect of the amount borrowed. According to the complainant, when repayment was demanded, the respondent issued cheque No.036421 for Rs.8,00,000/- dated 17.07.2016 and cheque No.036420 for Rs.9,00,000/- dated 25.07.2016 towards discharge of the said liability. The cheques were presented for collection on 05.10.2016 and were returned unpaid on 13.10.2016 for insufficiency of funds. The complainant further stated that the respondent had lodged a complaint before the Manapparai Police

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Station on 05.10.2016 alleging misconduct on the part of the complainant, but the complaint was closed by the police. Thereafter, the respondent issued a legal notice dated 12.10.2016 containing allegations against the complainant, to which the complainant sent a reply dated 18.10.2016 demanding repayment of the cheque amounts. As the respondent failed to pay the amounts within the statutory period, the complaint under Section 138 of the Negotiable Instruments Act was instituted.

3. The complainant examined himself as P.W.1 and marked Ex.P1 and Ex.P2, the two disputed cheques; Ex.P3, the return memo; Ex.P4, the legal notice issued on behalf of the respondent; Ex.P5, the reply notice issued by the complainant; Ex.P6 and Ex.P7, the postal acknowledgment cards; and Ex.P8, the counterfoils evidencing deposit of the cheques. The complainant maintained that the amounts had been advanced to the respondent and that the cheques were issued towards repayment. During cross-examination, however, the complainant admitted that he had advanced the sum of Rs.17,00,000/- without charging interest and that he was maintaining an overdraft account with his bank. The financial capacity of the complainant and the probability of advancing such a substantial amount without interest, while himself availing banking

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facilities on which interest was payable, consequently became material issues in the case.

4. The respondent denied having borrowed any amount from the complainant and disputed the execution of the alleged promissory note and the issuance of the cheques towards any liability owed to the complainant. The respondent examined himself as D.W.1 and contended that he had substantial financial liabilities, including a loan of approximately Rs.1.64 crores and a pending suit for recovery of Rs.66.5 lakhs, and that he had no financial means to borrow money from the complainant in the manner alleged. His specific defence was that he had approached one Jeyaraman, examined as D.W.2, seeking a loan of Rs.20,00,000/- for his business requirements. According to the respondent, Jeyaraman took him to one Lourduraj, examined as D.W.3, who allegedly advanced Rs.17,00,000/- after obtaining two signed, unfilled cheques bearing Nos.036420 and 036421 and a signed, unfilled promissory note. The respondent further claimed that he had agreed to pay interest of Rs.34,000/- per month and that he repaid Rs.10,00,000/- on 25.05.2015 and the balance sum of Rs.7,00,000/- on 13.09.2016 in the presence of Jeyaraman. According to him, when he demanded the return of the cheques and promissory note, the complainant stated that the

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documents were with Lourduraj and that he would retrieve and return them. The respondent thus maintained that the disputed cheques had not been issued towards any legally enforceable debt due to the complainant.

5. In support of the above defence, Jeyaraman was examined as D.W.2. He stated that the respondent had approached him for a loan of Rs.20,00,000/- and that he had taken the respondent to the complainant, who doesn't have money at that time, in turn, took them to Lourduraj, from whom the respondent allegedly received Rs.17,00,000/- against signed cheques and a promissory note. D.W.2 also spoke about the alleged repayments of Rs.10,00,000/- and Rs.7,00,000/- to the complainant. However, during cross-examination, it was elicited that D.W.2 and his brother had business dealings with the complainant and that there were pending proceedings concerning financial liabilities, including a recovery suit relating to an educational loan for his brother's son. The trial Court considered these circumstances while assessing the reliability of D.W.2's testimony and the possibility of disputes between the witness and the complainant - Lourduraj, examined as D.W.3, did not support the respondent's version. He categorically denied having lent any money to the respondent and stated that, although he had money transactions with the complainant, he had not advanced any amount to the

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respondent. The trial Court therefore found that the respondent's specific theory that the loan had been obtained from Lourduraj through Jeyaraman was not substantiated by the evidence of D.W.3. Nevertheless, the trial Court proceeded to assess the respondent's defence in the context of the entire evidence, including the complainant's financial position, the bank records, the non-production of the alleged promissory note and the circumstances surrounding the disputed cheques.

6. The Assistant Bank Manager of the complainant's bank was examined as D.W.4. His evidence disclosed that the complainant was maintaining an overdraft facility with a limit of Rs.90,00,000/-, that properties had been mortgaged to obtain banking facilities and that four loans had been availed, of which two had been discharged. Ex.D8, the statement relating to the complainant's overdraft account, and Ex.D10, the statements relating to the complainant's savings accounts, were relied upon in assessing the complainant's financial transactions and capacity. The appellate Court particularly noted that the account statements did not disclose a cash withdrawal corresponding to the alleged advancement of Rs.17,00,000/-. The respondent relied upon this circumstance to contend that the complainant had not established the source from which the alleged loan had been advanced. The Branch Manager of the respondent's

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bank was examined as D.W.5. His evidence disclosed that cheque Nos.036419 and 036422 had been honoured in the year 2013. However, he also clarified that there was no rule requiring cheque leaves to be issued or used strictly in serial order, as the drawer could issue cheque leaves at his discretion. Consequently, the mere fact that other cheque numbers had been honoured earlier did not, by itself, establish that the disputed cheques could not have been issued in the manner alleged by the complainant.

7. Upon considering the oral and documentary evidence, the learned Judicial Magistrate, Manapparai, held that the respondent was entitled to be acquitted under Section 255(1) of the Code of Criminal Procedure. The trial Court considered the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and recognised that the execution and issuance of a cheque attract a presumption which may be rebutted by the accused. Though the evidence of D.W.3 did not support the respondent's particular theory of borrowing from Lourduraj, the trial Court examined the complainant's own financial circumstances and the other evidence relating to the alleged transaction. It noted that the complainant was maintaining an overdraft facility and paying interest to the bank, whereas he claimed to have advanced Rs.17,00,000/- to the

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respondent without interest. The trial Court also considered the absence of the alleged promissory note from the complainant's evidence and the lack of a corresponding cash withdrawal supporting the alleged advancement. On an overall assessment, the trial Court concluded that the respondent had rebutted the statutory presumption on the standard of preponderance of probabilities and that the complainant had not established the alleged legally enforceable liability to the requisite criminal standard.

8. Aggrieved by the acquittal, the complainant preferred C.A.No.94 of 2017 before the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli. The appellate Court examined the rival submissions, the evidence of P.W.1 and D.Ws.1 to 5, and the documentary exhibits marked on either side. The appellate Court noted that, although D.W.3 had not supported the respondent's theory of borrowing, the central question was whether the complainant had established the alleged advancement of Rs.17,00,000/- and the existence of a legally enforceable debt. The appellate Court considered the complainant's overdraft facility, the payment of interest on the bank borrowings and the absence of a corresponding withdrawal in the account statements. It found that the explanation that the complainant had

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borrowed money on interest from the bank and had, in turn, advanced a substantial amount to the respondent without interest was not supported by sufficient evidentiary material. It further held that, once the respondent had raised a probable defence and rebutted the statutory presumption, the burden shifted back to the complainant to establish that the cheques had been issued in discharge of a legally enforceable debt. Finding no sufficient reason to displace the trial Court's assessment of the evidence, the appellate Court dismissed the appeal on 07.06.2018 and confirmed the acquittal.

9. In the present revision petition, the petitioner contends that the judgments of the Courts below are contrary to law, the weight of evidence and the balance of probabilities; that the appellate Court failed to appreciate the evidence of the witnesses and relied upon presumptions and surmises; and that, despite finding that the respondent had failed to substantiate his theory of borrowing from D.W.3, the appellate Court erroneously sustained the acquittal. The petitioner further contends that the Courts below failed to give due effect to the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, particularly in view of the respondent's alleged admission of borrowing Rs.17,00,000/- and entrusting cheques to the lender. It is also argued that

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the Courts below failed to consider the relationship between the parties, the short-term nature of the alleged loan, the explanation for not charging interest and the fact that the promissory note was allegedly obtained only when the second instalment was advanced. The petitioner therefore seeks to set aside the appellate judgment and the original order of acquittal.

10. This Court, while exercising jurisdiction under Sections 397 read with 401 of the Code of Criminal Procedure, is required to examine whether the judgment under challenge suffers from any material illegality, jurisdictional error, perversity, any imperative misappreciation of evidence or other infirmity resulting in a miscarriage of justice. The revisional jurisdiction is not equivalent to the ordinary appellate jurisdiction and does not ordinarily permit a wholesale re-appreciation of the evidence merely to substitute a different view for a view reasonably taken by the Courts below. This limitation assumes particular significance where the revision petitioner challenges an order of acquittal which has already been affirmed by the appellate Court. The revisional Court may interfere where the findings are manifestly unreasonable, material evidence has been ignored or misread, or the decision is otherwise vitiated by a serious legal or procedural error; it cannot, however, interfere merely because another interpretation of the evidence

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is possible. In the present case, this Court must therefore examine whether the concurrent findings regarding the alleged loan transaction, the complainant's financial capacity, the bank records and the rebuttal of the statutory presumption are legally sustainable and supported by the evidence on record, and not merely whether this Court might have reached a different conclusion upon a fresh assessment of the evidence. Unless a ground warranting such exceptional interference is established, the concurrent acquittal cannot be disturbed in the exercise of revisional jurisdiction.

11. This Court has carefully considered the submissions made on either side and the findings recorded by the Courts below.

12. The principal question that arises for consideration is whether the respondent had raised a probable defence sufficient to rebut the statutory presumption in favour of the complainant and, if so, whether the concurrent findings of the Courts below disclose any ground warranting interference in the exercise of revisional jurisdiction.

13. It is settled that the presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the holder of the

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cheque, subject to the statutory requirements being satisfied. However, the presumption is rebuttable. In **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**, the Hon'ble Supreme Court explained that the accused is required to raise a probable defence on the standard of preponderance of probabilities and may rely not only on evidence adduced by the defence but also on the materials brought on record by the complainant. The accused is not required to establish the defence beyond reasonable doubt,

14. The decision in **Basalingappa v. Mudibasappa** further explains the manner in which the evidential burden operates in a prosecution under Section 138 of the Negotiable Instruments Act. Initially, the statutory presumption operates in favour of the complainant. The accused may rebut that presumption by establishing circumstances which render the non-existence of the alleged debt or liability reasonably probable. Once such a probable defence is raised, the evidential burden shifts back to the complainant to establish the alleged transaction and the legally enforceable liability in the light of the evidence on record. The accused is required to establish the probable defence only on the standard of preponderance of probabilities, whereas the complainant must establish the ingredients of the offence, including the legally enforceable debt or liability, to the criminal standard of proof beyond reasonable

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doubt when the presumption stands rebutted. Thus, the burden shifts according to the evidence and circumstances established by the parties; the complaint also must prove the case beyond reasonable doubt.

15. In the present case, the appellate Court examined the evidence concerning the alleged advancement of Rs.17,00,000/- and the complainant's financial capacity to lend such a substantial amount. The complainant asserted that he had advanced the amount to the respondent without charging any interest. However, the evidence also indicated that the complainant himself was maintaining an overdraft facility and incurring interest on the amount availed from the bank. The bank statement relied upon by the complainant did not disclose a corresponding withdrawal of Rs.17,00,000/- supporting the alleged advancement.

16. In the ordinary course of commercial and financial dealings, a prudent person would ordinarily be expected to consider the financial implications of borrowing money from a bank on interest and then advancing a substantial amount to another person without interest. Such a transaction is not impossible, and the mere fact that a person maintains an overdraft facility does not, by itself, disprove the advancement of a loan.

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Nevertheless, when the complainant claims to have advanced Rs.17,00,000/- without interest while himself incurring interest on an overdraft, the absence of supporting financial records assumes relevance. In the absence of a satisfactory explanation supported by the evidence on record, this circumstance may reasonably be considered while assessing the probability of the alleged transaction.

17. The appellate Court also considered the defence evidence, including the fact that D.W.3 did not support the particular source suggested by the respondent. However, the failure of D.W.3 to support that particular version would not, by itself, establish that the complainant had advanced the alleged loan. The complainant's case must be assessed on the basis of the entire evidence and the statutory presumptions applicable to the transaction. The Courts below considered the complainant's version, the bank records and the defence evidence cumulatively and concluded that the respondent had raised a probable defence regarding the alleged loan and the existence of the legally enforceable liability.

18. Applying the principles laid down in **Basalingappa v. Mudibasappa,** this Court finds that the respondent was not required to

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disprove the alleged transaction beyond reasonable doubt. It was sufficient for the respondent to bring on record circumstances which made the defence reasonably probable on the standard of preponderance of probabilities. The financial circumstances surrounding the alleged loan, including the complainant's claim of lending a substantial amount without interest while maintaining an interest-bearing overdraft and the absence of a corresponding withdrawal in the bank statement, were matters which the Courts below were entitled to consider. Once these circumstances were found sufficient to raise a probable defence, the complainant was required to establish the alleged transaction in the light of the evidence on record. The statutory presumption could not, by itself, relieve the complainant of that evidential burden after it had been rebutted.

19. This Court is conscious that the absence of a corresponding bank withdrawal, or the fact that the complainant maintained an overdraft, cannot independently and conclusively establish that no loan was advanced. The issue is whether the evidence, viewed as a whole, supports the findings of the Courts below. On a consideration of the material referred to in the impugned judgments, this Court finds that the Courts below have assessed the competing versions and grasped a

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conclusion that the respondent had rebutted the statutory presumption by raising a probable defence. The petitioner has not demonstrated that the said conclusion is perverse, contrary to the evidence on record or vitiated by a material error warranting revisional interference. This Court finds no sufficient ground to interrupt the judgments of the Courts below.

20. In the result, this Criminal Revision Case is dismissed. The judgment dated 07.06.2018 passed in C.A.No.94 of 2017 by the learned I-Additional District and Sessions Judge (PCR), Tiruchirappalli, confirming the acquittal of the respondent in S.T.C. No.3189 of 2016 by the learned Judicial Magistrate, Manapparai, dated 21.08.2017, is hereby confirmed. No costs.

13-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1.The I-Additional District and Sessions Judge (PCR),
Tiruchirappalli.

2.The Judicial Magistrate,
Manapparai.

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M.D.SUMATHI, J.

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