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Crl.A.No.567 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2026
PRONOUNCED ON : 25.03.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.567 of 2017

S.Suganya,
Prop.Ramgopal Sixing Mills,
Rep. by power agent,
S.Ramgopal,
D.No.396, Ashokapuram,
Bhavani Main Road,
Erode-4.

... Appellant

Vs.

1.D.Murugesan,
Prop.Lakshmi Enterprises,
S/o.Devarajan Mudaliar,
D.152, S.S.D.Road,
Tiruchengode,
Namakkal dt.

2.State of TN,
By Public Prosecutor

... Respondents

PRAYER: Criminal Appeal is filed under Section 378(4) of Code of Criminal Procedure, to set aside the order of acquittal passed in Crl.A.No.131 of 2015 before the 2nd Addl. District and Sessions Judge of Erode, dated 29.02.2016 and confirm the judgment passed by the Judicial Magistrate No.1 of Erode in S.T.C.No.1222 of 2010 dated 22.09.2015.



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For Appellant : Mr.V.S.Kesavan

For Respondent : Mr.M.Guruprasad

JUDGMENT

The respondent was convicted *vide* judgment dated 22.09.2015 in S.T.C.No.1222 of 2010 by the learned Judicial Magistrate No.I, Erode (trial Court) and sentenced to undergo Simple Imprisonment for a period of three months for offence under Section 138 of Negotiable Instruments Act, 1881. Challenging the same, the respondent preferred an appeal before the learned II Additional Sessions Judge, Erode (lower appellate Court) in Crl.A.No.131 of 2015 and the same was allowed by judgment dated 29.02.2016 setting aside the conviction of the trial Court. Aggrieved over the same, the appellant/appellant filed the present criminal appeal.

2.Gist of the case is that Mrs.S.Suganya (PW2), Proprietor of M/s.Ramgopal Sizing Mills is represented by her son and Power of Attorney Mr.S.Ramgopal (PW1), Proprietor of M/s.Dwarakaa Calendering Mills. On 10.04.2009 the 1st respondent borrowed a sum of Rs.30,000/- from the appellant for his urgent business needs. In discharge of the liability, the 1st respondent issued a post dated cheque (Ex.P1) bearing No.880341 dated



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17.07.2009 for a sum of Rs.30,000/- drawn on City Union Bank, Erode

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Branch. When the appellant presented the cheque for encashment through his City Union Bank, Erode Branch, the same returned for the reason “Account Closed”. Thereafter, the appellant issued a legal notice (Ex.P3) to the 1st respondent demanding to pay the cheque amount within 15 days from the date of receipt of Ex.P3. Despite receipt of Ex.P3, the 1st respondent neither returned the cheque amount nor sent any reply. Thereafter, following the procedure, the appellant filed a complaint before the trial Court.

3.During trial, the Power of Attorney Mr.S.Ramgopal examined as PW1 and his mother examined as PW2 and marked Exs.P1 to P5. On the side of the defence/accused, one witness DW1 examined and Exs.D1 to D3 marked. On conclusion of trial, the trial Court convicted the 1st respondent, on appeal, the conviction was set aside by the lower appellate Court. Against which, the present criminal appeal is filed.

4.Learned counsel for the appellant submitted that the lower appellate Court allowing the appeal and acquitting the 1st respondent is against the law, weight of evidence and materially irregular. The lower appellate Court erred in holding that it was the appellant who failed to prove his financial transaction



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with the 1st respondent. The lower appellate Court, on a wrong understanding of proposition of law and on wrong reading of the evidence, allowed the appeal. In this case, the issuance of cheque (Ex.P1) not disputed and the cheque signed by the 1st respondent's second son, a mandate holder of M/s.Lakshmi Enterprises. Hence, the statutory presumption under Sections 118 & 139 of N.I.Act comes into play and the presumption is against the drawer of the cheque. The lower appellate Court gives a finding that the cheque not signed by the 1st respondent and further held that the 1st respondent and his second son, mandate holder were not in good terms, got separated, thereafter, the 1st respondent's second son misused the cheque and handed over to the appellant and projected a case as though the cheque issued in discharge of legally enforceable debt. The lower appellate Court finding is that the since the cheque amount was a loan, the appellant should have maintained books of account, but the appellant failed to produce the same and referred to the judgment [*Sri Murugan Financiers v. P.V.Perumal reported in 2004 SCC OnLine Mad 908*] wherein a Financier who advanced a loan, failed to produce the books of account.

5.Learned counsel further submitted that in this case, PW2/Mrs.S.Suganya was running a M/s.Ramgopal Sizing Mills and the 1st



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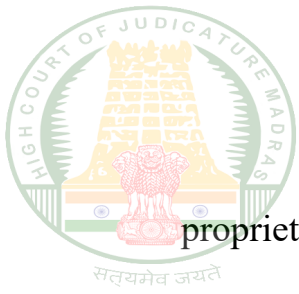
respondent, Proprietor of M/s.Lakshmi Enterprises was known to PW2.

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During that time, the 1st respondent approached the appellant and sought a short term loan. The 1st respondent admits that he closed the bank account on 30.06.2009 and the same mentioned in the reply notice (Ex.D1). Neither the bank officials nor the 1st respondent's second son Vijayakumar, mandate holder for the cheque, examined to prove the closure of account. The 1st respondent further admits that he has not surrendered the cheque book and remaining cheque leaves and not informed about the misunderstanding with his second son, mandate holder. The 1st respondent admits that it was his second son, mandate holder who ran the business. In such circumstances, the 1st respondent ought to have examined his second son Vijayakumar as witness to probablize his defence. But the lower appellate Court completely shifted the burden on the appellant and gave a finding that the appellant failed to examine the bank officials or mandate holder and allowed the appeal, is not proper.

6.In support of his submissions, learned counsel for the appellant relied on the following decisions:

(i)***Raghu Lakshminarayanan v. Fine Tubes reported in (2007) 5 SCC 103*** and ***M.Hemalatha v. D.Kannan reported inn 2016 (2) CTC 669*** for the point that as far as a sole proprietorship was concerned, it was only the sole



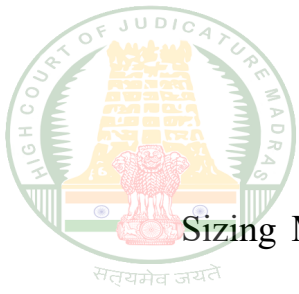
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proprietor who could be held liable under Section 138 NI Act for dishonour of a cheque drawn on the account of the sole proprietorship. In this case, the respondent is the sole proprietrix of M/s.Lakshmi Enterprises. Since the proprietary concern and the proprietor are one and the same person, merely because the proprietor concerned is the drawer of the cheque will not exonerate from the criminal liability.

(ii) *M.Vairavan v. T.M.Selvaraj reported in 2010 (3) MWN (Cr.) DCC 136* wherein this Court had held that non production of the books of account and Income Tax Return would not affect the case of the appellant since the appellant is not doing money lending business.

7.Making the above submissions and relying upon the decision, learned counsel for the appellant prays for setting aside the judgment of lower appellate Court.

8.Learned counsel for the 1st respondent submitted that in this case, the complaint lodged by PW1, son of PW2. The cheque (Ex.P1) issued in the name of M/s.Lakshmi Enterprises and signed by Vijayakumar, mandate holder, which is admitted by the 1st respondent. PW2, Proprietrix of M/s.Ramgopal



Sizing Mills stated about the 1st respondent taking loan, issuance of cheque (Ex.P1) in discharge of loan liability, dishonour of cheque for the reason “Account Closed”, issuance of statutory notice (Ex.P3), but suppressed the reply notice. In the reply notice, the 1st respondent gave the reason that the cheque (Ex.P1) not issued in discharge of any legally enforceable debt or liability. This suppression cannot be brushed aside as an oversight. The trial Court merely relied upon the statutory presumption and convicted the 1st respondent without properly considering the facts and materials on record. The lower appellate Court, on independent analysis of the evidence and materials, rightly allowed the appeal. Hence, the appeal to be dismissed and the acquittal of lower appellate Court to be confirmed.

9.Considering the submissions and on perusal of the materials, it is seen that PW1 is the power agent of PW2, who lodged a complaint, examined herself as PW2 and marked the documents (Exs.P1 to P5). PW2 in her evidence deposed in detail with regard to loan transaction, issuance of cheque (Ex.P1), dishonour of cheque (Ex.P1) for the reason “Account Closed”, issuance of statutory notice and receipt of the same by the 1st respondent. The 1st respondent examined himself as DW1. Though the 1st respondent claimed that he and his second son Vijayakumar were not in talking terms, earlier

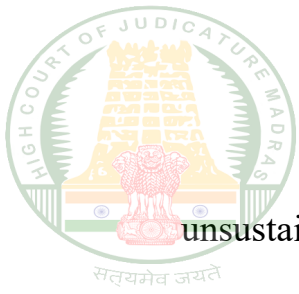


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Vijayakumar was the mandate holder maintaining the account which closed on

30.06.2009, thereafter only the cheque (Ex.P1) presented in the month of July 2009. The 1st respondent admits that he has not informed the bank officials and not produced any document to prove that he surrendered the cheque book and remaining cheque leaves and not took any steps against his second son Vijayakumar for misusing the cheque (Ex.P1). Only during the proceedings, the 1st respondent takes such stand without any supporting materials. The trial Court finding that the respondent was evasive and not probablized his defence and the appellant proved the case beyond all reasonable doubt, had rightly convicted the respondent by a well reasoned judgment.

10.The lower appellate Court completely misread the evidence and materials and erroneously held that it was for the appellant to prove the case finding that it was a case under Section 138 of N.I.Act and that *prima facie* statutory presumption is proved. The 1st respondent failed to probablize his defence and the defence of non production of books of account applies to finance company, but not to other cases. From the evidence of DW1, it is seen that he has not denied the cheque (Ex.P1) and his explanation is without any supporting materials. The lower appellate Court having misread the evidence and the proposition of law, allowed the appeal which is perverse and



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unsustainable.

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11. In view of the above, this Court finds that the appellant proved the case beyond all reasonable doubt and the 1st respondent failed to prove that the cheque (Ex.P1) was not issued for legally enforceable debt or liability and to probablize his defence.

12. In the result, this Criminal Appeal stands allowed. The judgment dated 29.02.2016 in Crl.A.No.131 of 2015 passed by the learned II Additional Sessions Judge, Erode is set aside and the judgment dated 22.09.2015 in S.T.C.No.1222 of 2010 passed by the learned Judicial Magistrate No.I, Erode is restored and confirmed.

13. The trial Court is directed to secure the 1st respondent for sufferance of sentence. Though no compensation was ordered by the trial Court in the sentence, in the event the respondent comes forward to return the cheque amount and to compound the offence, the same can be entertained by the trial Court and the case can be compounded.

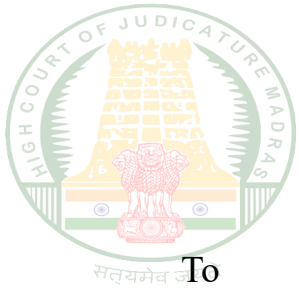
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Speaking order/Non-speaking order

Index: Yes/No

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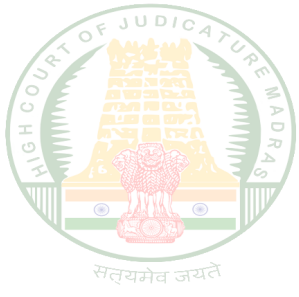
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To

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1.The II Additional Sessions Judge,
Erode.

2.The Judicial Magistrate No.I,
Erode.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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