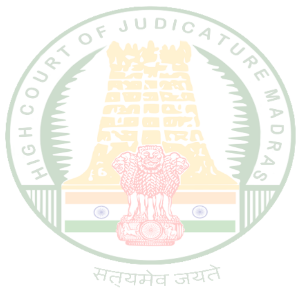

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2026
PRONOUNCED ON : 16.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.557 of 2017 and
Crl.M.P.No.19562 of 2025

Pramod Kumar Daga,
Proprietor of M/s.Ambica Genpower,
No.5 Bakers Street, 1st Floor,
Chennai-1. ... Appellant

Vs.

1.M/s.Insulation House,
Rep. by Mrs.Meenakshi Davey, Partner,
Officer at No.19, Narasingapuram Street,
1st Floor, Mount Road, Chennai-600002.

2.Mrs.Meenakshi Davey, Partner,
New No.17, Melony Road,
Ground Floor, B & C Rear Block,
Oakland Apartment, T.Nagar,
Chennai-600017.

3.Chandrakant P.Davey, Partner,
Flat-G, 1st Floor, New No.17,
Meloney Road, Oakland Apartment,
T.Nagar, Chennai-600017.

4.Prakash R.Devey, Mandate Holder,
New No.17, Melony Road,
Ground Floor, B & C Rear Block,
Oakland Apartment, T.Nagar,
Chennai-600017. ... Respondent

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PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the order dated 24.04.2017 passed in C.C.No.3498 of 2011 on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

For Appellant : Mr.N.R.Anantha Ramakrishnan

For Respondents : Mr.A.Thirumaran

JUDGMENT

The appellant as complainant filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.3498 of 2011 before the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai (trial Court). The trial Court by judgment dated 24.04.2017 dismissed the complaint and acquitted the respondents. Against which, the present Criminal Appeal is filed.

2.Gist of the case is that the appellant is the Proprietor of M/s.Ambica Genpower, Chennai. The appellant and the respondents were known to each other. The respondents 2 and 3 are active partners in the day to day affairs of the partnership business and the 4th respondent is the Signatory/Mandate Holder and signed in the cheque (Ex.P2). The respondents 2 and 3 purchased copper materials covered by various invoice bills on various dates and total

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outstanding amount due was Rs.13,65,257.19/-. After repeated demands, in discharge of part liability, the 4th respondent issued a cheque No.970859 dated 21.09.2011 (Ex.P2) drawn on South Indian Bank, Mount Road, Chennai for a sum of Rs.3,27,232.46/- issued in favour of the appellant. When the appellant presented the cheque for encashment in Canara Bank, Broadway, Chennai on 21.09.2011, the same returned for the reason "Payment Stopped by the Drawer" on 23.09.2011. Thereafter, the appellant sent a statutory notice (Ex.P5) dated 28.09.2011 to all the respondents. Without repaying the amount due, the respondents sent a reply dated 10.10.2011 (Ex.P6) with false allegations. Ignoring the same, the complaint under Section 138 of Negotiable Instruments Act, 1881 was filed. During trial, the appellant examined himself as PW1 and Exs.P1 to P8 marked. On the side of the defence, the 4th respondent examined as DW1 and Exs.D1 to D36 marked. On conclusion of trial, the trial Court dismissed the complaint and acquitted the respondents.

3.Learned counsel for the appellant submitted that the trial Court having found that the statutory presumption under Sections 118 & 138 of N.I.Act proved, ought to have convicted the respondents thereafter. The finding of the trial Court that the cheque (Ex.P2) was given for time-barred debt is erroneous. The trial Court holding that the invoice (Ex.P1) No.3466 was dated 18.07.2008

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and the cheque (Ex.P2) was dated 21.09.2011, thereby making it a time-barred debt beyond the three years period, is not proper. When the specific case/admission of the respondents in the civil suit in O.S.No.859 of 2013 that there was a running account between the appellant and respondents, the debt is not a time barred one. He further submitted that against the total outstanding of Rs.13,65,257.19/-, the 4th respondent issued a cheque (Ex.P2) for Rs.3,27,232.46/- for one invoice. The 4th respondent/DW1 in his cross examination admitted that there was pending liability between the appellant and the respondents confirms the cheque is not a time barred one. Further, the respondents in the reply notice (Ex.P5) and in cross examination admitted that substantial payments made in the year 2010-11 which established that a fresh point for limitation period gets extended for payment of the outstanding debt. The trial Court finding that Exs.D32 & D33 legal notice issued for individual invoices, is not proper. The finding of the trial Court is that the appellant not produced any material to establish the extension of time and that the cheque was not given for a legally enforceable debt and failed to consider that in the reply notice, the plaint, and during the cross-examination of DW1, the 4th respondent admitted to the continuous transaction. It is clear that admitted facts need not be proved again. Further the averments in the reply notice (Ex.D31 dated 10.10.2011) established that the invoice No.3466 dated

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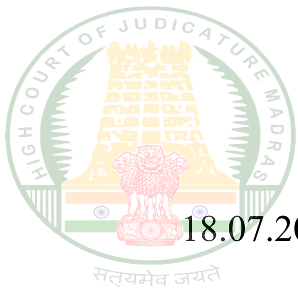
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18.07.2008 which is covered in the complaint was taken into consideration by the respondents while arriving at the outstanding amount of Rs.13,41,324.95/-. The respondents admittedly effected payment to the tune of Rs.2,41,385/- in 2010-11 and the balance was Rs.10,99,938.77/-. Thus, the respondents admitted, for the balance, part payment made in 2011, thereby giving rise to a fresh starting point for the limitation period. The trial Court committed serious error in concluding that the cheque (Ex.P2) was not issued for legally enforceable debt.

4.He further submitted that the appellant filed a petition in Crl.M.P.No.19562 of 2022 in Crl.A.No.557 of 2017 under Section 432 of BNSS to mark additional evidence namely the certified copy of the judgment in O.S.No.7277 of 2022 and certified copy of the decree in O.S.No.7277 of 2022 for the point that the 4th respondent as plaintiff admitted in his evidence that as of 31.03.2010 you are due to the defendant to the Rs.13,41,324/-. On the facts of the case, the appellant proved that the cheque (Ex.P2) was given in discharge of liability by producing cogent evidence. But the trial Court, on a wrong appreciation of facts and without considering the admission of DW1/4th respondent and documents, considered the date of invoice (Ex.P1) and date of cheque (Ex.P2) and gave a finding that the debt is time barred. Hence, the

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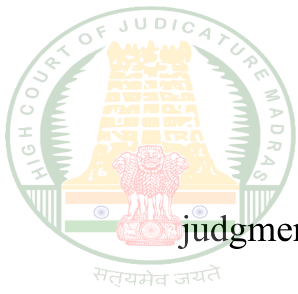

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judgment of the trial Court is perverse, to be interfered with and set aside. Hence, Crl.M.P.No.19562 of 2022 in Crl.A.No.557 of 2017 to be allowed. In support of his submissions, learned counsel for the appellant relied on the followed decisions:

1.Placed reliance on the decision in ***Hindustan Apparel Industries v. Fair Deal Corporation*** reported in ***AIR 2000 GUJ 261*** for the point that the payment by cheque which is dishonoured would amount to acknowledgment of a debt and a liability.

2.Placed reliance on ***Rajpati Prasad v. Kaushalya Kuer and others*** reported in ***1980 SCC OnLine Pat 107*** for the point that when a cheque is drawn by a person in settlement of the price of goods demanded from him by the person who had supplied the goods and was making the demand for payment of the price, at least in a case in which the cheque is honoured there can be no doubt that it amounts to and is an admission by the writer of the cheque that there is a debt owed by him to the person in whose favour the cheque has been drawn.

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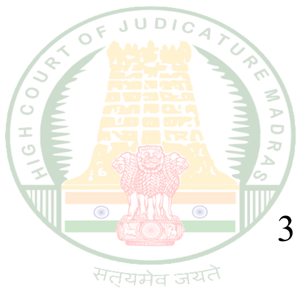
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3.Placed reliance on the decision of ***Dr.K.K.Ramakrishnan v. Dr.K.K.Parthasaradhy and another*** reported in ***(2004) 122 Comp Cas 457*** wherein it had held that when a person issues a cheque, he acknowledges his liability to pay. In the event of the cheque being dishonoured on account of insufficiency of funds, he will not be entitled to claim that the debt had become barred by limitation and that the liability was not thus legally enforceable and he would be liable for penalty in case the charge is proved against him.

4.Placed reliance on the decision in ***Rajeev Kumar v. State NCT of Delhi and another*** reported in ***2024 SCC OnLine Del 6421*** for the point that a person who has chosen to escape liability, can draw a cheque, in order to clear an earlier debt upon persuasion by the creditor. By the act of drawing a cheque, the promisor i.e. the drawer, is effectively stating that he has a liability to pay the drawee. Drawing of the cheque in itself, is acknowledgment of a debt or liability.

5.Placed reliance on the decision in ***Gorelal v. Ramjeelal*** reported in ***AIR 1961 MP 346*** for the point that passing of a cheque is payment for the purpose of Section 20 and if other conditions are fulfilled, a fresh term of limitation starts from that date, whether or not it is subsequently honoured.

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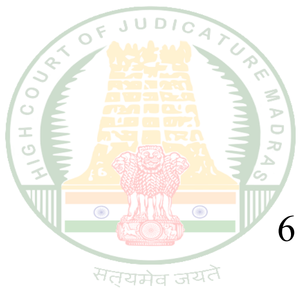

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6.Placed reliance on the decision in ***Rajesh Jain v. Ajay Singh*** reported in ***(2023) 10 SCC 148*** for the point that once the presumption under Section 139 was given effect to, the Court shall proceed on the premise that the cheque was, indeed, issued in discharge of a debt/liability.

7.Relied on the decision of the Hon'ble Apex Court in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited*** reported in ***(2016) 10 SCC 458*** wherein it had held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant.

8.Placed reliance on the decision of the Hon'ble Apex Court in ***K.Hymavathi v. The State of Andhra Pradesh & Anr.,*** reported in 2023 LiveLaw (SC) 752 for the point that if the question as to whether the debt or liability being barred by limitation was an issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties since the question of limitation is a mixed question of law and fact.

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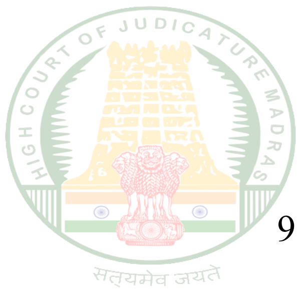
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9.Relied on the decision of the Hon'ble Apex Court in ***Anil Kumar Sawhney v. Gulshan Rai*** reported in ***(1993) 4 SCC 424*** wherein it had held that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

10.Placed reliance on the decision of the Hon'ble Apex Court in ***Ashok Yeshwant Badave v. Surendra Madhavrao Nighojakar and another*** reported in (2001) 3 SCC 726 for the point that For prosecuting a person for an offence under Section 138 of the Act, it is inevitable that the cheque is presented to the banker within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.

11.Relied on the decision of the Hon'ble Apex Court in ***S.Natarajan v. Sama Dharman and another*** reported in ***(2021) 6 SCC 413*** for the point that observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability.

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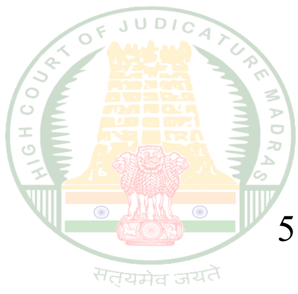
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5.Learned counsel for the respondents strongly opposed the appellant's submissions and submitted that the 4th respondent examined himself as DW1 and marked Exs.D1 to D36 to show that the appellant owes to Rs.1,06,30,754/- to the respondent. In Exs.D31 & P7 the explanation is that the amount due for the purchase of materials was Rs. 13,41,324.95/- as of 31.03.2010. During the year 2010-11, the amount of Rs.2,41,385/- paid. This due amount of Rs.10,99,938/- was given due credit and after deducting this amount, the appellant owes a sum of Rs.95,30,815.23/-. Additionally, invoice No.3466 is dated 18.07.2008. The specific stand is that the appellant had taken undated four cheques including the subject cheque (Ex.P2) for a sum of Rs.3,27,232.46/- dated 31.03.2010 as security to show to the bankers to prove their creditworthiness. The respondents issued a stop payment for these four cheques and sent a letter to the bank on 01.06.2010, confirming that the subject cheque (Ex.P2) and three other cheques, which were issued in 2010, were given only as security.

6.He further submitted that the invoice (Ex.P1) was of the year 2008 and the cheque (Ex.P2) was of the year 2011 which issued on one to one correlation, hence, for Ex.P1, Ex.P2 issued which is clearly a time barred debt. No documents or any material produced by the appellant to show that the

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respondents by their own admission extended the period of limitation, thereby Section 25(3) of Contract Act is invoked. The trial Court by a detailed and well reasoned judgment referring to various decisions of the Hon'ble Apex Court rightly found that the cheque (Ex.P2) is a time barred one.

7.Learned counsel for the respondents strongly opposed the petition in Crl.M.P.No.19562 of 2022 in Crl.A.No.557 of 2017 filed by the appellant under Section 432 of BNSS to mark additional evidence and stated that this complaint filed in the year 2011 and the judgment delivered in the year 2017 and now the documents attempted to be marked is of the year 2025. The documents came into existence after the complaint filed and eight years after the trial Court judgment. Hence, the documents cannot be marked and such procedure is not at all envisaged in law. Added to it, taking additional evidence would serve no purpose. He further submitted that the civil case is filed by the respondents and not by the appellant. The appellant's case must stand on its own merits and cannot rely on the dismissal of the suit filed by the respondents. Even in the civil case, the cross-examination of the witnesses occurred 14 to 15 years after the case was transferred to this Court in C.S.No.859 of 2013, and subsequently transferred to the District Court and renumbered as O.S.No.7277 of 2022. The plaintiff therein is of 66 years, at

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that point, marking the document is unnecessary. In view of the above, the petition filed by the appellant under Section 432 of BNSS and the present appeal are liable to be dismissed.

8.Considering the submissions and on perusal of the materials, it is seen that the 4th respondent as Power of Attorney and Mandate Holder of the 1st respondent Firm filed a civil suit in C.S.No859 of 2013. On the point of pecuniary jurisdiction, the same transferred to the file of the District Court and taken on file as O.S.No.7277 of 2022 and the suit dismissed on 08.04.2025. In the judgment and decree, it is clearly recorded that the suit is a counterblast to the cheque bouncing case filed by the defendant against the plaintiff. It is seen that the suit filed in the year 2013 and after nine years, it was transferred to the District Court, thereafter evidence taken and the plaintiff is aged about 66 years. Further, the documents sought to be brought in evidence are (i)Certified copy of the judgment dated 08.04.2025 in O.S.No.7277 of 2022 and (ii)Certified copy of the decree dated 08.04.2025 in O.S.No.7277 of 2022. Though these are Court judgment and decree, there cannot be serious objection. But the issue involved in this case is whether the cheque (Ex.P2) issued is time barred or not, considering with invoice (Ex.P1). Now looking the evidence of witnesses and exhibits both on the side of the appellant and the

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respondent, this Court finds that already there are enough materials and evidence to decide the issue. Hence, further evidence not required/necessary. Accordingly, Crl.M.P.No.19562 of 2022 in Crl.A.No.557 of 2017 stands dismissed.

9.In this case, the invoice (Ex.P1) is dated 18.07.2008 and the subject cheque (Ex.P2) is dated 29.09.2011. Though on the face of it, it might appear beyond three years and the debt is time-barred one, it is not so. In the reply notice (Ex.P6), it is mentioned that the cheque (Ex.P2) was issued only as security to tied over the bank requirement and it was given in the year 2010. In Ex.P7 as well as Ex.D31 the same reiterated. Though Exs.P7 & D31 cannot be automatically taken as an endorsement or approval in extending the limitation period, invoking Section 25(3) of Contract Act, the appellant reiterated in his evidence that he and the respondents had running account and further the due lastly arrived was Rs.13,65,257.19/- and the respondents paid Rs.2,41,385/- giving credit to the payment, four cheques for the balance amount of Rs.10,99,938.77/- issued. The subject cheque is one of them. The 4th respondent/DW1, the mandate holder, signatory to the cheque confirmed the cheque and invoice are not in one to one correlation and they were having running account. Once it is admitted that the appellant and the respondents

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were having running account, then there is no question of limitation or time barred debt. From the reply, it is the admitted position. This proves that the debt is not a time-barred one and the cheque (Ex.P2) issued in discharge of part liability.

10.Though the trial Court rendered a detailed judgment referring to the evidence and documents and decisions of the Hon'ble Apex Court, it had misdirected confining only to the invoice (Ex.P1) and the cheque (Ex.P2) and failed to consider the other evidence produced by both the appellant and the respondents. The evidence of the 4th respondent/DW1 and reply notice (Ex.P7) confirm they had a running account. Once the running account is admitted, then no limitation ground can be raised.

11.In the result, this Criminal Appeal stands allowed and the judgment of acquittal dated 24.04.2017 in C.C.No.3498 of 2011 passed by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai is set aside.

12.The trial Court is directed to rehear the arguments of both counsels for the appellant and the respondents and to consider the evidence and

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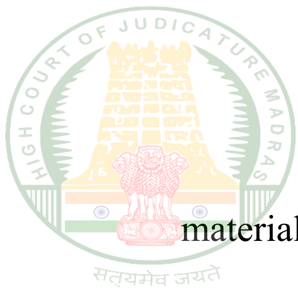
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materials afresh and deliver judgment, without delay not later than three months from the date of receipt of a copy of this judgment and the case bundle from this Court.

13.In the interregnum, if the respondents come forward for a settlement to settle the cheque amount, the same can be entertained by the trial Court and the case can be compounded.

14.Registry is directed to send back all the case records in C.C.No.3498 of 2011 to Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai (trial Court) within seven days from the date of uploading this judgment. Since the trial Court is a Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, the case records can be delivered through Special Messenger to avoid postal and procedural delay.

16.04.2026

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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Note: Issue Order Copy on 16.04.2026.

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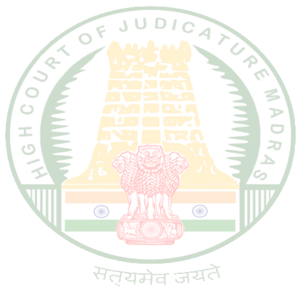

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M.NIRMAL KUMAR, J.

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To

The Metropolitan Magistrate,
Fast Track Court-IV, George Town, Chennai.

PRE-DELIVERY JUDGMENT IN
Crl.A.No.557 of 2017

16.04.2026

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