BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22-07-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

AS(MD) No. 174 of 2019

S.Ravichandran
S/o.M.S.V.Samikalai Nadar, No.118/1,
Thanatharam Main Road,
Jai Nagar, Ponmeni, Madurai- 625 010.

..Petitioner(s)

Vs

1. M/s.Sri Naga Agencies
   Rep. by its Partners,
   K.Nagarathinam and K.Balakumar,
   23, Jawahar Road, Chokkikulam, Madurai.

2. K.Nagarathinam
   W/o.Kandasamy, H77,
   New HIG Colony,
   Anna Nagar, Madurai.

3. K.Balakumar
   S/o.Kandasamy,
   H77, New HIG Colony,
   Anna Nagar, Madurai.

..Respondent(s)

Prayer : Pleased to set aside the judgment and decree dated 07.03.2019 made in O.S.No.25 of 2012 on the file of the VI Additional District Court, Madurai by allowing this appeal and further decree the suit as prayed for and grant such further or other relief or reliefs as it may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner(s): Mr.Y.Prakash

For Respondent(s): Mr.M.Rajaraman

ORDER

(By G.R.SWAMINATHAN, J.)

The appellant filed O.S No.25 of 2012 on the file of the VI Additional District Judge, Madurai for recovery of a sum of Rs.35,82,000/- with interest at the rate of 12% from the respondents herein. According to him, the respondents 2 and 3 herein approached him in December 2009 for financial assistance ; they borrowed a sum of Rs.15 lakhs on 25.04.2010 and executed a cheque for the said sum in favour of the appellant ; they borrowed a further sum of Rs.15,00,000 on 25.05.2010 and executed another cheque for the said sum favouring the appellant ; the cheques were drawn on Canara Bank and signed by the third respondent herein in his capacity as the authorised signatory of the first respondent firm ; the respondents did not settle the loan liability ; the appellant issued notice dated Notice dated 18.11.2011 (Ex.A3) ; Ex.A6 reply notice was issued controverting the notice averments. Hence, OS No.25 of 2012 was instituted on 12.01.2012.

2.The defendants denied the suit claim. According to them, the cheques in question have been forged. One Ganesh Kumar, an employee of the third respondent was accused of having committed the act. They contended that the object of filing the suit was to force them to withdraw the criminal complaint. Based on the rival pleadings, the court below framed the necessary issues. The plaintiff examined himself as PW1. Exs.A1 to A10 were marked. The third defendant examined himself as DW1. One Paunraj and Nagarathram were examined as DW2 and DW3. Ex.B1 to B12 were marked on the side of the defendants. After hearing both sides and considering the evidence on record, the trial Court dismissed the suit vide the impugned judgment and decree dated 07.03.2019. Assailing the same, this appeal has been filed.

3.The first submission advanced by the respondents' counsel is summarised as follows :

When a cheque is issued, it should be presented for payment to the drawee. Failure to do so would absolve the drawer of liability. Since the cheques in question were not presented for payment, no suit will lie for recovery against the drawer of the cheques. Section 64 of the Negotiable Instruments Act, 1881 would come in the way.

4.Let us examine this contention. Section 64(1) of the Negotiable Instruments Act, 1881 is as follows :

> "64.Presentment for payment.—
> [(1)] Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable

thereon to such holder.

[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof..."

The Hon'ble Supreme Court in ***Britannia Industries Limited v. Punjab National Bank and ors (2013) 10 SCC 642*** held that the statutory requirement of presentment under Section 64 for payment is mandatory and the words "must be" clearly express the legislative intent. The failure to present will absolve the "other parties thereto" of all liability. But who are those "other parties thereto" is the moot question.

5.Section 64(1) of the Act deals with promissory notes, bills of exchange and cheques. The expression "respectively" found in the provision should be understood as a word of severance. P.Ramanatha Aiyar's Advanced Law Lexicon defines it as follows :

"Relatively to each of several things in the order in which they are specified".

It is, therefore, obvious that a promissory note must be presented for payment to its maker, bill of exchange to the acceptor and cheque to the drawee.

6.There has been a cleavage of judicial opinion as to whether the drawer of the cheque also would fall within the sweep of the expression “the other parties thereto”. Some of the High Courts took the view that the expression “other parties thereto” would include the drawer of the cheque also. The Hon’ble Punjab and Haryana High Court in the decision reported in ***AIR 1974 P&H 156 (Harish Chander v. Ganga Singh and sons)*** disagreed with the said interpretation. The learned Judge (D.S.Tewatia, J) held that the expression “other parties thereto” must be interpreted to exclude from its ambit the ‘maker’ of the cheque as well. His Lordship was swayed by the fact that as per Section 37 of the N.I Act, the drawer of a bill of exchange until acceptance and the acceptor are, in the absence of a contract to the contrary, liable as principal debtors. According to the Judge, it does not stand to reason that the drawer of the cheque would be absolved of his liability under the cheque in case of non-presentment for payment. We respectfully disagree with the said interpretation. Chapter II of the Act defines “promissory note”, “bill of exchange” and “cheque”. The one who signs the promissory note is its maker. The maker of bill of exchange or cheque is called the “drawer” and the person thereby directed to pay is called the “drawee”. The person named in instrument, to whom or to whose order, the money is by the instrument directed to be paid is called the “payee”. While a cheque is a bill of exchange, not all bills of exchange are cheques. A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. A bill of exchange is an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. When Section 64 makes it clear that in default of presentment to the drawee, the other parties thereto are not liable, it obviously means that the maker/drawer of the cheque is also not liable. In the case of a promissory note, it has to be presented to the maker. In the case of a cheque, presentment for payment is not to the maker but to the banker and there lies the difference. Courts are not supposed to rewrite the words of a statutory provision. We, therefore, hold that the expression "other parties thereto' occurring in Section 64 of the Act would include "the drawer of the cheque" also.

7.But this interpretation of ours will be of no cause for celebration to the drawer/maker of the cheque. Justice Tewatia was probably loathe to let go the person who is the principal debtor. No such consequence would arise as a result of our construction. This is because Section 64(1) states that the other parties would not be liable "thereon" to the holder of the instrument. P.Ramanatha Aiyar's Advanced Law Lexicon defines the word "thereon" as "on that". When the cheque is not presented to the banker, no liability can be fastened on the drawer on the strength of the instrument. In other words, the drawer is absolved of his liability only to the extent it is founded on the instrument.

8.The holder of the instrument is not without remedy. Can he not sue the maker of the instrument by falling back on the original consideration is the next question that falls for our consideration.

9.Legal history is rich with precedents on this point. In ***A.L.S.P.P.L. Subrahmanyan Chettiar v. Muthuswami Goundan, 1940 SCC OnLine FC 9,*** it was observed that a creditor can always fall back on the original consideration and sue upon the debt independently of the promissory note. The Hon'ble Division Bench of the Calcutta High Court in the decision reported in ***1944 SCC OnLine Cal 124 (Sri Sri Iswar Sridhar Jiru v. Jahor Lal Mukhopadhya***) held as follows :

> *"50.In our opinion, the true position is that where A lends money to B, A can always sue B for the money as for money lent, whether there is a promissory note executed contemporaneously with the loan or at any time thereafter on account of it. As between an actual lender and an actual borrower, a promissory note can never be any thing but collateral security, and the lender can, therefore, always sue on the original consideration, disregarding the security. The promissory note in such a case containing as it does an express promise to repay, cannot wipe out the promise to repay which is implied in the loan itself. There can be no question of any merger of the original consideration in the promissory note so as to make the promissory note the only available cause of action."*

10.Halsbury's Laws of England speaks thus :

> *"If a bill of exchange or note be taken on account of a debt, and nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor. If the security is paid when it becomes due, this is equivalent to payment of the original debt, and if it is paid in part, the original debt is discharged 'pro tanto'. If the instrument is dishonoured, payment of the original debt may be enforced as if no security had been taken, unless the bill has been negotiated and is outstanding at the time of action brought in the hands of a third party, in which case the creditor's remedy continue to be suspended."*

The above passage has been approvingly relied upon in ***Radhakisan Tijulal Agrawal v. Jayantilal Hargovindas, 1980 Mh.LJ. 120***. It was cited by the Full Bench of the Bombay High Court in ***Gautam Landscapes Pvt. Ltd. v. Shailesh S. Shah, 2019 SCC OnLine Bom 563***. The Full Bench decision was overruled by the Hon'ble Supreme Court in ***N.N.Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1*** but that was on an another point.

11.A nuanced view was taken by the Full Bench of the Madras High Court in ***Ramasami Pillai v. Murugiah Padayachi (1935 SCC OnLine Mad 180)***. It was held therein that with regard the antecedent debts, the position is that the original debt can be sued upon irrespective of the subsequent document or promissory note and the better opinion with regard to contemporaneous loans and promissory notes is that where the promissory note is the consideration for the loan, the debt cannot be proved aliunde. The Hon'ble Chief Justice held as follows :

> *"...dealing with money-lending transactions, I am not disposed to think that this view is entirely correct, and, in a country where borrowing and lending of money is so universal, the prima facie rule as stated in English cases cannot be adopted without some qualification. A borrower goes to a person who lends money and asks for a loan. The lender says that he will not lend the money unless the borrower executes a promissory note. The borrower agrees to do so and I imagine in a majority of cases executes the promissory note first and in exchange for it receives the money. Is the lender under these circumstances to be presumed to be receiving the promissory note as a conditional repayment of the money? Or does the promissory note which states that the borrower has received a sum of money and the date of the receipt and a promise to repay it with interest form the contract itself? It is, in my view, difficult to avoid the conclusion that it does. What other term is there which is omitted? PAGE, C.J. in Maung Chit v. Roshan N.M.A. Kareem Oomer & Co. [(1934) I.L.R. 12 Rang. 500 (F.B.).] is of the opinion that the term that the promissory note is taken as a conditional payment is omitted but this presupposes that there was such a term. I fully agree with what has been stated in many of the cases to which reference has been made that the question must be one of fact, but, where it is clear that the promissory note itself contains all the terms, I think that, in the absence of any evidence to the contrary, it must be accepted as the contract and that no contract aliunde can be proved. A great deal must depend upon what appears on the face of the document. In some cases, the promissory note may state that it is given in payment for goods sold*

and delivered. Such cases, in my opinion, do not present any difficulty because the presumption there would be that the promissory note was given in conditional payment for the goods sold and delivered. In other cases it may be clear that there was already a completed contract before the promissory note was given. In such cases I agree that evidence of that contract can be given irrespective of the promissory note. The position does seem to me to be different however when the promissory note appears to be part and parcel of the transaction of loan. My view, therefore, is that in all cases Courts must be guided by what appears on the face of the promissory note. If it is expressed in such a way as to leave what was intended by the parties in any way in doubt, then the facts must settle the question. If it is clear on the face of the promissory note that it is the contract, then no further evidence can be permitted."

Pandu Ranga Rao, J. agreed with the view of the Hon'ble Chief Justice. But Justice Cornish sitting on the bench chose to confine himself to the facts of the case. However, the learned Judge too observed that when a cheque is presented and dishonoured, the debt, the remedy for which was suspended until presentment of the cheque may be treated as debt subsisting all along, just as if the cheque had never been given. In certain cases, a creditor may indeed accept a negotiable instrument in satisfaction of his debt. But when there is no such pleading or proof, the suit can be maintained on the debt independently of the instrument.

12.The above decision was considered by a Five Judges Bench in ***Perumal Chettiar v. Kamakshi Ammal (1938) 48 L.W. 220***. The question of law was framed as follows :

> *"Whether a person who has lent money on a promissory note can sue to recover the debt apart from the note when the note embodies the terms of the contract with the borrower but is inadmissible in evidence owing to defect in the stamping."*

The question was answered in the following terms :

> *"If the promissory note embodies all the terms of the contract and the instrument is improperly stamped no suit on the debt will lie. S. 91 of the Evidence Act and S. 35 of the Stamp Act bar the way. But if it does not embody all the terms of the contract the true nature of the transaction can be proved and where an instrument has been given as collateral security or by way of conditional payment a suit on the debt will lie. The fact that the execution of the promissory note is contemporaneous with the borrowing cannot exclude the possibility of the instrument having been given as collateral security or by way of conditional payment. Whether a suit lies on the debt apart from the instrument therefore depends on the circumstances under which the instrument was executed."*

During the course of discussion, the following reference was made to an earlier ruling :

> "...the The question under discussion was considered by a Full Bench of the Rangoon High Court of which I was a member, in the case of *Maung Chit* v. *Roshan N.M.A. Kareem Oomer and Co.* (1934 AIR (Rang) 389) and there all the important decisions, both Indian and English, were discussed in the course of the arguments.

The judgment of the Court was delivered by Page, C.J., who deduced the following propositions of law from the authorities:—

(1) When a loan is contracted it is an implied term of the agreement that it shall be repaid.
(2) When a promissory note is given by the borrower, either at the time when the loan is contracted or afterwards, the terms upon which it is given and taken is a question of fact and not of law.
(3) The giving of a negotiable security by a debtor to his creditor operates *prima facie* as a conditional payment only, and not as a satisfaction of the debt unless the parties so regard it.
(4) If the promissory note is itself the consideration for the loan or if it is accepted as an accord and satisfaction of the original debt, the lender is restricted to his rights under the instrument.
(5) The lender is entitled to sue on the original consideration if the instrument is given merely as a collateral security.
(6) If the terms of the agreement under which the loan was made have been embodied in an instrument no evidence can be adduced in proof of the terms of the contract except the document itself, and if the document is not admissible in evidence as the result of its being improperly stamped the suit must fail. I concurred in this judgment and subject to one qualification, I still consider that it correctly states the law. **The qualification which I would now make has reference to the statement that the giving of a negotiable instrument operates *prima facie* as a conditional payment of the debt. On further consideration I have come to the conclusion that this must depend on the facts of the particular case and that there is no presumption that the instrument has been given as conditional payment**. Therefore, in my opinion, when the lender wishes to sue on the original contract on the ground that the instrument was given by way of

conditional payment he must prove facts which warrant the inference."

According to the Hon'ble Division Bench of the Madras High Court in ***89 L.W 94 (Sivabhagiathammal v. Thangappa Nadar (1976),*** the Full Bench in Perumal v. Kamakshi Ammal clearly laid down whether a suit lies on the debt apart from the instrument depends on the circumstances under which the instrument was executed. If really the instrument is only an evidence on the lending, certainly the suit will lie. The Seven Judges Bench of the Andhra Pradesh High Court in ***Lothamasu Sambasivarao v. Thadwarthi Balakotaiah (AIR 1973 AP 342***) accepted the Madras view.

13.It is important to remember that in those cases, the admissibility of promissory notes was challenged on the ground of stamping. A cheque cannot be treated on par with a promissory note though both are negotiable instruments. Statute defines them distinctly. The Indian Stamp Act contained definitions of bills of exchange, cheque and promissory notes originally and rendered them liable to be stamped. Vide Central Act V of 1927, the cheques were no longer liable to be stamped. In other words, stamping is a requirement for promissory notes and bills of exchange but not for cheques. Therefore, the Full Bench decisions rendered in the context of promissory notes will have to be understood appropriately in the case of cheques in the context of Section 64 of the N.I Act. No drawer of a cheque can plead that the instrument contains the terms of the agreement between the parties and that since it is inadmissible, the payee cannot rely on the original consideration. In other words, the holder or payee of a cheque can sue the drawer of the cheque on the basis of the original consideration even without presenting the same to the drawee. The original debt does not get extinguished on account of the issuance of the cheque. In fact, Section 139 of the N.I Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque for the discharge, in whole or in part of any debt or other liability. Section 138 of the Act which penalises dishonour of cheque states that the offence will be attracted where the cheque is issued for the discharge, in whole or in part, of any debt or other liability. The explanation to the Section states that “debt or other liability” means a legally enforceable debt or other liability. If the debt had already been extinguished, it is not an enforceable debt. Therefore, on an overall consideration of the statutory scheme, one can conclude that issuance of cheque will not extinguish the liability. Only when it is encashed, the liability will be correspondingly extinguished. Thus, cheques stand on a different footing altogether.

14.But there is an important exception. Halsbury’s Laws of England (4th Edition, 461) states the legal position as follows :

> “A holder who cannot recover on an instrument that has been materially altered cannot recover on the consideration which he gave for it, unless the alteration was made without his knowledge and before he took the instrument, or, where the alteration was

made while in his possession, provided it was not made fraudulently, and the party from whom he seeks payment would have had no right of recourse if the alteration had not been made; in this last case, if the bill is given for goods sold, the holder can sue for the price."

15.Another point needs to be noted. A summary suit cannot be instituted under Order 37 CPC if the drawer disputes the execution of the cheque. Only a regular suit will lie on the original cause of action in such circumstances. A learned Judge of this Court in ***K.Rajagopal v. R.Sumanth*** vide order dated 01.06.2021 in ***CRP No.1054 of 2021*** held that a holder of a cheque gets cause of action to sue upon the cheque once the cheque is issued and the fact whether the cheque is presented for payment to be bank or not, does not really matter. A cheque should ordinarily be presented for payment to the bank within three months of its execution ; but a suit based on a cheque can be filed within three years of its execution. The order of the trial court holding that the suit was not maintainable because the cheque in question was not presented was set aside. While we respectfully agree with the said view, we would add one caveat. The three year limitation would start running from the date of execution of the cheque if its execution is admitted. In that event, the failure to present will not make a difference. But where the execution of the cheque itself is disputed and the payee is unable to establish the same, the limitation period would have to be reckoned from the date of original cause of action. We, therefore, reject the contention of the respondents that the suit is not maintainable because the plaintiff/payee did not present the cheque for payment. We answer the first point for determination accordingly.

16.The other point for determination is whether the court below rightly non-suited the appellant/plaintiff on the ground that he did not prove that the suit cheques were executed by the third respondent / defendant Balakumar. To answer this issue, let us look at the pleadings. The case of the plaintiff was that on behalf of the first defendant firm, its partner Balakumar (third defendant) as its authorised signatory issued the suit cheques. The defendants in their written statement categorically denied the signatures found in the suit cheques Exs.A1 and A2 dated 25.04.2010 and 25.05.2010. Their specific plea was that they were stolen by one Ganesh Kumar, an employee of the third defendant and fabricated with his assistance.

17.When such a categorical plea had been taken in the written statement, the burden lay entirely on the plaintiff to prove that the suit cheques were actually executed by the defendants. Unfortunately, the plaintiff did not take any step to have the suit cheques Exs.A1 and A2 referred for the opinion of a handwriting expert. No doubt, under Section 73 of the Evidence Act (corresponding to Section 72 of BSA) empowers the Court to undertake a comparison on its own. But there are quite a few decisions which caution the court from undertaking such an exercise. The Hon'ble Supreme Court in the decision reported in ***AIR 1997 SC 3255 (Ajit Savant Majagvai v. State of Karnataka)*** held that as a matter of extreme caution and judicial sobriety, the court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of the experts. In the case on hand, even though the plaintiff did not have the suit cheques referred for handwriting expert's opinion, the Trial Judge on his own compared the disputed signatures found in the suit cheques with the admitted signatures of the third defendant available in Ex.B5. The learned Judge came to a categorical finding that the disputed signatures are not that of the third defendant.

18.A learned Judge of this Court in ***SA No.547 of 2010 (Perumal v. Dhanalakshmi Ammal)*** vide order dated 13.10.2020 held that when the execution of signature itself is disputed, the plaintiff should have taken steps to compare the signature in the suit instrument with any other admitted contemporaneous signature of the defendant through an scientific expert. Failure to do so would have fatal consequences for the plaintiff. In the case on hand, the plaintiff failed to discharge the burden cast on him.

19.The plaintiff could not have also invoked the presumptive provision in Section 118 of the Act in his favour. Under the said provision, execution of the cheque cannot be presumed. What can be presumed is the passing of consideration, the date of the document etc., as enumerated in the provision.

The presumption set out in Section 118 can be raised only if due execution of the document is proved (***M.Varadharajan v. V.Balasubramanian (2015 SCC OnLine Mad 13148***).

20.The defendants had specifically questioned the wherewithal of the plaintiff to advance a huge sum of Rs.30,00,000/-. In the cross examination, pointed questions had been put in this regard. The plaintiff ought to have established that he had the capacity to advance the amount. If the transaction had been done through banking channels, the question of capacity would have paled into insignificance. When the plaintiff claims that it was a hand loan and the defendant not only denies receipt thereof but also questions the financial capacity of the plaintiff, the onus lies on the plaintiff to prove before the court that he had the wherewithal to advance the suit amount.

21.The Hon'ble Supreme Court in the decision reported in ***2025 SCC OnLine SC 793 (The Correspondent, RBANMS Educational Institution v. B.Gunashekar & anr)*** highlighted the importance of carrying on high-value financial transactions only through instruments or through banking channels. In the case on hand, the plaintiff did not show that cash to which Rs.13,00,000/- (Rupees Thirteen Lakhs only) was available with him for advancing it as loan. The plaintiff did not mark his IT returns. On the other hand, the passbook marked on his side Ex.A9 shows that the plaintiff had availed overdraft facility to a tune of Rs.35,00,000/-. In the cross examination, PW1 stated that he sold a property in Sivakasi and got a sum of Rs.20,00,000/- towards advance, and out of the same, Rs.10,00,000/- was given. But no proof was adduced in this regard. When wherewithal is questioned, the so-called lender is obliged to prove that he had the capacity to lend the money in question. This burden has also not been discharged in the instant case.

22.The Court below had rightly dismissed the suit. We are satisfied with the correctness of the reasons assigned by the Court below. There is no merit in this Appeal. This Appeal stands dismissed. No costs.

(G.R.S.,J.) & (K.K.R.K.,J.)
22-07-2026

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

To

1. VI Additional District Court, Madurai

G.R.SWAMINATHAN, J.
AND
K.K.RAMAKRISHNAN, J.

SKM

AS(MD) No. 174 of 2019

22-07-2026