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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-09-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 760 of 2017

S.Sivakumar
Prop. J.P.S.Yarn Tex,
No.119, Chennimalai Road,
Erode-1.

..Appellant(s)

Vs

P.Murugan
Prop. Ammaiyappan Fabrics,
No.22/48, Palanipuram,
6th Street, Bhavani-638 301.

..Respondent(s)

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., against the judgment of the learned II Additional District and Sessions Judge, Erode, passed in C.A.No.41 of 2017, dated 18.08.2017 reversing the judgment of conviction under Section 138 of N.I. Act sentencing the respondent (accused) to one year simple imprisonment and to pay a fine of Rs.3000/-, in default to pay, a sentence of 3 months simple imprisonment in STC.No.677 of 2013, dated 29.12.2016 on the file of the Judicial Magistrate (Fast Track Court No.II), Erode.

For Appellant(s): M/s.R.P.Ruban Chakravarthy
for M/s.S.Kaithamalai Kumaran

For Respondent(s): M/s.M. Karkthik

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JUDGMENT

This Criminal Appeal is preferred against the judgment passed by the learned II Additional District and Sessions Judge, Erode, passed in C.A.No.41 of 2017, dated 18.08.2017, whereby the learned Appellate Court reversed the judgment of conviction passed by the learned Judicial Magistrate (Fast Track Court No.II), Erode in STC.No.677 of 2013, dated 29.12.2016. The learned Trial Court had convicted the respondent/accused under Section 138 of N.I. Act and sentenced him to undergo one year of simple imprisonment and to pay a fine of Rs.3000/-, in default of payment of fine, to undergo a further period of three months simple imprisonment.

2. When the matter came up for hearing on 04.12.2025, this Court passed the following order:

> *"The appellant as complainant filed a private complaint in S.T.C.No.677 of 2013 against the respondent for offence under Section 138 of the Negotiable Instruments Act. The appellant is the Proprietor of J.P.S.Yarn Tex and respondent is a Proprietor of Ammaiyappan Fabrics and a personal friendship developed between them. Thereafter the respondent borrowed a sum of Rs.11,00,000/- on 30.04.2013 and issued a post-dated cheque dated 30.07.2013 in discharge of his liability. This cheque was*

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deposited on 29.07.2013. It had gone to the bank of the respondent only on 01.08.2013, on the date of its maturity. Thereafter it was returned for the reason 'Insufficient Funds'. The appellant caused a statutory notice on 22.08.2013. The respondent received the same but neither paid back the cheque amount nor sent any reply. Thereafter the appellant following the procedure, filed a complaint.

2.During trial, the appellant examined himself as PW1 and marked Exs.P1 to P8. The respondent not examined any witnesses and marked any documents. The trial Court on conclusion of the trial, by the judgment dated 29.12.2016, convicted the respondent and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo further three months simple imprisonment. Aggrieved against the same, the respondent preferred an appeal in Crl.A.No.41 of 2017 before the learned II Additional District and Sessions Judge, Erode. The learned Sessions Judge, by the judgment dated 18.08.2017 allowed the appeal setting aside the conviction and sentence of the trial Court, against which, the present appeal has been filed.

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3.The learned counsel for the appellant/complainant submitted that the trial Court on the evidence found that the respondent/accused not disputed issuance of the cheque or his signature. The defence taken by the respondent before the trial Court is that cheque was given as security for earlier transaction, which was misused and the appellant/complainant has no means to lent such huge amount. The trial Court finding that the respondent unable to dislodge statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, on the other hand, the appellant proved the case beyond all reasonable doubt had rightly convicted the respondent.

4.He further submitted that the Lower Appellate Court has misread the judgment and wrongly understood the facts of the case and rendered a judgment of acquittal. The primary ground raised on which the acquittal rendered is though the appellant produced Income Tax returns/Exs.P7 and P8 for the year 2013-2014 and 2014-2015, the loan of Rs.11,00,000/- is not reflected in the Income Tax returns. Further the appellant not produced any supporting documents except Ex.P1/cheque. Further the Lower Appellate Court had given a finding that since there is no reference in the Income Tax returns as creditor, the appellant is not entitled for demanding the cheque amount.

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5.In support of his contention, the learned counsel for appellant relied upon the judgment of the Division Bench of Bombay High Court in the case of ***Prakash Madhukarrao Desai vs. Dattatraya Sheshrao Desai*** *reported in* ***2023 SCC OnLine Bom 1708****, wherein the question framed is whether in case the transaction is not reflected in the books of account and/or the Income Tax returns of the holder of the cheque in due course and thus is in violation to the provisions of Section 269SS of the Income Tax Act, 1961. Whether such a transaction can be held to be a legally enforceable debt and that can be permitted to be enforced by institution of proceedings under Section 138 of the Negotiable Instruments Act. Since there was a conflicting stand thereafter considering the submissions and referring to various judgments finally it held that a transaction not reflected in the books of account and/or Income Tax returns of the holder of the cheque in due course can be permitted to be enforced by instituting proceedings under Section 138 of the N.I. Act in view of the presumption under Section 139 of the N.I. Act.*

6.Further the Lower Appellate Court referred to the judgment of Bombay High Court in ***Sanjay Mishra vs. Kanishka***

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Kapoor Alias Nikki, *wherein it is held that the alleged liability to repay an unaccounted cash amount admittedly not disclosed in the Income Tax return cannot be a legally recoverable liability. He further submitted that the purpose of marking Exs.P7 and P8 is only to show that the appellant is a man of means doing business and for this point alone it was marked. The respondent's consistent view is that it is the security cheque. Then for what purpose this cheque given and when it was given, no details furnished. The respondent failed to probabilise his defence. Further the appellant proved that he is a man of means and he had given loan of Rs.11,00,000/- to the respondent. Hence, the finding of the Lower Appellate Court is perverse and to be set aside.*

7.The primary contention of the respondent is that the cheque is dated 30.07.2013 but it was presented even one day before, i.e., on 29.07.2013. Hence, no case under Section 138 of the N.I. Act can proceed. He further seeks small accommodation to get instructions from the respondent to respond to the points raised by the appellant. The learned counsel further submitted that he is finding it difficult to contact his client/respondent.

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8.In view of the above submission, this Court finds the presence of the respondent would be necessary. In view of the same, this Court directs the jurisdictional police to secure and ensure the presence of the respondent, namely, P.Murugan, S/o.Pattappan, Proprietor, Ammayappan Fabrics, No.22/48, Palanipuram 6th Street, Bhavani – 638 301 and also at No.14/12, Somasundarapuram, 1st Street, Bhavani – 638 301 before this Court on the next hearing date.

9. Post on 19.12.2025."

3. Subsequently, the matter was referred to mediation before the High Court Mediation Centre and the Special Lok Adalat, however, no settlement could be arrived at. Accordingly, the matter is once again listed before this Court today.

4. The learned counsel for the appellant submitted that the learned Trial Court had rightly appreciated the oral and documentary evidence adduced by the appellant and had correctly arrived at a finding that the respondent had not disputed either the cheque or his signature thereon. Though the appellant was extensively cross-examined, the respondent was unable to elicit any material admission or favourable answer so as to probabilise his defence. On 19.08.2015, the respondent questioned the wherewithal of the appellant and also took the defence that the cheque had been given as a security in connection with the

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thread commission business. The respondent also questioned with regard to the difference in the ink of the signature and the writing in the cheques. Subsequently, the appellant again entered into the box on 28.10.2015 and marked registration certificate of J.P.S.Yarn Textile Company as Ex.P6 and Income tax returns for the assessment years 2013-14 and 2014-15 as Ex.P7 and Ex.P8. The said documents disclose the business carried on by the appellant and also contain the particulars relating to profit and loss of the business. Thus the appellant has proved his wherewithal.

5. The learned counsel further submitted that on considering the evidence and materials available on record, the Trial Court had rightly convicted the respondent. However, the Lower Appellate Court, on its own reasoning observed that the liability of the respondent had not been shown in Ex.P7 and Ex.P8. On that basis, the learned Appellate Court erroneously concluded that the respondent had probabilised his defence and consequently set aside the judgment of conviction passed by the learned Trial Court and acquitted the respondent/accused.

6. Considering the above submissions and perusal of materials, it is seen that the respondent had not denied the issuance of the cheque and the signature therein and had taken a specific stand that the cheque was issued only as security for thread business. On dishonour of the cheque, the statutory notice

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was served to the respondent, but he failed to send any reply. During the course of trial, the respondent, through the cross-examination of the appellant, had put forth his defence. However, he had not further elaborated as to the nature of the alleged thread business transaction, the circumstances under which the cheque was issued as security, the date on which it was handed over, or the liability in respect of which such security was allegedly furnished. No specific details whatsoever were brought on record in support of the said defence. Except for a bald suggestion that the cheque was given as security, the respondent had not placed any material before the Court to substantiate his defence. When the signature and issuance of the cheque are not disputed, the burden shifts upon the respondent/accused to rebut the said presumptions by raising a probable defence.

7. With regard to the other defence that the appellant had no wherewithal, the appellant on the very next hearing itself, produced Exs.P6, 7 and 8. There is no question put to the appellant, with regard to Exs.P6, 7 and 8, which are the registration certificate of J.P.S.Yarn Textile Company and income tax returns and no questions put forth questioning financial capacity or wherewithal to advance the amount in question. Further, not even a suggestion has been put to the appellant to show that the transaction between the appellant and the respondent not reflected in Exs.P7 and P8. The Lower Appellate Court, on its own, cannot give an interpretation that, since the transaction is not reflected in

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Exs.P7 and P8, the loan had not been advanced and no question or any suggestion put forth by the respondent in this regard. The explanation of the appellant that Exs.P7 and P8 have been marked only to show that he is a man with means, carrying on business and having sufficient income is acceptable. Thus the finding of the Lower Appellate Court is not proper.

8. In view of the above, the findings of the learned Lower Appellate Court, rendered on its own motion and without any supporting evidence, are not sustainable. Hence, the judgment of the learned Lower Appellate Court is set aside and the judgment of conviction passed by the learned Trial Court is restored. Accordingly, this Criminal Appeal is allowed.

9. The respondent/accused is directed to undergo the sentence imposed by the learned Trial Court. The learned Trial Court is directed to issue the necessary conviction warrant and take consequential steps in accordance with law. In the meanwhile, if the respondent/accused approaches the learned Trial Court for settlement, the same shall be considered in accordance with law.

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

1. II Additional District and Sessions Judge, Erode,

2. The Judicial Magistrate (Fast Track Court No.II), Erode

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M.NIRMAL KUMAR, J.

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