CASE NO.:
Appeal (crl.) 1066 of 2001
Special Leave Petition (crl.) 969 of 2001

PETITIONER:
K.N. BEENA

Vs.

RESPONDENT:
MUNIYAPPAN AND ANOTHER..

DATE OF JUDGMENT: 18/10/2001

BENCH:
S.N.Variava, K.T.Thomas

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

Briefly stated the facts are as follows:
The Appellant filed a complaint under Section 138 of the Negotiable Instruments Act as the cheque dated 6th April, 1993 in a sum of Rs.63720/-, issued by the 1st First Respondent in favour of the Appellant on Central Bank, had been dishonored with the remarks "Insufficient Funds". The Appellant had issued a legal notice dated 28th April, 1993. Receipt of the said notice is admitted. A reply dated 21st May, 1993 was sent by the 1st Respondent. However no payment was made.

After trial the Judicial Magistrate-II, Kumbakonam, convicted the 1st First Respondent under Section 138 and directed payment of a fine of Rs.65000/-. In default the 1st Respondent was to suffer simple imprisonment for one year. The 1st Respondent challenged the conviction and sentence by filing Criminal Appeal No. 32 of 1995. The same came to be dismissed by the Sessions Judge on 28th August, 1995.

The 1st Respondent then preferred Criminal Revision No. 883 of 1995 before the High Court of Madras. A learned Single Judge, by the impugned Order dated 20th July, 2000, set aside the conviction and acquitted the 1st Respondent. The learned Judge acquitted the 1st Respondent on the ground that the Appellant had not proved that the cheque dated 6th April, 1993 had been issued for any debt or liability.

In our view the impugned Judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonored cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the Negotiable Instruments Act. Under Sections 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebutable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P. Dalal vs. Bratindranath Banerjee reported in (2001) 6 S.C.C. 16 has also taken an

identical view.

In this case admittedly the 1st Respondent has led no evidence except some formal evidence. The High Court appears to have proceeded on the basis that the denials/averments in his reply dated 21st May, 1993 were sufficient to shift the burden of proof onto the Appellant/Complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The 1st Respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st Respondent not having led any evidence could not be said to have discharged the burden cast on him. The 1st Respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside that conviction.

In this view of the matter the impugned Judgment is set aside. The conviction and sentence as awarded by the Magistrate by his order dated 21st March, 1994, stand. The 1st Respondent is granted one months' time to pay the fine. In default thereof he shall suffer simple imprisonment for 3 months. The fine, if realised, Rs.60,000/- therefrom shall be paid to the Complainant as compensation.

The Appeal stands disposed of accordingly. There will be no Order as to costs.

PATEL HIRALAL JOITARAM VS