IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.695 of 2026

S.Gandhi, (M/A – 68 Years),
S/o.Subramaniam,
No.11/1, Kalyanasundaram Street,
Kasipalayam Post,
Erode. ... Appellant

Vs.

K.Muruganandham,
S/o.Karuppana Gounder,
No.90, Kasiyannan Street,
Sambath Nagar,
Collector Office Post,
Erode. ... Respondent

PRAYER: Criminal Appeal is filed under Section 378(3) of Code of Criminal Procedure, to set aside the judgment of acquittal passed in S.T.C.No.25 of 2022 dated 09.02.2024 by the learned Judicial Magistrate, Fast Track-I, Erode.

For Appellant	:	Mr.R.Prabakar
For Respondent	:	Ms.C.B.Geeth Sanchitha for Mr.C.Ramaraj

JUDGMENT

Appellant as complainant filed private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 against the respondent before the learned Judicial Magistrate, Fast Track Court-I, Erode (trial Court) in S.T.C.No.25 of 2022, which was dismissed on 09.02.2024 acquitting the respondent. Against which, the present appeal filed by the appellant.

2.Gist of the case is that on 14.02.2021, the respondent borrowed a sum of Rs.5,00,000/- from the appellant for family expense and promised to repay the same. On 10.08.2021, in discharge of the liability, the respondent issued cheque (Ex.P1) bearing No.230911 dated 10.08.2021 drawn on Canara Bank, Perundurai Road Branch to the appellant. When the cheque presented for encashment, the same returned on the same day with an endorsement "Payment stopped by the Drawer". The respondent had sufficient funds in his account on the day when the cheque (Ex.P1) presented for encashment. At the time of issuing the cheque, the respondent promised that the cheque (Ex.P1) would be honoured when presented. To cheat the appellant, the respondent purposefully gave stop payment. Hence, the appellant issued statutory notice dated 27.08.2021 (Ex.P3) to pay the cheque amount but the respondent failed to do so and sent reply notice (Ex.P6) dated 03.09.2021 with false allegations.

The appellant ignored the same and filed private complaint before the trial Court. During trial, the appellant examined himself as PW1 and marked Exs.P1 to P8. On the side of the defence/respondent, DW1 to DW3 examined and Exs.D1 to D6 marked. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondent.

3.The learned counsel for the appellant submitted that the trial Court failed to consider the fact that the respondent not denied the cheque (Ex.P1) or his signature thereon. Thus, the foundational fact proved and statutory presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, stands proved. He further submitted that the cheque (Ex.P1) returned with an endorsement "Payment stopped by Drawer". On the date of presentation, there were no sufficient funds in the respondent's bank account. Hence, the reason for dishonour being "Payment stopped by Drawer" is of no consequence, and the cheque, in any event, will be returned for insufficient funds.

4.He further submitted that the appellant established his financial capacity by producing his house tax receipt and electricity bill (Exs.P7 and P8). Though the respondent examined DW1, Bank Manager, Canara Bank, Perundurai Road Branch to prove the fact of stop payment by the respondent and examined himself as DW2 to establish that there was chit transaction with DW3 Seethapan in the year 2020, and the cheque (Ex.P1) issued to DW3 in connection with the said chit transaction and not to the appellant, DW3 denied receiving any security from the respondent. According to the respondent, the appellant/DW2 issued two other cheques bearing Nos.230910 and 230912 and promissory note as security for repayment of chit amount to DW3. Since it was COVID-19 pandemic period, there was delay in repaying the chit amount within the prescribed time, and a difference of opinion arose between the respondent and DW3. DW3 refused to return the cheques and promissory note, and those cheques subsequently reached the hands of the appellant, who filed present case. DW3 confirmed that no cheque or promissory note issued by the respondent for chit transaction. In fact, the respondent examined himself as DW2 as defence witness. Since DW3 not supported the defence case, he was cross examined by the respondent but nothing could be elicited in favour of the respondent. He further submitted that the trial Court framed seven questions in this case and found that the appellant proved Question Nos.1 and 3 to 7, except Question No.2. The trial Court holding that the appellant not included the interest part of Rs.45,000/- for six months and failed to send any rejoinder to the reply notice (Ex.P6), thus, the respondent probablised his defence, is not proper. In support of his submissions, the learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in ***Uttam Ram v. Devinder Singh Hudan and another*** reported in ***(2019) 10 SCC 287***, for the point that the observation of the trial Court that the complainant is required to prove the debt as before the civil Court, wherein the plaintiff is required to prove his claim on the basis of evidence adduced in support of his claim for recovery of the amount due, is disapproved. The Hon'ble Apex Court held that dishonour of a cheque carries a statutory presumption of consideration and the holder of the cheque in due course is required to prove that the cheque was issued by the accused and that, when presented, it was not honoured. Since there is a statutory presumption of consideration, thereafter, the burden is on the accused to rebut the presumption that the cheque was not issued for any debt or other liability. Thus, the trial Court misread the evidence and materials and wrongly applied the principle and law and acquitted the respondent which is not proper. Hence, the judgment of the trial Court is liable to be set aside.

5.The learned counsel for the respondent submitted that, in this case, the appellant admits that the respondent was known to him through his relative, but the said relative not examined. The appellant further admits that he was not engaged in the money lending business when he was specifically questioned with regard to his financial capacity to lend such huge amount. Though the appellant claims that he had known the respondent for six to seven years, he was unable to furnish any details further regarding the business and relationship he had with the respondent. Further, the appellant stated that he obtained hand loan from Sasikumar, his sister's son, but the said Sasikumar not examined. The appellant admits that the respondent availed loan on interest and interest not paid. He further admits that the cheque (Ex.P1) not issued with interest liability. In the reply notice (Ex.P6), the respondent sought copy of the cheque, but the appellant neither furnished the copy nor sent any rejoinder. The appellant admits that there was variance in the ink, in the signature and the writings found in the cheque (Ex.P1), confirming that a blank cheque filled up at a later point of time. In the reply notice (Ex.D2) dated 11.03.2021, the respondent clearly stated that he issued three cheques, including subject cheque, and promissory note as security to DW3, thereby proving the fact that the said three cheques and promissory note issued to DW3 during chit transaction. To probablize the defence, the respondent examined three witnesses. DW1 is the Manager of Canara Bank, Perundurai Road Branch, where the respondent maintains his account, and through him, the respondent marked the statement of account (Ex.D1). DW1 confirms that cheque No.230913 encashed on 05.12.2020 and for cheque No.230911, stop payment request received on 10.08.2021.

6.The respondent examined himself as DW2 and gave explanation that he subscribed to chit for Rs.5 lakhs with DW3 at the rate of Rs.25,000/- per month for twenty months. The chit commenced in May 2019, and the respondent was the successful bidder in February 2020. At that time, the respondent handed over three security cheques bearing Nos.230910, 230911 and 230912. During April-May 2020, due to COVID-19 pandemic, the chit discontinued and subsequently completed in February 2021. Thereafter, the respondent sent a notice to DW3 to return three cheques and promissory note, which is marked as Ex.D2, and the postal acknowledgment marked as Ex.D3. The respondent also marked Ex.D5, the salary slip of his son, who was a Marine Engineer and having income of Rs.3,50,000/-. Further, the respondent produced the pocketbook in which the chit transactions regularly recorded by DW3, which marked as Ex.D6. DW3 was examined by the respondent, and he confirmed Exs.D2, D3 and D6. With regard to other aspects, though DW3 not supported the respondent, DW3 confirmed the conduct of the chit transaction and the chit book (Ex.D6). The trial Court, considering all these aspects, found that the financial wherewithal of the appellant questioned, but the appellant was unable to provide any explanation or produce any material.

Thereafter, it was for the appellant to prove his financial capacity, but in the present case, the appellant failed to produce any document to establish the same. Thus, the trial Court rightly dismissed the complaint and acquitted the respondent. Hence, the appeal is liable to be dismissed.

7.Considering the submissions and on perusal of the materials, it is seen that, in this case, the issuance of cheque (Ex.P1) and the signature thereon by the respondent not disputed. After receipt of statutory notice (Ex.P3), the respondent sent detailed reply (Ex.P6), stating that the cheque (Ex.P1), along with two other cheques and promissory note, issued to DW3 as security in connection with chit transaction and the chit transaction completed in February 2021. In fact, the respondent sent a notice (Ex.D2) to DW3, and DW3 in his evidence admitted that he received the notice (Ex.D2) from the respondent but not sent any reply. Thus, the specific defence of the respondent is that the cheque issued to DW3 and not to the appellant. The appellant's wherewithal also questioned, but the appellant unable to give proper explanation.

8.The trial Court found that, though the appellant received the reply notice (Ex.P6), but not sent any rejoinder. Further, the appellant admitted that Rs.5,00,000/- had been given in cash without any contemporary document and the cheque (Ex.P1) issued six months after alleged loan, without including any interest liability. Coupled with the fact that it is admitted that there is variations in the ink in the writings and signature, this fact also taken into consideration. Further, Ex.D2 is dated 11.03.2021, but the cheque (Ex.P1) is dated 10.08.2021, *i.e.,* five months thereafter. Thus, it cannot be said that the defence of the respondent was an afterthought.

9.The clinching evidence is Ex.D6, which is a chit book for Rs.5,00,000/-, in which DW3 recorded the monthly subscription to the chit, the bidding details, and the payment of dividend amounts and he has signed in the chit book and the signature is identical with signature found in DW3's deposition.

10.Thus, by way of appellant's cross-examination and by examining himself as DW2 and two other defence witnesses, and by producing contemporary defence exhibits, the respondent probabilised his defence. Considering all these facts, the trial Court rightly dismissed the complaint.

11.In view of the above, this Court is not inclined to interfere with the judgment of acquittal dated 09.02.2024 in S.T.C.No.25 of 2022 passed by the learned Judicial Magistrate, Fast Track Court-I, Erode and the same is hereby affirmed.

12.In the result, this Criminal Appeal stands dismissed.

24.08.2026

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

The Judicial Magistrate,
Fast Track Court-1,
Erode.

M.NIRMAL KUMAR, J.

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