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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28-09-2026

DELIVERED ON : 11.11.2026

CORAM

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

Crl. A(MD) No. 170 of 2019

CNR:{HCMD010344792019}

Soundararajan

..Appellant

Vs

Saraswathi

..Respondent

Prayer: This Criminal Appeal is filed under Section 372 of Cr.P.C. praying to to set aside the judgment dated 31.07.2018 made in C.A.No.50 of 2012 on the file of the Additional Sessions Court, Dindigul reversing the judgment and sentence passed in C.C.No.102 of 2007 on the file of the District Munsif-cum-Judicial Magistrate, Vedasandur dated 04.05.2012 and restore the conviction and sentence and award of compensation passed against the respondent ie., sentence to undergo one year simple imprisonment and compensation of Rs.1,20,000/- to the petitioner and allow this Criminal Appeal.

For Appellant : Mr. S. Gokul Raj

For Respondent : Mr. M. Sheik Abdullah

JUDGMENT

This appeal is directed against the judgment of acquittal passed by the learned Additional Sessions Judge, Dindigul, in Criminal Appeal No.50 of 2012, dated 31.07.2018 reversing the judgment and sentence dated 04.05.2012 passed in C.C.No.102 of 2007 by the learned District Munsif-cum-Judicial

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Magistrate, Vedasandur.

2. On a careful perusal of records, it is found that the appellant herein had filed a private complaint before the learned District Munsif-cum-Judicial Magistrate, Vadasandur, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act"). The said complaint was taken on file in C.C.No.102 of 2007 and summons was issued to the respondent/accused/respondent. On her appearance, the copies of the complaint was furnished to her under Section 207 Cr.P.C. The substance of the accusation were put to her, which she denied. Therefore, the Respondent was tried by the trial Court.

3. On the side of the appellant/complainant, the appellant examined himself as P.W-1 and one Ravi as P.W-2. Ex.P-1 to P-7 were marked. Upon closure of the evidence of the complainant, the incriminating circumstances appeared in the evidence were put to the respondent under Section 313(1)(b) Cr.P.C., which she denied the same and reported that she has witnesses on her side. On the side of the defence, two witnesses D.W-1 and D.W-2 were examined. Thereafter, the defence side evidence was closed.

4. After hearing both sides, the trial Court has found the respondent guilty of the offence punishable under Section 138 of the NI Act and sentenced her to undergo one year simple imprisonment and directed the cheque amount

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as compensation to the appellant/complainant. In default, the respondent shall undergo three months simple imprisonment as default sentence.

5. Aggrieved by the said judgment of conviction and sentence, the respondent herein had preferred an appeal before the learned Additional Sessions Judge, Dindigul, in Criminal Appeal No. 50/2012 wherein the Appellate Court has set aside the conviction passed by the trial Court and acquitted the respondent from the offence.

6. Aggrieved over the said judgment of acquittal, the complainant/ appellant is before this Court by way of this appeal. In this appeal, the learned counsel for the appellant is heard. The learned counsel for the respondent is also heard. Both sides filed written submissions and the written submissions were perused.

7. Point for consideration:

Whether the acquittal passed by the first Appellate Court is sustainable?

Answer:

8. The learned counsel for the appellant, in his oral and written arguments, submitted as follows:

8.1. The appellant had filed private complaint in C.C.No.102 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Vedasendur,

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against the respondent herein. On 04.05.2012, the learned District Munsif-cum-Judicial Magistrate, Vedasendur, was pleased to convict the accused/respondent for an offence under Section 138 of the NI Act and sentenced to undergo one year Simple Imprisonment and awarded compensation under Section 357 [3] of Cr.P.C., for a sum of Rs. 1,20,000/- in favour of the appellant. Against which the respondent/accused/respondent had filed an appeal in C.A.No.50 of 2012 on the file of learned Additional Sessions Judge, Dindigul. On 31.07.2018, the learned Additional Sessions Judge, Dindigul was erroneously acquitted the respondent. Against which, the appellant had preferred the present Criminal Appeal.

8.2. On 20.12.2006, the accused/respondent had borrowed a sum of Rs.1,20,000/- from the appellant and assured to repay the same within 50 days. Further, the accused/respondent had issued cheque bearing No.234980, drawn at Indian Overseas Bank, Coimbatore, for discharging the legally enforceable debt. The appellant had presented the cheque for collection before Bank of India, on 07.03.2007, however, the said cheque was returned on the same day for reason that "Insufficient funds" on 14.03.2007.

8.3. The respondent had issued legal notice on 09.04.2007, calling upon the respondent to pay cheque amount with 15 days. The said notice was served on 12.04.2007 and the same was refused by the accused/respondent, the postal cover was returned as "Intimation Sent" and unclaimed. However, there was no

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reply notice sent by the respondent for the statutory notice issued by the appellant.

8.4. During the trial, the appellant had examined himself as P.W-1 and one V.Ravi also examined as P.W-2. Further, he had marked Ex.P-1 to Ex.P-8. The respondent also examined D.W-1 one Thirumalairaju and also examined her husband as D.W-2 namely Dhanasekaran.

8.5. The learned Trial Judge had categorically held that the accused/respondent had not sent any reply notice for the statutory notice sent by the appellant. Further, the learned Trial Judge had assigned the reason for convicting the accused/respondent that during the cross examination the D.W-2, husband of the accused/respondent had stated that without knowledge of the accused/respondent, he had issued a cheque signed by the accused/respondent. However, no reason has been assigned as to what circumstances he issued his wife's cheque.

8.6. The trial Court categorically held that had not taken any complaint against the appellant and not sought any return of cheque alleged to be issued to the finance company namely KPS Finance Company. Further, the trial Court had held that the accused/respondent herself not interested to put herself as witness to rebut the presumption under Sections 118 and 139 of the NI Act.

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8.7. Further, the trial Court disbelieved the evidence of D.W-1 who was working as Office Assistant and marked the register. During the cross examination of D.W-2, husband of the accused/respondent had stated that it is possible that after receiving the amount from the appellant at about 05.00 p.m., his wife may attend duty and hence, the trial Court had disbelieved the plea of alibi.

8.8. The trial Court had further held that during cross examination of D.W-1, there were 1000 employees working in the Government Hospital, Coimbatore. Hence, it cannot be possible to say that any person may attend the duty belatedly and cannot be properly identified. Hence, the trial Court had disbelieved the evidence.

8.9. Against the judgment dated 04.05.2012 passed by the learned Trial Court in C.C.No.102 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Vedasendur, the respondent/accused/respondent had filed an appeal in C.A.No.50 of 2012 on the file of the learned Additional Sessions Judge, Dindigul and the same was allowed on 31.07.2018.

9. The reason assigned by the Appellate Court is that the husband of the accused/respondent had entrusted the cheque in favour of KPS Finance Company wherein the appellant also one of the partners.

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9.1. As per Ex.P-7, the registration of firm and Ex.P-8 Varthamana deed dated 26.04.2002, the appellant left the KPS Finance. Hence, the appellant admitted the partnership in the above said finance company. No document has been produced by the appellant as he was retired from the finance company. Further, it was admitted that Rs.35,000/- loan amount was received by the respondent's husband.

9.2. The evidence of D.W-1 is believable is not possible to attend the duty by the accused/respondent on 20.12.2006 and it will take 4 hours to reach Coimbatore from the house of complainant at Paraipatti, Dindigul District. Hence, no legally enforceable debt and allowed the appeal.

10. The learned counsel for the appellant raised the following grounds:

10.1. The respondent/accused has not rebutted the presumption under Sections 118 and 139 of the NI Act. In fact, the respondent/accused had admitted the signature in the cheque issued by her.

10.2. Though the legal notice issued by the complainant on 09.04.2007, the respondent/accused had not chosen to reply notice to deny the contentions in the legal notice.

10.3. The respondent/accused have not rebutted the presumption as envisaged under Sections 118 and 139 of the NI Act, by examining proper

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witness.

10.4. The lower Appellate Court erroneously held that the appellant/ complainant was partner in the KPS Finance company which was run by PW-2. Hence, he believed the version of the accused/respondent that for the transaction in the KPS Finance, her husband had issued the cheque in question. In fact, the cheque was issued by the accused/respondent in the individual capacity. The appellant showing his *bona fide* before the Court, he had marked Ex.A-8, registration certificate of finance company and Ex.A-9 varthamana deed to prove that he was relieved from the finance company.

10.5. The lower Appellate Court had miserably failed to see that the alibi plea is weakest plea and heavy burden upon the person who relying the plea of alibi.

10.6. The lower Appellate Court failed to see that during the cross examination of D.W-1 and D.W-2, it is evidencing that it is possible to reach the working place of respondent/accused within 4 hours i.e., Paraipatti, Dindigul District to Coimbatore.

10.7. The lower Appellate Court failed to see that D.W-1 who is an Office Assistant of Government Hospital had categorically admitted that he was not seen the respondent/accused whether she was belatedly attended her duty. Hence, the lower Court had disbelieved D.W-1 also.

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11. In support of his contention, the learned counsel appearing for the appellant relied on the following decisions:

11. 1. In ***Rajesh Jain vs. Ajay Singh*** reported in ***2023 Supreme [SC] 1025*** the Apex Court has observed as follows:

> *"60. Coming to the finding of High Court, we find again, there has been fundamental error in the approach with which the High Court has proceeded to consider the evidence on record. In paragraph 6 of the impugned order, the High Court finds that the complainant has proved the issuance of cheque, which means that the presumption would come into immediate effect. In paragraph 13, it rightly observes that the burden is on the Accused to rebut such presumption. In the very next paragraph, it finds that the Accused has rebutted the presumption by putting questions to the complainant and explaining the circumstances under section 313 Cr.P.C.*
>
> *61. There is no elucidation of material circumstances/basis on which the Court reached such conclusion. It notes the allegation made in the complaint that the complainant had given the loan on 01.03.2014 and on several dates thereafter. Based on this averment, the High Court rather shockingly concludes that: "If the complainant had given loans on various dates, he must have maintained some document qua that, because it was not a one-time, loan but loan along with interest accrued on the principal, which made the amount to Rs.6,95,204/-." Therefore, according to the High Court, 'the burden was primarily on the complainant to prove the debt amount'."*

11.2. In ***R.Dennis Raja vs. T.Subbiah*** reported in ***2018 Supreme [Mad] 1846*** this Court has observed as follows:

> *"27.The Accused in this case, has attempted to probabilise there was no passing of consideration to issue cheques and the cheques were stolen by the Accused while he was employed as Manager. From the evidence let in by the complainant as pointed out earlier, the complainant has established to the core that he was not mere a Manager in Sudha Gas Agency, he and his family members have contributed to the business and the same has been acknowledged by the Accused himself in his letters to HPCL just few months before the trouble started. The stock verification records and the power of attorney also lend support to the case of the complainant. Whereas, the Accused has denied the issuance of the cheques through public notice in a newspaper alleging theft of the cheques by the*

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complainant one year back. This notice is clearly an afterthought. It miserably fails to clear the test of prudence since, no document to show he informed about the theft/missing of those cheques either to the bank or to the police, immediately. His conduct of closing the accounts after issuing the cheques and not intimating the bank about the cheques held by him, does not lend any support to probabilise his defence.

29.It is relevant to point out at this juncture, when the Accused denies the execution of Ex.P.2, document, the same is proved through attesting witnesses P.W.2 and P.W.3. These two witnesses have deposed that panchayat held in the presence of elders of the community and locality. The father in law of the complainant, father of the Accused and others were present, while P.W.2 and P.W.3 signed the document as witnesses for its execution. This Court only wonders what prevented the Accused to examine any of those persons mentioned by these attesting witnesses to disprove their evidence or what prevented him from producing documents to show he was not at Tuticorin on 12.07.2002 and 14.07.2002, but was at Chennai and stayed at Imperial Hotel. Therefore, this Court holds that mere denial of liability or passing of consideration will not be sufficient to rebut the presumption under section 139 of the N.I. Act. Such a rebuttal should be backed by some material evidence which could probabilise the facts content in it. The points framed for consideration answered accordingly."

11.3. In ***P.Benedict Fernandez vs. Rajiv Bhatia*** reported in ***2008 2 MLJ [Crl] 1318 –*** this Court has observed as under:

"9. Learned Metropolitan Magistrate seems to have been proceeded on an assumption that a fact has got to be proved only by documentary evidence and oral evidence is of no use. The observation made by the learned Metropolitan Magistrate to the effect that the complainant had not even produced a scrap of paper to show that he had a cash of Rs.70,000/- with him and Rs.1,96,000/- was the amount he got from the Foreman of the Chit under a chit transaction after making payment of the entire subscription. When there is a clear assertion through PW1 who is none other than the complainant and his evidence having not been discredited either by eliciting points contrary to the stand during the cross examination or by adducing contra evidence, the observation made by the learned Metropolitan Magistrate is quite unwarranted. Above all, there was no occasion for the learned Metropolitan magistrate to embark upon a rowing enquiry as to whether existence of debt or other liability has been proved by the appellant/complainant. As pointed supra, there is no evidence adduced on the side of the appellant/Accused sufficient enough to make it appear that the cheque could have been issued to a third party and hence the cheque could not have been issued for the discharge of any debt or other liability towards the appellant/complainant. Whenever the Accused in a criminal

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prosecution for an offence punishable under Section 138 of the Negotiable Instruments Act comes forward with a plea that the cheque issued in favour of another person has been misused by the complainant for prosecuting him, either he should have examined the said person in whose favour the cheque, according to him, was issued or adduced evidence to that effect, otherwise he could have elicited answers from the witnesses examined on the side of the prosecution which will make his case probable. In this case, after going through the evidence of PW1, this Court is of the considered view that no such answer has been elicited from the prosecution witnesses by the learned counsel for the Accused who appeared in the lower court. The additional fact that goes against the respondent/Accused in this case is that the Accused has not come forward to say who was that the third party in whose favour the cheque was issued. Under such circumstances, this Court comes to the conclusion that the respondent/Accused has not made out even a prima facie case that the cheque was not issued in discharge of debt or other liability. Therefore, without any hesitation this Court holds that the respondent/Accused has not rebutted the presumption raised under Section 139 of Negotiable Instruments Act, regarding the purpose for which the cheque was issued. That alone is enough to convict the Accused for the said offence, provided the other conditions are proved.

10.It is a fact not in dispute that the cheque bears date 15.4.1999 and it was presented for encashment during its validity period. It was presented on 20.4.1999 and returned with an endorsement "funds not sufficient". Ex.P1 is the dishonoured cheque. Ex.Pl2 is the dishonour slip. The banker's memo indicating the dishonour to the appellant/complainant is Ex.P.3. It is also obvious that within 15 days from the date of receipt of intimation of dishonour, the statutory notice was issued. Ex.P4 is the copy of the notice. Ex.P.5 is the postal acknowledgment card evidencing the receipt of the said notice by the respondent/Accused. Nowhere in the cross-examination of PW1, it was suggested that the said notice was not at all received by the respondent/Accused and that the signature found in Ex.P.5 was not that of the respondent/Accused. This Court wonders how the learned Metropolitan Magistrate took the job upon himself to test the genuineness of such a document which was not at all disputed by the party in the trial. The finding of the learned Magistrate to the effect that the signature found in the postal acknowledgment card marked as Ex.P.5 was not proved to be that of the Accused is perverse. Therefore, the said finding of the learned Magistrate being discrepant has got to to be set aside and reversed.

11. It is also not in dispute that the amount covered by the cheque was not settled by the respondent/Accused within the time prescribed by sub-clause (c) of Section 138 of Negotiable Instruments Act. Therefore, this Court comes to the conclusion that the learned Magistrate has committed a blatant error in arriving at a conclusion that the offence with which the respondent/Accused stood charged was not proved beyond reasonable doubt. The said finding of the Court below is no doubt erroneous and

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discrepant and this Court has to set it right by setting aside the said finding and reverse the judgment of the acquittal pronounced by the Courts below."

11.4. In ***M/s.Malliah Tea Factory (P) Ltd., and others vs. S.Jawahar*** reported in ***2016 [3] DCR 737*** this Court has observed as follows:

> *"6.The revisions petitioners has not denied the signature in the cheque, but they have stated that the cheque was issued in favour of one Padmaban and there is no existence of any transaction between the petitioners and the complainant. It is admitted on the side of the petitioners that cheque was presented by the complainant for encashment through his bankers, the same was dishonoured with an endorsement Exceeds Arrangement, the complainant issued statutory notice to the petitioners. The learned counsel contended that the cheque was not issued for the transaction between the parties, as there is no existence of any transaction between the petitioners and the complainant. The revision petitioners has not entered into the box and not adduced any oral evidence to prove their suggestions made during the cross examination of PW1 and to putforth there was no transaction between the petitioners and the complainant, the cheque was issued to one Padmanaban, the petitioners/Accused failed to prove the above said facts before the trial Court. The trial Court after considering the evidence of PW1 and cross examination of DW1 clearly found and accepted the evidence of PW1 and rejected the contentions putforth on the side of the Accused and finally comes to the conclusion with the evidence of PW1 and the documents marked as Exs.P1 to P8 which clearly proved the case beyond reasonable doubt. Even during the trial also the revision petitioners/Accused/ was not able to adduce any documents to show that the revision petitioners has not borrowed any amount and there is no existence of transaction between the Accused and the complainant."*

It is therefore prayed that this Court may be pleased to convict the accused/respondent for an offence under Section 138 of the NI Act, by restoring the conviction and sentence passed by the learned District Munsif-cum-Judicial Magistrate, Vedasandur.

12. The learned counsel appearing for the respondent, in his oral and written submissions, submitted as follows:

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12.1. The above respondent was acquitted by the learned Additional Sessions Judge, Dindigul against the alleged offence under Section 138 of the NI Act in C.A.No.50 of 2012. Prior to that, the respondent was arrayed as an accused on the file of the learned District Munsif-cum-Judicial Magistrate, Vedasanthur, Dindigul District in C.C.No. 102 of 2007 and the learned District Munsif-cum-Judicial Magistrate convicted the respondent to undergo 1-year simple imprisonment and to pay the cheque amount of Rs.1,20,000/- as a compensation to the appellant, and if the default arise, to undergo further 3 months simple imprisonment. The judgment of the lower trial Court was set aside by the learned Additional Sessions Judge, Dindigul. Against the lower Appellate Court's order, the appellant has now preferred this appeal before this Hon'ble Court without any grounds.

12.2. The learned lower Appellate Court has aptly considered so many vital grounds on merits which were not considered by the learned trial Court. The learned trial Court did not consider the grounds of lacuna in notice, lacuna in intimation endorsement, existence of alibi, lack of vital ingredient of "legally enforceable debt" among other things.

12.3. The learned trial Court did not consider the ground of 'alibi' which was glaring but the same was considered by the learned lower Appellate Court. Before the learned Trial Court, appellant/complainant examined as P.W-1 in his cross examination, admitted very clearly that on 20.12.2006 at about 5.00 p.m.

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he paid the amount to the respondent. Per contra, defence side Exhibit No.2 copy of the attendance register of Coimbatore Medical College Hospital, marked through D.W-2 in that Exhibit on 20.12.2006, between 7.00 pm to next day 7.00 am the respondent was attending her duty at Coimbatore Medical College Hospital. The running hours between Paraipatti Village, Dindigul District and Coimbatore Medical College Hospital is about 4 hours, so it is highly impossible for the respondent to have come to Paraipatti Village on 20.12.2006 at 5.00 pm for receiving amount and issuing cheque. This imaginary piece of information was not considered by the learned trial Court. But the learned Appellate Court has rightly considered this aspect and acquitted the respondent.

12.4. The learned trial Court did not consider the ground explain "how the unfilled cheque landed in the hands of Appellant." Before the learned trial Court, in the cross examination of P.W-1 i.e the Appellant he clearly admitted that he was running a finance firm in the name and style "K.P.S. Finance Firm" registered by Government of Tamil Nadu under Partnership Act. A pass book issued by the KPS firm for the loan sum of Rs.35,000/- borrowed by respondent's husband Mr. Dhanasekaran was marked. Further, one Mr. Ravi was also examined as a P.W-2. He admitted before the learned trial Court the respondent's husband borrowed sum of Rs.35,000/- from the appellant's finance firm, for that the appellant received two cheques from the husband of the

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respondent but the two cheques belong to the respondent. The Appellant had purposely received two unfilled cheques from the respondent for her husband's debts sum of Rs.35,000/-. The Appellant knows that the respondent was a Government Employee. Since the respondent's husband did not return his loan amount of Rs.35,000/-, the Appellant utilised the cheque of the respondent. Between the appellant and respondent there is no relationship; they don't know each other; without any introduction of each other it is impossible that the appellant lent a sum of Rs.1,20,000/-. So, it is very clear that the appellant did not issue any legally recoverable loan and hence the vital requisite of "legally enforceable debt" is lacking. This vital aspect was not considered by the learned trial Court but the learned lower appellate Court has aptly considered the same on merit and issued acquittal orders.

12.5. The "legal notice of the appellant contains information of "insufficiency of fund" but the return memo of the drawee bank has information "account closed". Generally, in banking transactions, once an account is closed "insufficient fund" will never be an expression of information given by the bank against the cheque presented in respect of closed account. Legal notice for instances of "account closed" which is not truly and clearly mentioned in the notice is unacceptable u/s. 138(b) of NI Act. This aspect was not considered by the learned trial Court.

12.6. Before the trial Court, the appellant/complainant filed a complaint

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on 31.07.2007. Legal notice i.e. Ex-P-5 intimation to the respondent on 12.04.2007 but the complaint contains that legal notice refused by the respondent, on 12.04.2007 matter of the legal notice intimated to the respondent, from the date of intimation 15 days time should be given to the respondent for paying the alleged cheque amount. The cause of action arose on 12.04.2007 as per section 138(3), time limit for repaying amount 26.04.2007 with the cheque amount not paid as per section 142(b) of NI Act complaint should be filed before the learned trial Court on or before 26.04.2007 even excluding the day i.e. 26.04.2007 as per General Clauses Act, case may even be filed on 26.05.2007. But the complaint filed before the learned trial Court on 31.05.2007. The belated or time barred complaint itself is unacceptable as per the stipulations contained in the NI Act. In short, the complaint before the lower trial Court was not within the period of limitation i.e. barred by limitation was not considered by the learned trial Court. But aptly considered by the learned lower Appellate Court.

12.7. As per section 139 of the NI Act rebuttal of presumption may be explained very clearly i.e. cheque receiver should prove the loan amount for the purpose of his debts. But in this case, the Appellant failed to prove all the facts in this case. But the respondent explained the genuineness before the learned lower Appellate Court. So, u/s. 139 of NI Act presumption may be in favour of the respondent that was confirmed in the decision of Hon'ble Apex Court in

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2013 BC 743 (SC).

12.8. Issue of notice not mentioned in the case of u/s. 138/ NI Act that entire case may be subject to dismiss. That was confirmed by Hon'ble Apex Court in ***2003 CTC 162*** from the above decision, in this case date of issuance of notice was not mentioned by the Appellant. Similarly, our Hon'ble High Court of Madras decided which was reported in ***2001(2) MWN (CR) DCC-89 and 2007(1) MWN (CR) DCC-4***.

12.9. In the event, the notice is refused by Accused in cheque case, the complaint should indicate that the accused refused notice deliberately otherwise the complainant should not take any presumptions. That was confirmed by our Hon'ble High Court which is reported in ***2004(2) MWN (CR) DCC 15 (MAD)*** explain as to how to raise presumption of deemed service of notice, there should be a clear averment in complaint that statutory notice of demand sent to Accused but Accused evaded service in absence of such averment, no such presumption could be raised. In this case on hand the appellant has not mentioned that the refusal of notice was voluntarily done by the respondent neither in his complaint nor in his evidence. This aspect was not considered by the learned trial Court but correctly considered by the learned lower Appellate Court.

12.10. The creditor should prove before the Court of law that he received

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the cheque from the debtor for "legally enforceable debts" otherwise the entire case may be acquitted: this was confirmed by our Hon'ble High Court, reported in ***2013(1) MWN (CR) DCC 85 MAD***. In this case, the appellant has not proved he received the cheque from the respondent for her legally enforceable debt. This aspect was not considered by the learned trial Court but considered by the learned lower Appellate Court.

12.11. U/s. 118 and 139 of the NI Act presumption not to be taken in favour of the cheque receiver that was confirmed by Hon'ble Apex Court that was reported in ***2014 BC(3) (SC)***.

12.12. In the written argument, the appellant has not raised any valid point for consideration by this Hon'ble Court. Rather the appellant has failed to notice that the respondent had played the rebuttal of presumptions u/s 119 and 139 of the NI Act well and to the best level of preponderance probability of existence of alternate possibility regarding how the instrument would have reached the complainant. Immediately on this rebuttal the burden has shifted to the complainant who had not proved his case after shifting of this onus. Further, the argument of the Appellant is silent about the time barred complaint made to the learned trial Court.

12.13. Therefore, it is prayed that this Hon'ble Court may be pleased to dismiss the appeal filed by the appellant with costs and confirm the acquittal

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order passed by the learned Lower Appellate Court in C.A.No.50 of 2012.

13. This Court has given its thoughtful consideration to the rival submissions put forth by either sides. The trial Court and the first Appellate Court records were called for and perused.

14. On a careful perusal of records, it is found that the appellant herein has come up with a private complaint before the trial court on the following averments:

14.1. On 20.12.2006, the respondent has borrowed a sum of Rs.1,20,000/- (Rupees One Lakh and twenty thousand only) by cash and agreed to repay the said loan amount within 50 days from the date of receipt of the loan and issued Ex.P-1 cheque bearing No.234980 for a sum of Rs.1,20,000/- drawn on Indian Overseas Bank, Perks School Extension Counter, Uppili Palayam, Coimbatore. The appellant herein had presented the said cheque for clearing through his banker - Bank of India, Mallapuram Branch, Soolapuram on 07.03.2007. The said cheque was returned for the reason “insufficient funds” on 10-03-2007. The return memo was issued by his banker on 14-03-2007. The appellant had issued a demand notice dated 09.04.2007 to the respondent through his counsel. The said notice was returned with an endorsement “intimation delivered, unclaimed” on 12-04-2007 which received by the appellant on 21-04-2007. Since the respondent has issued a cheque without there being sufficient funds in her account. According to the appellant, she

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committed an offence punishable under Section 138 of the NI Act.

14.2. To substantiate the said complaint, the complainant has examined himself as P.W-1 and marked Ex.P-1 to P-6. Further, he examined one V.Ravi as P.W-2 and marked Ex.P-7. On the side of the defence, one Thirumalai Raj was examined as D.W-1 and the husband of the respondent was examined as D.W-2. Ex.D-1 and Ex.D-2 were marked through the same witnesses.

14.3. On a careful perusal of the evidence of PW-1, the appellant herein, it is found that he deposed in line with his complaint. Apart from that, he examined P.W-2 and P.W-2 in his evidence, deposed that he and the complainant were running a partnership firm under the name and style of KPS Finance. The said KPS Finance is a partnership firm. There were 10 partners. The complainant was served as a partner for two years. Thereafter, he retired with effect from 26.04.2002. In this connection, an agreement was entered into between them. The husband of the accused/respondent borrowed a sum of Rs.35,000/-. He has issued two cheques to secure the said transaction. He has not issued any cheque issued by his wife to their company for security purpose. The husband of the accused/respondent is having an account in Indian Overseas Bank, Uppili Palayam. The said Dhanasekaran had to pay Rs.28,000/- as on that date. Therefore, he did not return the cheques.

14.4. On a careful perusal of the evidence as projected on the side of the

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appellant/complainant, it is found that it is the specific case of the appellant/complainant that on 20.12.2006, the accused/respondent borrowed a sum of Rs.1,20,000 and issued the subject cheque for the repayment of the said amount within 50 days from the date of borrowal.

14.5 However, on the side of the defence, it is contended that on 20.12.2006, the respondent/accused was working as a Nurse at CMC Medical College Hospital. To prove the said factum, the defence has examined one Thirumalai Raj as R.W-1 and exhibited Ex.D-2 - attendance register maintained by CMC Medical College Hospital, Coimbatore. The distance between the house of the appellant and the CMC Medical College Hospital, Coimbatore, is about 4 hours travel by road. According to D.W-1 the accused/respondent was working night duty on that day between 7.00 p.m. and 7.00 a.m. PW-1, in his cross-examination has admitted that the money was lent at around 5 p.m. Therefore, according to the respondent, since the respondent was working at CMC Medical College Hospital, Coimbatore, on 20.12.2006, the case of the appellant that she borrowed a sum of Rs.1,20,000/- and issued a cheque becomes doubtful.

14.6. Further, the defence has examined the husband of the respondent to say that he borrowed a sum of Rs.3,50,000/- from KPS Finance. In order to secure the said loan, he has issued the subject cheque signed by his wife. Therefore, according to the learned counsel for the respondent, the respondent

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has raised a probable defence and he explained as to how the cheque reached the hands of the appellant. In the said circumstances, it is for the appellant to prove that the respondent has borrowed a sum of Rs.1,20,000/- as claimed by him. However, on the side of the appellant, no evidence was let in to prove that he has paid a sum of Rs. 1,20,000/- as on the date of alleged borrowal.

14.7. On the other hand, it is contented by the appellant that the signature in the cheque was admitted by the accused/respondent. Therefore, the complainant/appellant is entitled to the presumption under Section 118(a) and 138 of the NI Act. It is for the respondent to disprove that the cheque was not issued for any legally enforceable debt or liability. The respondent has not raised any probable defence and therefore, the learned counsel for the appellant contended that he has proved that the respondent has borrowed a sum of Rs.1,20,000/- and issued the subject cheque. According to the learned counsel for the appellant, to raise the presumption under Section 138 of the NI Act, the complainant has to prove the foundational facts beyond all reasonable doubts. In this case, the appellant has proved the foundational facts.

14.8. However, on a careful perusal of record, it is found that the cheque was issued on 20.12.2006, which was presented by the appellant on 07.03.2007. The intimation as to the return of the cheque was received by him on 14.03.2007. He issued a legal notice on 09.04.2007 which was returned with an endorsement “intimation delivered, unclaimed” on 12.04.2007. Therefore, the

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complaint ought to have filed within 45 days therefrom. However, the complaint was not filed within 45 days therefrom but filed belatedly without any application for condone delay. Therefore, the cognizance itself is bad in law.

15. In this connection, the learned counsel for the respondent relied on the decision of the honourable Apex Court in ***K.Bhaskaran vs. Sankaran Vaidhyan Balan and another*** reported in ***1999 (2) MWN (Cri) S.C. 357***. On a careful perusal of the said decision, it is found that the Honourable Apex Court has held as follows:

> *"22. It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him, [vide Harcharan Singh v. Smt. Shivrani and Ors., [1981] 2 SCC 535, and Jagdish Singh v. Natthu Singh, [1992] 1 SCC 647.]*
>
> *23. Here the notice is returned as unclaimed and not as refused. Will there be any significant different between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The Section reads thus :*
>
> > *"27. Meaning of service by post. - Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression `serve' or either of the expressions `give' or `send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post"*
>
> *24. No doubt Section 138 of the Act does not require that the notice should be given only by `post'. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for*

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> *such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.*
>
> *25.Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the Accused did not even attempt to discharge the burden to rebut the aforesaid presumption."*

16. From the said decision, it is clear that when a notice is returned by the sendee as unclaimed such date would be the commencing date to reckon the period of 15 days contemplated in clause *(d) to* proviso of Section 138 of NI Act. In this case, the date of return of notice as unclaimed is 12-04-2007. Therefore, the 15 days period was over as early as on 27-04-2007 itself. The complaint ought to have filed on or before 24-05-2007. However, the complaint was filed only on 31.05.2007 with a delay of 4 days. Admittedly, no condone delay application was filed to condone the said delay as required under Section 142(1) proviso of the NI Act.

17. The learned counsel for the respondent further relied on a decision of the Honourable Apex Court in ***S. Nagesh vs. Shobha S. Aradhya***, reported in ***2026 (1) M.W.N (Cr.) DCC 128 (SC)***, to say, as per proviso to Section 142(1) (b), power conferred upon court to take cognizance of belated complaint is subject to complainant first satisfying court that he had sufficient cause for not filing complaint within time. Condonation of delay must precede act of taking cognizance. The approach of the High Court in treating crucial aspect as mere

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interchangeable exercise i.e., either to first condone delay or first take cognizance, is not in accordance with the mandate of provision. Therefore, the Magistrate erred in taking cognizance even before the condonation of delay.

18. In view of the above decision, the present complaint without an application for condoning the delay and an order by the learned Magistrate in condoning the delay is bad in law. Therefore, on this short ground alone, the present complaint ought to have failed.

19. Further, the learned counsel for the respondent contended that in view of the plea of alibi placed by the respondent, he had made a probable defence that the cheque was not issued as claimed by the complainant but as a security for the loan borrowed by her husband/D.W-2. On careful perusal of the evidence of D.W-2, it is to the effect that he borrowed loan from KPS Finance for sum of Rs.35,000/- for which he issued a cheque signed by his wife as a security for the said loan. Though P.W-2, in his evidence, claimed that the husband of the respondent has given his cheques to secure the loan transaction, it is curious to note that the said cheques were not produced before the trial Court. When the defence has raised a probable defence that the cheques were issued only to secure the loan of D.W-2, then it is to be construed that the presumption which could be raised under Section 139 of the NI Act stands rebutted. In the said circumstances, it is for the appellant to establish that the respondent has borrowed a sum of Rs.1,20,000/- on 20.12.2006 as claimed by

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the complainant. However, no evidence as to the mode of payment and the source of the said money was forthcoming on the side of the complainant. Therefore, the appellate Court has rightly acquitted the respondent. It requires no interference.

20. ***M/s.M.M.T.C. Ltd. vs. Mrs.Sampoornam reported in 2007 (1) MWN (Cr.) DCC 4*** to say that the returned cover contains two postal endorsements - “not claimed” and “address relates to some other area”. The refusal is not proved. Further, he relied on the decision of this Court in ***S.N.Mukherjee and another vs. NEPC Micon Ltd.,*** reported in ***2001 (2) MWN (Cr.) DCC (Mad.) 89*** to say in the absence of specific mention of the date of service of notice it cannot be ascertained on what date the cause of action arose. He further relied on the decision of this Court in ***M/s. Sarathy Enterprises by its Manager, Rajendran vs. Selvaraj*** reported in ***2004 (2) MWN (Cr.) DCC 14 (Mad.)*** to say the High Court is empowered to set aside acquittal only in rarest of cases of injustice resulting from violation of fundamental principles of law. He further relied on the decision of this Court in ***B. Kannan v. Kothandan*** reported in ***1995 (2) MWN (Cr.) 231*** to say that the approval of cause of action will arise after the expiry of the period of 15 days from the date of receipt of notice, putting the drawer to knowledge of dishonour by the banker of cheque which he issued. In case of non-availability of time of delivery of notice, the date of endorsement by postman or the person to whom the said notice was

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entrusted for delivery to the drawer will have to be taken to be the date of service on him, as the date when the drawer could have full knowledge of the contents thereof.

21. The learned counsel for the respondent further relied on the decisions of this Court in ***Rajendran vs. N.Radhakrishnan*** reported in ***2013 (1) MWN (Cr.) DCC 85 (Mad)*** to say that the order of acquittal shall be interfered with only if the findings of the appellate court is perverse. Further, if two views are possible, then the view which favourable to the accused/respondent need to be taken. In view of the above decisions, this court found that there is no scope for interference in this appeal.

22. In the result, the present appeal is dismissed. The judgment of acquittal passed by the learned Additional Sessions Judge, Dindigul, in Criminal Appeal No.50 of 2012, dated 31.07.2018 reversing the judgment and sentence dated 04.05.2012 passed in C.C.No.102 of 2007 by the learned District Munsif-cum-Judicial Magistrate, Vedasandur is confirmed.

11-11-2026

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

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S.KARTHIKEYAN, J.

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To

1. The Additional Sessions Judge, Dindigul.

2. The District Munsif-cum-Judicial Magistrate, Vedasandur.

Judgment made in
CRL A(MD) No. 170 of 2019

11-11-2026

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