

WEB COPY



Crl.A.No.756 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2026
PRONOUNCED ON : 07.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.756 of 2022

G.Dorairaj

... Appellant

Vs.

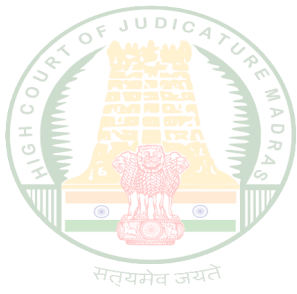
J.Janabai

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the order of acquittal dated 26.10.2021 passed in C.A.No.22/2019 on the file of the XX Additional Sessions Judge, Chennai in reversing the order passed in C.C.No.5846 of 2016 on the file of the Fast Track Court Magisterial Level Egmore (FTC-I) at Allikulam, Chennai-3, dated 11.12.2018 and allow this Criminal Appeal.

For Appellant : Mr.J.R.K.Bhavanantham

For Respondent : Mr.N.Bhaskaran



Crl.A.No.756 of 2022

JUDGMENT

WEB COPY

The respondent convicted by judgment dated 11.12.2018 in C.C.No.5846 of 2016 passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Chennai (trial Court) and sentenced to undergo six months Simple Imprisonment and to pay the compensation of Rs.3,30,000/- to the appellant in default to undergo two months Simple Imprisonment. Challenging the same, the respondent preferred an appeal before the learned XX Additional Sessions Judge, Chennai (lower appellate Court) in Crl.A.No.22 of 2019 and the same was allowed on 26.10.2021 setting aside the judgment of conviction of the trial Court. Against the same, the present Criminal Appeal is filed by the appellant/complainant.

2.Gist of the case is that the appellant and the respondent known to each other for the past several years and both working in Kilpauk Medical College and Hospital, Chennai, having good acquaintance the respondent approached the appellant and availed hand loan to meet urgent binding necessities. The appellant gave hand loan to the respondent believing that the respondent owned a house property situated at Perumbakkam, Guru Devi Colony, 1st Floor B Block No.1/909, Chennai. Subsequently, the respondent executed a promissory note (Ex.P1) on 10.11.2014 for Rs.3,30,000/- and agreed to pay



Crl.A.No.756 of 2022

interest @ 2% P.M. which is also due to the sum of Rs.85,800/-. The

respondent assured to return the amount due on the promissory note (Ex.P1)

and promised to repay the same on 16.01.2016. In discharge of the liability,

the respondent issued a cheque dated 16.01.2016 (Ex.P2) bearing No.505630

drawn on Oriental Bank of Commerce, Kilpauk, Chennai for a sum of

Rs.3,30,000/-. As per the instruction given by the respondent, the appellant

deposited the said cheque for collection on 28.03.2016 in Indian Bank, Chetpet

Branch, the same returned for the reason "Funds Insufficient". Thereafter, the

appellant caused statutory notice dated 30.03.2016 (Ex.P4) to the respondent,

but the respondent neither paid the cheque amount nor sent any reply.

Following the procedures, the complaint filed before the trial Court for offence

under Section 138 of Negotiable Instruments Act, 1881. During trial, on the

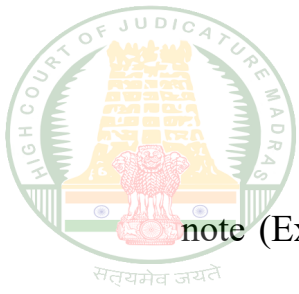
side of the appellant/complainant, he examined himself as PW1 and marked

Exs.P1 to P6. On the side of the defence, no witness examined and no

document marked. On conclusion of trial, the trial Court convicted the

respondent, but the lower appellate Court set aside the trial Court conviction.

3.Learned counsel for the appellant submitted that the lower appellate Court magnified a typographical error made in the complaint referring to the promissory note (Ex.P1). In the complaint, it is mentioned that the promissory



Crl.A.No.756 of 2022

note (Ex.P1) is dated 10.11.2014 and the amount is Rs.3,30,000/-, instead of the date of promissory note as 21.11.2014 and the principal amount as Rs.3,20,200/-. This typographical error corrected by the appellant by filing additional proof affidavit on 20.06.2017 and the affidavit copy was served on the respondent on 19.03.2018. Thereafter, a petition under Section 311 Cr.P.C. filed in Crl.M.P.No.1566 of 2018 to recall the appellant to correct the typographical mistake which is purely technical. Mr.A.Manimaran, learned counsel for the respondent in the trial Court received the affidavit copy, raised no objection. Thereafter, further chief examination recorded on 19.03.2018 and the typographical mistake was explained. But the lower appellate Court not considered the same and gave a finding as though the technical error is a vital contradiction, thereby, giving benefit of doubt to the respondent.

4.He further submitted that the respondent took two contradictory stands in this case. The first stand is that on the date of issuance of cheque (Ex.P2) she was not in Chennai due to her employment, hence, the cheque (Ex.P2) could not have been issued by the respondent. The second stand is that on the date of execution of mortgage deed in document No.1014 of 2009, the appellant stealthily removed the cheque book which was kept in her bag and misused it and filed the 138 complaint. To mark the attendance register



Crl.A.No.756 of 2022

maintained in the Government Hospital, Vellore and to produce additional

document of mortgage deed in document No.1014 of 2009 dated 10.11.2009

and to summon the Manager of Oriental Bank of Commerce, Kilpauk to

produce the respondent's statement of account from 02.11.2008 to 30.03.2016,

the respondent filed a petition under Section 391 Cr.P.C. in Crl.M.P.No.12968

of 2019 which was allowed on 07.03.2020, against which, the appellant filed a

revision before this Court in Crl.R.C.No.673 of 2020 and this Court by order

dated 14.09.2020 set aside the order of the lower appellate Court and held that

as regards the plea of alibi that the accused was working in the Government

Vellore Hospital on 16.01.2016, it is seen that in the cross examination, it was

suggested to the complainant that the accused was working in Villupuram,

which suggestion the complainant has denied. Further held that when the

respondent examined under Section 313 Cr.P.C. no explanation given about the

entire circumstances which the accused attempted to project in 391 Cr.P.C.

petition. Further held that the document which she intended to mark was very

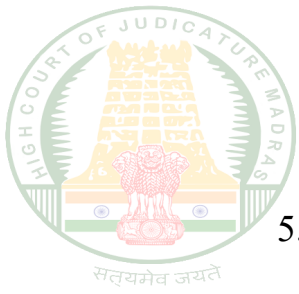
much available during the trial. Considering that the complaint was filed in

2016, the appellant was cross examined by the respondent on 11.01.2018, the

judgment was delivered by the trial Court on 11.12.2018 and finding that

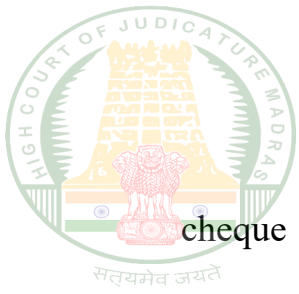
during appeal filing 391 Cr.P.C. petition in cavalier manner cannot be

entertained and set aside the order dated 07.03.2020.



5.Learned counsel further submitted that the lower appellate Court failed to note that both appellant and the respondent employed in the Kilpauk Medical College and Hospital, Chennai. The lower appellate Court finding is that Ex.P1 could not be treated as promissory note since it was written in a notebook page. The lower appellate Court failed to see the fact that the respondent gave acknowledgment signing in the stamp paper admitting that she received an amount of Rs.3,20,200/- on 21.11.2014 and Ex.P1 is attested by V.Yuvaraj, son of the respondent. The respondent not denied her signature in Ex.P1. Further, promissory note (Ex.P1) does not have any prescribed format, the only requirement is that it should be stamped and signed, acknowledging the receipt of money. He further submitted that the lower appellate Court in drawing adverse inference invoking Section 114(g) of Indian Evidence Act by referring to the typographical error in the complaint with the promissory note, is not proper since the error got rectified by filing of additional affidavit.

6.Learned counsel further submitted that the mortgage deed is of the year 2009, at that time, the cheque was stealthy removed by the appellant is the specific condition, but the cheque is of the year 2016. No steps taken by the respondent either to inform the bank, call upon the appellant to return the



Crl.A.No.756 of 2022

cheque or lodge any Police complaint during this period. Added to it, after receipt of the statutory notice (Ex.P4), the respondent not disputed the same, and no such defence raised at that time. Hence, the respondent's explanation regarding the cheque appears to be an afterthought for the purposes of the present case. He further submitted that the lower appellate Court, after hearing the arguments of both the appellant and the respondent, reserved the case for judgment on 05.10.2021. However, five days thereafter, the respondent filed additional written statement. There is no record to show when the respondent was re-heard. Hence, the consideration of additional written statement by the lower appellate Court is not proper. The lower appellate Court giving undue importance with regard to giving of loan in four installments which does not find place in the complaint and proof affidavit, is not proper. In the evidence, the appellant deposed that a total sum was paid to the respondent in four instalments, namely Rs.90,000/- on two occasions, Rs.80,000/- on one occasion, and Rs.60,200/- on the last occasion. This was not disputed by the respondent. But the learned lower appellate Court considered the same as a contradiction.

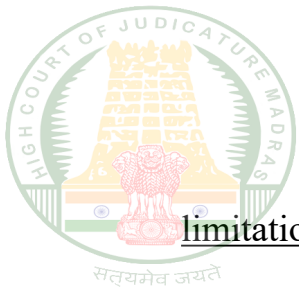
7.He further submitted that the appellant to prove the case marked Exs.P1 to P6 and examined himself as PW1. Though elaborate cross



examination made, the respondent could not dent the evidence of complainant.

In this case, the issuance of cheque (Ex.P1) and the signature not disputed, hence, statutory presumption under Sections 118 & 139 of N.I. Act comes into play. On proper reading of evidence and materials, the trial Court rightly convicted the respondent, but the lower appellate Court on extraneous consideration not only doubted Ex.P1 and also gave undue importance to the typographical error which was rectified earlier and came to an erroneous conclusion that the appellant failed to prove that the cheque was issued by the respondent for legally enforceable debt. Further the lower appellate Court, in the absence of any supporting evidence, erroneously held that the defence of the respondent that the cheque had been misused by the appellant may be true and the appellant not came with clean hands and allowed the appeal. In support of his submissions, learned counsel for the appellant relied on the following decisions:

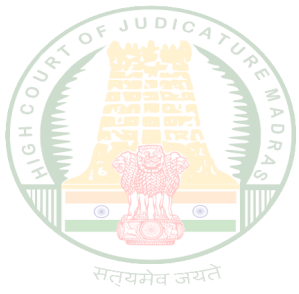
(i) Relied on the decision of the Hon'ble Apex Court in *A.V.Murthy v. B.S.Nagabasavanna* reported in *(2002) 2 SCC 642* for the point that Section 118 of Negotiable Instruments Act, 1881, it is to be presumed that cheque was drawn for the consideration if the amount borrowed by the drawee of the cheque is shown by acknowledgment, then the Creditor have a fresh period of



limitation from the date on which the acknowledgment is made. In this case, the cheque Ex.P1 is dated 16.01.2016 and Ex.P2 is dated 21.11.2014, hence, it is within the period of limitation.

(ii) Further placed reliance on the decision of this Court in ***J.Magdalene Rejula v. K.Ramesh*** reported in ***2022 SCC OnLine Mad 9892*** for the point that by filing amendment petition to correct the discrepancy in the notice and in the complaint can be rectified which is in conformity to the decision of the Hon'ble Apex Court in the cases of ***S.R.Kumar v. Sunaad Raghuram*** reported in ***(2015) 9 SCC 609*** and ***Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari*** reported in ***(2016) 11 SCC 774***.

(iii) Further placed reliance on the decision in ***Uttam Ram v. Devinder Singh Hudan*** reported in ***2019 (3) MWN (Cr.) DCC 116 (SC)*** for the point that it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e., the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the accused-appellant to establish a probable defence so as to rebut such a presumption. In this case, the onus has not been discharged by the accused.

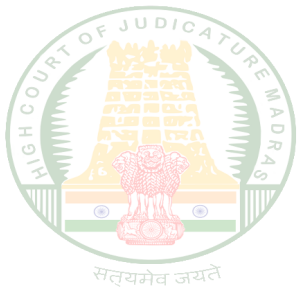


Crl.A.No.756 of 2022

WEB COPY

(iv)Placed reliance on the decision of the Hon'ble Apex Court in the case of ***Bhupesh Rathod v. Dayashankar Prasad Chaurasia and another*** reported in ***(2022) 2 SCC 355*** for the point that the signature of the cheques were not denied. Neither it was explained by way of alternative story as to why duly signed cheques were handed over and further there was no plea of any fraud or misrepresentation. The only attempt made by the respondent in this case is to take a technical plea arising out from the format of the complaint solely with a view to evade liability.

(v)In ***Bansal Milk Chilling Centre v. Rana Milk Food Private Ltd., and another*** reported in ***2025 SCC OnLine SC 1509*** the Hon'ble Apex Court following the dictum in the case of ***U.P Pollution Control Board v. Modi Distillery and others*** reported in ***(1987) 3 SCC 684*** held that the infirmity is one which can be removed by making formal application to correct the technical flaw is permissible and it is not incurable defect and also held that in criminal cases governed by the Code, Court is not powerless and may allow amendments in appropriate cases. In this case, the Amendment/Correction has been rightly carried out that to after giving notice to the respondent.



WEB COPY

8. Making the above submissions and relying upon the above decision, learned counsel for the appellant prays for allowing the appeal and setting aside the judgment of lower appellate Court.

9. Learned counsel for the respondent strongly opposed the appellant's submissions and submitted that the appellant has not come with clean hands and suppressed the true facts. The appellant admits that there was an earlier transaction between the parties wherein the respondent received a sum of Rs.3,00,000/- and subsequently repaid the same, at that point of time security cheque collected and now misused, the appellant claims that the respondent executed a promissory note (Ex.P1) and issued a cheque (Ex.P2) in his favour. The specific defence of the respondent is that earlier loan of Rs.3,00,000/-, which was taken, was repaid, at that time, the appellant collected the cheque (Ex.P2) and misused the same in the present case. Further there are vital contradictions with regard to the date and amount mentioned in the promissory note (Ex.P1) and the lower appellate Court rightly held that Ex.P1 is not a valid promissory note. The trial Court without proper appreciation of evidence mechanically held that since the cheque (Ex.P2) and her signature is not denied, statutory presumption under Sections 118 & 139 comes into play and



Crl.A.No.756 of 2022

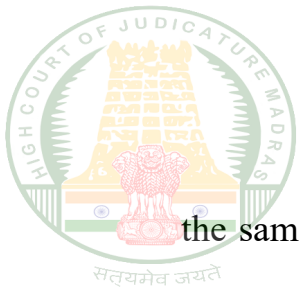
convicted the respondent, which is not proper. The specific case of the respondent is that the cheque, which was given for earlier transaction, misused by the appellant. Before the trial Court, the Advocate mistakenly gave no objection for filing additional affidavit and also to recall and mark the same. By filing additional affidavit such mistake committed cannot be rectified. The mistake is not only made in Ex.P1, but also in the statutory notice (Ex.P4).

10.He further submitted that right from the beginning, the consistent case of the appellant is that Ex.P1 was dated 10.11.2014 for a sum of Rs.3,30,000/-, on the other hand, in reality in Ex.P1 the date mentioned as 21.11.2014 for a sum of Rs.3,20,200/-. Thus, the foundational facts of the case gets snapped. The respondent to further probablize the defence filed a petition under Section 391 Cr.P.C. during appeal. On 07.03.2020, the lower appellate Court considered the same and allowed the respondent to mark the attendance register to show on the date of alleged loan, the respondent was not in Chennai due to her employment and further to mark the mortgage deed to confirm that in the year 2009, the appellant stealthily removed the cheque from her and misused the same in the present case. But in the revision in Crl.R.C.No.673 of 2020, this Court by order dated 18.09.2020 had set aside the lower appellate Court order, hence, the respondent handicapped and unable to produce the



evidence which is already available. From the above, it is clear that the appellant had not come with clean hands. The learned lower appellate Court rightly drew adverse inference finding that the respondent probablized the defence and that the appellant failed to prove the case and allowed the appeal. In support of his submission, learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in ***K.Prakashan v. P.K.Surenderan*** reported in ***(2008) 1 SCC 258*** for the point that if two views are possible, the appellate Court shall not reverse the judgment of acquittal only because another view is possible to be taken. The appellate Court jurisdiction to interfere in case of the appeal against acquittal is limited. Hence, the judgment of acquittal rendered by the lower appellate Court is not to be disturbed.

11.Considering the submissions and on perusal of the materials, it is seen that the appellant and the respondent both working in Kilpauk Medical College and Hospital, Chennai. The respondent availed loan from the appellant for her urgent need, in discharge of the same, she handed over the cheque (Ex.P2) dated 16.10.2016 and promissory note (Ex.P1). In this case, the defence taken is on two fold viz., one is plea of Alibi to show that on the date of issuance of cheque, the respondent was not in Chennai due to her employment and she never handed over the cheque to the appellant. To prove



Crl.A.No.756 of 2022

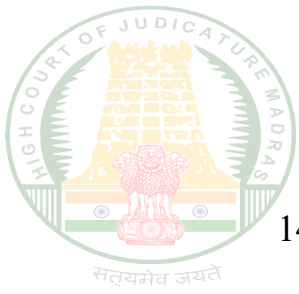
the same, she wanted to summon the attendance register of the hospital. The second defence is that the respondent mortgaged a property with the appellant for Rs.3,00,000/- on 10.11.2009, at that time, the appellant stealthily removed some cheques from the respondent, filled up the same and filed the complaint and mortgage deed, denied by the appellant. Hence, it was required to produce the mortgage deed document No.7014 of 2009. To probabilise his defence in the appeal, a petition under Section 391 Cr.P.C. filed in Crl.M.P.No.12965 of 2020. The lower appellate Court allowed the same on 07.03.2020, but this Court in Crl.R.C.No.673 of 2020 set aside the lower appellate Court order on the ground that a suggestion for alibi raised during cross examination and that during questioning under Section 313 Cr.P.C. no explanation given by the respondent. Likewise the mortgage deed was very much available with the respondent and the respondent had sufficient time and opportunity to mark the same during trial. Hence, the petition under Section 391 Cr.P.C., cannot be allowed in a cavalier fashion and dismissed the same.

12.In this case, the respondent not denied the issuance of cheque (Ex.P2) and her signature. Hence, Sections 118 and 139 of Negotiable Instruments Act, 1881 comes into play. Admittedly, the respondent neither examined any witness nor marked any document to probablize her defence and to prove that



the appellant has not come with clean hands. On the other hand, by taking prevaricate stand, the respondent further exposed the hollowness in the defence. The trial Court considering all these aspects rightly convicted the respondent by a well reasoned judgment. On the other hand, the lower appellate Court by misreading the evidence and materials came to the conclusion that the cheque should have been issued. The period of limitation for legally enforceable debt is from the date of borrowing or from the date of acknowledgment of the debt subject to the three year limitation period. In this case, the cheque (Ex.P2) is dated 16.10.2016 and the promissory note is dated 21.11.2014. The respondent's specific stand is that the cheque could not have been issued on 16.01.2016 since she was not in Chennai due to her employment. In any event, from the date of the loan to date of issuance of the cheque, all within a period of three years, hence, the debt is not a time barred one. Thus, the lower appellate Court having misread the evidence and the proposition of law, allowed the appeal which is perverse and unsustainable.

13. In view of the above, this Court finds that the appellant proved the case beyond all reasonable doubt and the respondent failed to probalilise that the cheque (Ex.P2) was not issued for legally enforceable debt or liability.



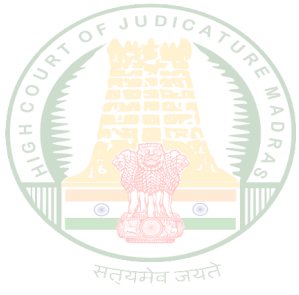
Crl.A.No.756 of 2022

14.In the result, this Criminal Appeal stands allowed. The judgment dated 26.10.2021 in Crl.A.No.22 of 2019 passed by the learned XX Additional Sessions Judge, Chennai is set aside and the judgment dated 11.12.2018 in C.C.No.5846 of 2016 passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Chennai is restored and confirmed.

15.The trial Court is directed to secure the respondent for sufferance of sentence. In the event the respondent comes forward to return the cheque amount and to compound the offence, the same can be entertained by the trial Court and the case can be compounded.

07.04.2026

Speaking order/Non-speaking order
Index: Yes/No
Neutral Citation: Yes/No
vv2

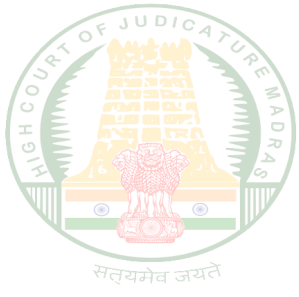


Crl.A.No.756 of 2022

WEB COPY

To

- 1.The XX Additional Sessions Judge,
Chennai.
- 2.The Metropolitan Magistrate,
Fast Track Court-I, Egmore, Chennai.



WEB COPY



Crl.A.No.756 of 2022

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY JUDGMENT IN
Crl.A.No.756 of 2022

07.04.2026