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Crl.A.No.150 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2025
PRONOUNCED ON : 21.01.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.150 of 2022

Narendran

... Appellant

Vs.

K.Vijayan

... Respondent

PRAYER: Criminal Appeal is filed under Section 378(4) of Code of Criminal Procedure, to set aside judgment dated 29.01.2020 of the Judicial Magistrate I, Perambalur in STC.No.90 of 2015 acquitting the accused of the offence punishable u/s 138 of Negotiable Instruments Act and to allow the STC.No.90 of 2015 and to punish the accused with maximum punishment.

For Appellant : Mr.T.Saikrishnan

For Respondent : Ms.J.Hakshara Shree,
Legal Aid Counsel



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JUDGMENT

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The appellant as complainant filed private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in STC.No.90 of 2015 before the learned Judicial Magistrate No.I, Perambalur (trial Court) against the respondent. The trial Court by judgment dated 29.01.2020 dismissed the complaint and acquitted the respondent. Against which, present criminal appeal filed.

2.Despite service of notice to the respondent and his name printed in the cause list, there was no representation for the respondent either in person or by any counsel. Hence, this Court by order dated 30.10.2025 appointed Ms.J.Hakshara Shree as Legal Aid Counsel for the respondent.

3.Gist of the case is that the respondent borrowed a sum of Rs.3,00,000/- (Rupees three lakh only) from the appellant on 15.10.2012 for his business purpose and promised to repay within one month from the date of loan received. But the respondent never repaid the loan amount, after repeated request, the respondent in repayment of loan issued a cheque (Ex.P1) bearing No.325357 dated 25.12.2012 for a sum of Rs.3,00,000/- (Rupees three lakh



only) drawn on the Lakshmi Vilas Bank, Perambalur to the appellant. When the cheque presented in the complainant's bank account viz., Indian Overseas Bank, Red Fields Branch, Coimbatore on 25.12.2012, the same returned for the reason "Insufficient Funds" on 28.12.2012. Thereafter, statutory notice (Ex.P3) dated 05.01.2013 issued to the respondent who received the same on 07.01.2013. But neither paid the cheque amount nor sent any reply. Following statutory procedure, complaint filed before the trial Court. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P4. The respondent examined himself as DW1 and marked Exs.D1 to D8. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondent. Challenging the same, present criminal appeal filed by the appellant/complainant.

4.Learned counsel for the appellant/complainant submitted that the trial Court failed to consider that the cheque (Ex.P1) duly presented, it was sent to Indian Overseas Bank for encashment, thereafter, the cheque (Ex.P1) returned for the reason "Insufficient Funds" by return memo (Ex.P2) dated 28.12.2012. He further submitted that appellant examined himself as PW1 and marked Exs.P1 to P4. The respondent in this case received statutory notice (Ex.P3) and postal acknowledgment (Ex.P4) confirms the same. The appellant was



cross examined in detail by the respondent, at that time, he took a stand that the appellant belongs to Coimbatore district and the respondent hails from Perambalur which is 200 km far away place and there is no reason for appellant giving loan to the respondent when there is no other relationship between them. Further, the appellant's financial capability questioned, the appellant confirmed he was running lorry transport business and had sufficient income to lend a loan. The appellant was questioned with regard to Income Tax Returns, thereafter respondent failed to probablize his defence that appellant had no source of income and he was not a man of resources. The respondent admits registered sale agreement in document No.5002 of 2011 dated 17.08.2011 between appellant and respondent and the sale to be concluded within 11 months. In this case, respondent failed to complete payment and conclude the agreement, a legal notice for the sale transaction issued. The specific case is that the cheque (Ex.P1), given at the time entering sale agreement, filled up during December 2012.

5.Learned counsel for the appellant further submitted that the respondent cross examined in detail with regard to sale agreement, issuance of power of attorney, cancellation of power of attorney, the appellant's father-in-law Ramasamy filing civil suit in O.S.No.96 of 2013 before the Subordinate Court,



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Peramabalar, filling up of promissory note and demanding the repayment of

Rs.6,00,000/- with interest. Further the respondent examined himself as DW1 and marked Exs.D1 to D8. The sale agreement marked as Ex.D1, power of attorney between appellant and respondent marked as Ex.D2, cancellation of power of attorney marked as Ex.D3, written statement filed in O.S.No.96 of 2013 marked as Ex.D4, encumbrance certificate for the property marked as Ex.D5, the plaint in O.S.No.96 of 2013 marked as Ex.D6, notice issued by appellant's father-in-law prior to filing of civil suit marked as Ex.D7 and reply notice marked as Ex.D8. The trial Court failed to consider the fact and relevancy of the case, but rendered the judgment of acquittal referring to Sections 58, 106, 145 & 155(3) of Indian Evidence Act, 1872 and Sections 118 & 139 of Negotiable Instruments Act, 1881. Added to it, the trial Court failed to consider the entire evidence and material in proper perspective and came to conclusion, there was some transaction between appellant's father-in-law Ramasamy and respondent, which the appellant not disclosed in the statutory notice, complaint or in his evidence, until confronted by the defence and hence gave benefit of doubt and dismissed the complaint.

6.In support of his contention, learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in the cases of *Shree Daneshwari*



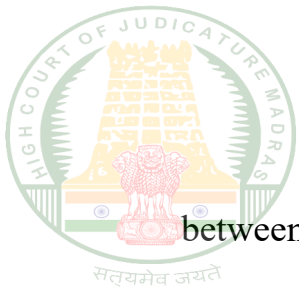
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Traders v. Sanjay Jain and another reported in ***(2019) 16 SCC 83*** and

Rohitbhai Jivanlal Patel v. State of Gujarat and another reported in ***(2019)***

18 SCC 106 for the point that it is for the respondent-accused to adduce evidence to prove that the cheques were not supported by consideration and there was no debt or any liability to be discharged by him and for the point that when the respondent had not denied his signature on the cheques and when the cheques were presented to the Bank within the period of their validity and returned unpaid for either insufficient funds or account being closed, the basic ingredients under Sections 138, 118 & 139 of Negotiable Instruments Act, 1881 are apparent on the face of the record. In view of the above, the revision to be allowed and the appellant to be convicted.

7.Learned counsel for the respondent submitted that the appellant had not come with clean hands. The case projected by the appellant as per statutory notice (Ex.P3) is that on 15.10.2012, the respondent borrowed a sum of Rs.3,00,000/- as hand loan for development of business and to repay the loan amount, the cheque (Ex.P1) dated 25.12.2012 issued, the cheque presented, thereafter, complaint filed. Nowhere in the statutory notice (Ex.P3) it is mentioned that how the respondent, a resident of Perambalur came in contact with appellant, a resident of Coimbatore and what was the relationship



between them and how the appellant gained confidence and gave loan. More

particularity, the appellant in his evidence admits that the respondent resides 200 km far away from the appellant and they had no common business between them. Further appellant admits he has not lent any loan to anybody and for the first time, gave loan to the respondent. Learned counsel further submitted that the respondent examined himself as DW1 and marked (i)sale agreement in document No.5002 of 2011 dated 17.08.2011 as Ex.D1, (ii)power of attorney (Ex.D2) dated 10.11.2011 as Ex.D2, (iii)cancellation of power of attorney dated 26.03.2013 as Ex.D3, (iv)written statement dated 05.02.2014 filed by the respondent in O.S.No.96 of 2013 as Ex.D4, (v)encumbrance certificate confirming sale agreement between appellant and respondent as Ex.D5, (vi)plaint copy of civil suit filed by appellant's father-in-law in O.S.No.96 of 2013 dated 13.09.2013 as Ex.D6, (vii)notice issued by appellant's father-in-law as Ex.D7 and (viii)reply notice in the civil suit dated 06.08.2013 as Ex.D8. When these documents were confronted and put to the appellant, he denied the same, thereby, completely suppressed true facts of the case. The specific case of the respondent is that there was a registered sale agreement between appellant and respondent (Ex.D1) for sale of land; according to Ex.D1, the sale to be completed within stipulated period; at the time of executing Ex.D1, promissory note and three signed blank cheques



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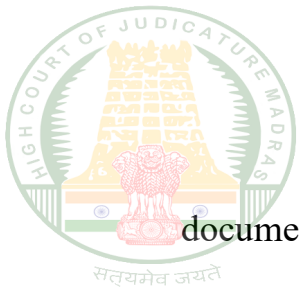
received by the appellant; one of the signed blank cheque filled up and false case projected against the respondent. The admitted position is that there was civil dispute between appellant and respondent. The appellant using his father-in-law Ramasamy filed civil suit (O.S.No.96 of 2013) using promissory note and also filed 138 complaint using one of the security cheque issued. Thus, it is clear that as arm-twisting and to somehow exert pressure to the respondent, the present complaint filed against the respondent. The trial Court on proper analysis of evidence and materials rightly came to conclusion that the appellant had not come with clean hands and the respondent probablized his defence by way of examining himself as DW1 and marking defence documents as Exs.D1 to D8 and dismissed the complaint, acquitted the respondent from the case. Hence, he prayed for dismissal of the appeal confirming judgment of acquittal.

8.Learned counsel for the appellant by way of reply submitted that the civil suit in O.S.No.96 of 2013 decided in favour of appellant by judgment dated 29.09.2023. In the civil suit written statement, respondent admits handing over of cheque in dispute (Ex.P1) to the appellant. Nowhere in the civil suit, the defence that liability to the cheque, discharged taken.



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9. Considering the submissions and on perusal of the materials, it is seen that appellant prior to filing complaint under Section 138 of Negotiable Instruments Act, 1881, issued statutory notice (Ex.P3) to respondent. The statutory notice is with regard to issuance of cheque (Ex.P1) by respondent and dishonour of cheque (Ex.P1) and filing of complaint there is no details further given. Even in the complaint and in sworn statement, there is no reference to any of earlier transaction between appellant and respondent. When the appellant was cross examined by the respondent, the appellant was specifically questioned with regard to earlier sale agreement (Ex.D1), power of attorney (Ex.D2), cancellation of power of attorney (Ex.D3), filing of civil suit by appellant's father-in-law and other aspects. The appellant denied the same and feigns ignorance. The sale agreement is a registered document in No.5002 of 2011 dated 17.08.2011, power of attorney is document No.331 of 2011 dated 10.11.2011, cancellation of power of attorney is document No.1317 of 2013 dated 26.03.2013. These documents clearly referred to in the civil suit notice and its reply (Exs.D7 & D8). In this case, the proof affidavit filed on 20.11.2018, but there is no reference about these registered documents and the transactions between appellant and respondent, all details disclosed by the respondent when he examined himself as defence witness (DW1) and marked



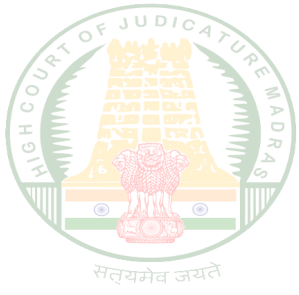
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documents as defence exhibits (Exs.D1 to D8). It is apparent that the appellant had not come with clean hands and he suppressed material facts.

10.Now the civil Court judgment in O.S.No.96 of 2013 produced by the appellant. In the civil suit, the specific stand is that at the time of sale agreement, a promissory note and signed blank security cheques collected from the respondent. One of the cheque filled up and the complaint filed. Hence cheque issued pursuant to the sale agreement as security and cheque not in discharge of any loan liability.

11.On proper appreciation of evidence and materials the trial Court rightly held that the respondent probablized his defence by way of defence witness and documents and the appellant failed to prove the case beyond all reasonable doubt.

12.In view of the above, this Court finds no reason to interfere with the judgment of acquittal dated 29.01.2020 in STC.No.90 of 2015 passed by the learned Judicial Magistrate No.I, Perambalur and the same is hereby confirmed.



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13. In the result, this Criminal Appeal stands dismissed. This Court appreciates Ms.J.Hakshara Shree, Legal Aid Counsel for the respondent for meticulous preparation.

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Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

The Judicial Magistrate No.I,
Perambalur.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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