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CrI.A.No.613 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2026
PRONOUNCED ON : 17.03.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.613 of 2021

Y.Yonus,
S/o.Yaqub,
Prop.M/s.Standard Service Point,
No.1/225, Hosur Bangalore Main Road,
Mookandapalli-635126,
Hosur (Tk) Krishnagiri District. ... Appellant

Vs.

D.Chaithra,
W/o.Muralidharan,
Haranmane Golden Gate,
Sajjapura Main Road,
Attibele-562107.
Anekal (Tk),
Bangalore District. ... Respondent

PRAYER: Criminal Appeal is filed under Section 378(4) of Code of Criminal Procedure, to set aside the judgment dated 15.04.2021 passed in C.A.No.30 of 2020 by the Additional District Judge, Hosur reversing the judgment dated 30.01.2020 passed in S.T.C.No.99 of 2016 by the Judicial Magistrate, Fast Track Court, Hosur, Krishnagiri District and allow this appeal.



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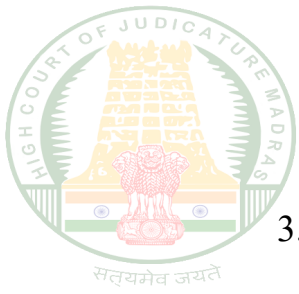
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For Appellant : Mr.C.D.Sugumar
For Respondent : Ms.R.Gayathri,
Legal Aid Counsel

JUDGMENT

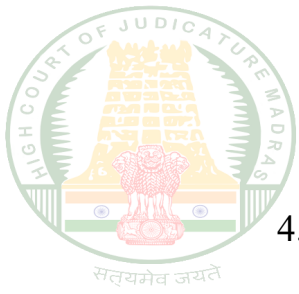
The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in STC.No.99 of 2016 before the learned Judicial Magistrate, Fast Track Court, Hosur (trial Court) against the respondent. The trial Court by judgment dated 30.01.2020 convicted the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo one year Simple Imprisonment and to pay Rs.3,67,000/- as compensation to the appellant. Challenging the same, the respondent preferred an appeal before the learned Additional District Judge, Hosur (Lower Appellate Court) in Crl.A.No.30 of 2020 and the same was allowed on 15.04.2021 setting aside the judgment of the trial Court. Against which, the present Criminal Appeal is filed by the appellant/complainant.

2.Despite service of notice to the respondent and her 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 12.11.2025 appointed Ms.R.Gayathri as Legal Aid Counsel for the respondent.



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3. Gist of the case is that the appellant and the respondent are known to each other for the past 15 years. The respondent along with her husband approached the appellant and requested to join the chit run by them. Believing the same, the appellant joined the chit and the respondent borrowed a sum of Rs.3,67,000/- from the appellant. On 03.09.2015, the appellant issued a post dated cheque bearing No.000121 dated 03.10.2015 for Rs.3,67,000/- drawn on Karur Vysya Bank, Attibele Branch. When the appellant presented the cheque (Ex.P1) for encashment on 26.10.2015 in Central Bank of India, Mookandapalli Branch, the same returned for the reason "Insufficient Funds" on 27.10.2015. The appellant intimated the dishonour of cheque to the respondent, but the respondent did not pay the amount, on the other hand, the respondent requested the appellant to represent the cheque. Believing the same, on 02.11.2015, the appellant re-presented the cheque, but again the cheque returned for the reason "Insufficient Funds". Thereafter, the appellant sent a legal notice on 12.11.2015 to the respondent. Despite receipt of the statutory notice, the respondent neither made any reply nor paid the cheque amount. Following the procedures, the complaint under Section 138 of Negotiable Instruments Act, 1881 filed before the trial Court.



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4. During trial, the appellant examined himself as PW1 and the Bank Managers of Central Bank of India and Karur Vysya Bank examined as PW2 & PW3. Ex.P1 is the cheque dated 03.10.2015, Exs.P2 & P3 are Bank Return Memo, Ex.P4 is the statutory notice, Ex.P5 is the Postal Receipt, Ex.P6 is the Postal Acknowledgment Card, Ex.P7 is the appellant's bank statement marked through PW2, Ex.P8 is the respondent's bank statement marked through PW3 and Exs.P9 & P10 are the cheque return particulars. On the side of the defence, the respondent examined herself as DW1 and her relative Ms.Shilpa examined as DW2, but no document marked. On conclusion of trial, the trial Court convicted the respondent, but on appeal the lower appellate Court set aside the trial Court conviction. Against which, the present appeal is filed.

5. Learned counsel for the appellant/complainant submitted that the appellant is known to the respondent and her husband who were running an indigenous chit. The appellant was a Subscriber to the chit which was for Rs.25,000/- (Rupees twenty five thousand only) per month, for a total sum of Rs.5,00,000/- (Rupees five lakh only) over twenty months. The appellant regularly paid the subscription amount. Three months before completion of the chit, the appellant became a successful bidder. For paying the chit amount, a cheque (Ex.P1) dated 03.10.2015 for a sum of Rs.3,67,000/- issued by the



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respondent. When the cheque (Ex.P1) presented by the appellant on 26.10.2015 in Central Bank of India, Mookandapalli Branch, the same returned for the reason “Insufficient Funds” on 27.10.2015. When the appellant informed the respondent about dishonour of the cheque (Ex.P1), the respondent requested the appellant to re-present the cheque (Ex.P1) and subsequently, the cheque (Ex.P1) presented on 02.11.2015 which was again returned for the reason “Insufficient Funds” on 03.11.2015. Thereafter, the statutory notice (Ex.P4) issued on 12.11.2015. Despite receipt of the same, the respondent neither paid the cheque amount nor sent any reply. Following the procedure, the complaint under Section 138 of N.I. Act filed before the trial Court.

6.Learned counsel further submitted that the appellant examined himself as PW1. Initially the appellant took a stand as though the respondent took loan from the appellant, at that time, the cheque (Ex.P1) was given by the respondent. Later the appellant deposed that the transaction was related to the chit. This discrepancy is projected as vital contradiction in the evidence of the appellant. The specific defence taken by the respondent is that the signed blank cheque (Ex.P1) was given to one Narayana Reddy with whom the appellant had chit transaction and that the signed cheque (Ex.P1) was filled up



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by the appellant and projected as though it was issued for liability. Further

defence taken by the respondent is that the respondent took a loan of Rs.2,00,000/- for construction of house and she repaid this Rs.2,00,000/- with interest, at that time, the appellant returned the cheque which was given for that transaction. As regards this cheque (Ex.P1) given to Narayana Reddy, the respondent examined herself as DW1 and her relative as DW2 to show that the respondent and DW2 were Subscribers to the chit with Narayana Reddy and Narayana Reddy used to collect security cheque from the successful bidders of the chit. But DW2 was not aware about whether the respondent collected the cheque back from Narayana Reddy. DW2 confirmed that Narayana Reddy is a neighbour to the appellant and Narayana Reddy was very much available in the town. When the specific stand taken by the respondent that the cheque handed over to Narayana Reddy, the respondent ought to have taken steps to examine Narayana Reddy. The trial Court finding that the appellant proved the case; the respondent/DW1 not denied the issuance of cheque (Ex.P1) and its signature, but only taken a stand there is difference in ink on the cheque and for not examining Narayana Reddy to probablize the defence rightly invoking Sections 118 and 139 of N.I. Act, convicted the respondent. But the lower appellate Court not independently considered the evidence and materials in a comprehensive manner, but allowed the appeal on the ground that when the



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specific defence taken by the respondent that the cheque was given to Narayana Reddy, the said Narayana Reddy not examined by the appellant as a witness, hence, the appellant not proved the case.

7.Learned counsel further submitted that when the specific defence taken by the respondent that the cheque was given to Narayana Reddy and Narayana Reddy is very much available which is confirmed by DW2, it is for the respondent to examine Narayana Reddy as a witness. Further the respondent admits that she received the statutory notice (Ex.P4) but not taken any action against the appellant for misusing the cheque (Ex.P1). These factors not considered but the lower appellate Court, on wrong appreciation of evidence and materials, allowed the appeal. In view of the above, the trial Court conviction to be confirmed.

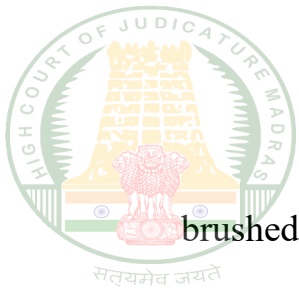
8.Learned counsel for the respondent submitted that in this case, the appellant initially took a stand that the respondent obtained loan from the appellant and in discharge of loan liability, the cheque (Ex.P1) given. Later the appellant changed his stand and stated that the appellant was a Subscriber to the chit and he became a successful bidder to the chit and in payment of the chit amount, the cheque (Ex.P1) issued and got dishonoured. The appellant in



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his chief examination admits that he intends to examine Narayana Reddy, thereafter, failed to examine Narayana Reddy. The appellant confirmed that the cheque (Ex.P1) is a non-CTS cheque. The cheque, which was given to Narayana Reddy for the chit transaction in the year 2012, was misused by the appellant. The appellant admits that he was an Income Tax Assessee, but he has not shown the loan given to the respondent in the Income Tax Returns. She further submitted that from the appellant's bank account statement (Ex.P7), it is seen that the appellant never had any transaction running to lakhs. The cheque, which was issued as security to Narayana Reddy, was misused, is not proper. The trial Court had merely gone on the statutory presumption invoking Sections 118 and 139 of N.I. Act, but not considered the facts of the case.

9.She further submitted that the respondent elaborately cross examined the appellant who deposed different answers at each stage. To probablize her defence, the respondent examined herself as DW1 and deposed with regard to loan transaction and repayment of loan to the appellant much earlier and also about the chit transaction she had with Narayana Reddy. To corroborate her evidence, the respondent examined DW2, another Subscriber to the chit of Narayana Reddy. Merely because DW2 is a relative, her evidence cannot be



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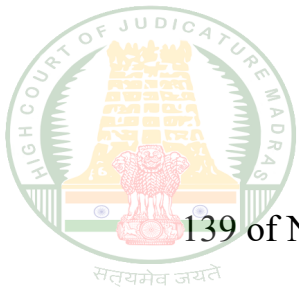
brushed aside. Thus, the trial Court convicted the respondent on a wrong premise, but the lower appellate Court finding that the respondent probalized the defence and the appellant taking provocative stand and also failed to examine Narayana Reddy, rightly acquitted the respondent. In view of the above, the judgment of lower appellate Court to be confirmed.

10. In support of her submissions, learned counsel for the respondent relied on the following decisions.

(i) *M/s.S.J.S.Business Enterprises (P) Ltd., v. State of Bihar* reported in *AIR 2004 SC 2421* for the point that suppression of material fact by a litigant disqualifies such litigant from obtaining any relief.

(ii) *P.Dhanam v. G.Arujunan in Crl.A.No.37 of 2014 dated 11.10.2018* for the point that admission of the signature in the cheque and not replying to the legal notice are not fatal.

(iii) *ANSS Rajashekar v. Augustus Jeba Ananth* reported in *(2020) 15 SCC 348* for the point that when the complainant has been questioned with regard to his whereabouts, it is for him to rebut the presumption, thereafter, it is for the complainant to prove the case and it has to be construed that Section



139 of N.I. Act is rebutted.

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(iv) *Chandrappa and others v. State of Karnataka* reported in (2007) 4 *SCC 415* for the point that when there are two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

(v) *Basalingappa v. Mudibasappa* reported in (2019) 5 *SCC 418* for the point that failure to prove financial capacity strikes at the very root of the alleged loan and independently rebuts the statutory presumption under Sections 118 & 139 of N.I.Act.

11.Considering the submissions and on perusal of the materials, it is seen that the appellant examined himself as PW1 and marked Exs.P1 to P10. The appellant's Bank Manager examined as PW2, through him, the appellant's bank statement marked as Ex.P7. The respondent's Bank Manager examined as PW3, through him, the respondent's bank statement marked as Exs.P8.

12.In this case, the issuance of cheque (Ex.P1) and its signature is not disputed by the respondent. Though the respondent examined herself as DW1



but admits the issuance of cheque (Ex.P1) and takes a defence that the cheque (Ex.P1) was given to one Narayana Reddy who was conducting an indigenous chit. During the chit transaction, the respondent handed over signed blank cheque which was filled up by the appellant and projected as though it was issued for liability. The respondent admits that she knew the appellant and she took loan of Rs.2,00,000/- from the appellant which she repaid over a period of time and the security cheque which was taken by the appellant was also returned back to her. DW2, a relative of DW1 examined to confirm that there was a chit transaction with Narayana Reddy and it is the practise of Narayana Reddy to collect security cheque from the successful bidders of the chit. Hence, the entire defence rest on the evidence of Narayana Reddy. Though the appellant states that he is inclined to examine Narayana Reddy, but for some other reason not examined him. When the specific defence taken by the respondent that she gave the cheque (Ex.P1) to Narayana Reddy and the said Narayana Reddy was very much available is proved by the evidence of DW2, then it is the bounden duty of the respondent to examine Narayana Reddy to corroborate and probablize her defence. Thus, the trial Court by a well reasoned judgment rightly convicted the respondent. But the lower appellate Court finding that non-examination of Narayana Reddy is fatal and the appellant ought to have examined Narayana Reddy as a witness, is not proper.

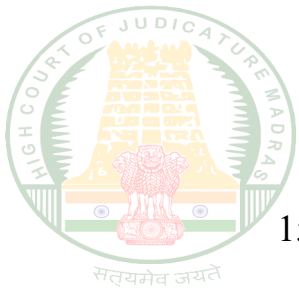


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Once the respondent takes a specific stand that the cheque was given to Narayana Reddy and Narayana Reddy is very much available, it is for the respondent to examine Narayana Reddy to probablize her defence. But in this case, the respondent failed to do so.

13.In view of the above, this Court finds that the cheque (Ex.P1) was given in discharge of liability by the respondent to the appellant, which is proved by cogent evidence and materials produced in this case. The trial Court rightly convicted the respondent, but the finding of the lower appellate Court is perverse, hence, to be set aside and the lower appellate Court failed to consider the case in its totality, given a contrary finding.

14.In the result, the judgment dated 15.04.2021 in Crl.A.No.30 of 2020 passed by the learned Additional District Judge, Hosur is set aside. Consequently, the judgment, dated 30.01.2020 in S.T.C.No.99 of 2016 passed by the learned Judicial Magistrate, Fast Track Court, Hosur is restored and confirmed. Accordingly, this Criminal Appeal stands allowed.



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15.The trial Court is directed to issue conviction warrant and secure the respondent to undergo the period of conviction. It is made clear that in the interregnum, if the respondent comes forward for settlement and discharge her liability, she can approach the appellant for compounding the offence which can be entertained even by the trial Court.

16.This Court appreciates Ms.R.Gayathri, Legal Aid Counsel for the respondent for her strenuous effort in preparation and submission of written argument and decision. The Legal Services Authority, Madras High Court is directed to pay remuneration to Ms.R.Gayathri, Legal Aid Counsel as per norms.

17.03.2026

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

- 1.The Additional District Judge,
Hosur.
- 2.The Judicial Magistrate,
Fast Track Court, Hosur.
- 3.The Legal Services Authority,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
Crl.A.No.613 of 2021

17.03.2026