

CrI.RC(MD)No.662 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 11.09.2025

PRONOUNCED ON: 16.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

CrI.RC(MD)No.662 of 2025
CrI.MP(MD)No.7911 of 2025

Mohammed Iqbal, S/o.Raja
Door No.25, Samadhi Street
Atappanvayal, Pudukottai District

Petitioner

Vs

S.Manonmanian, W/o.Palaniyappan
Palaniyappa New House, Sivankoil Street
Virachilai, Thirumayam Taluk
Pudukottai District

Respondent

Prayer:- This Criminal Revision Case has been filed, under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), against the order dated, 15.04.2025, passed in CrI.MP.No.101 of 2025 in STC.No. 476 of 2016, by the Judicial Magistrate I, Pudukottai.

For Petitioner : Mr.A.Balaji

For Respondent : Ms.S.Prabha for Mr.D.Ramesh Kumar

ORDER

1. This Criminal Revision Case has been filed, against the order dated, 15.04.2025, passed in CrI.MP.No.101 of 2025 in STC.No.476 of 2016,



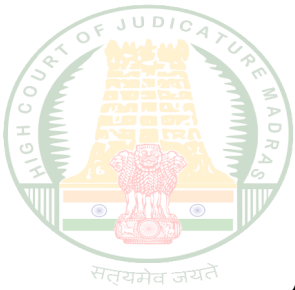
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by the Judicial Magistrate I, Pudukottai.

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2. The facts of the case of the Petitioner, in a nutshell, as set out in the affidavit filed in support of this Criminal Revision Case, led to filing of this Criminal Revision Case and necessary for disposal of the same, are as follows:-

- a) The Respondent had borrowed a sum of Rs.5,50,000/- from the Petitioner on 01.02.2014, for which, the Respondent had given a cheque, bearing No.009790, dated, 28.05.2014, drawn on ICICI Bank, Virachilai Branch, Pudukottai, as a security. When the said cheque was presented for encashment on 29.05.2015, it was returned on 30.05.2014, with an endorsement "Funds Insufficient". Hence, the Petitioner had sent a legal notice to the Respondent on 14.06.2014, demanding him to repay the said loan amount and the said notice was returned, as the Respondent refused to accept the same. Hence, the Petitioner had filed a Petition in STC.No.476 of 2016, under Sections 138 and 147 of the Negotiable Instruments Act, before the Judicial Magistrate I, Pudukottai, to direct the Respondent to repay the said loan amount and also to punish him.
- b) When the case was taken for trial, the Petitioner had filed Crl.MP.No.101 of 2025 under Section 63(a) of the Indian Evidence



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Act, in STC.No.476 of 2016, to accept the xerox copy of the cheque in question, as a secondary evidence on the ground that the original cheque was lost, as his erstwhile Advocate had misplaced the same with the bundles. By the impugned order, dated 15.04.2025, the Trial Court had dismissed the said Petition, on the sole ground that there is no evidence to prove the averment of the Petitioner that the original cheque was lost by his erstwhile Advocate. As against the same, the Petitioner has filed this Criminal Revision Case.

3. In the counter affidavit filed by the Respondent, it is averred as follows:-

- (a) The sworn statement of the Petitioner was recorded by the Trial Court on 15.07.2014. After lapse of 10 years, the Petitioner filed the Petition under Section 63(a) of the Indian Evidence Act before the Trial Court, to accept the xerox copy of the cheque in question, stating that the cheque was misplaced by his earlier counsel.
- (b) As per Section 63 of the Indian Evidence Act, the Petitioner failed to examine the earlier counsel, who lost the original cheque in question and also to submit documents to substantiate his claim. Hence, the Trial Court had rightly dismissed the Petition on the ground that no documents were produced by the Petitioner to sustain the plea raised by him.



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4. This court heard Mr.A.Balaji, the learned counsel for the Petitioner and Ms.S.Prabha for Mr.D.Ramesh Kumar, the learned counsel for the Respondent.
5. The learned counsel for the Petitioner has submitted that after filing of the complaint under Section 138 of the Negotiable Instruments Act and after production of the original cheque before the Trial Court, the Trial Court, after recording the sworn statement of the Petitioner on 15.07.2014 and after verifying the original cheque and after retaining the xerox copies of all the documents, had returned the original cheque to the Petitioner on the very same date and that the Petitioner had also made an endorsement in the said sworn statement to the said effect and that thereafter, the original cheque was lost, as his erstwhile Advocate had misplaced the same with the bundles and thereafter, it was not traceable.
6. The learned counsel for the Petitioner has further submitted that since the Petitioner had produced the original cheque at the time of filing the Petition in STC.No.476 of 2016 and subsequently, the Trial Court also discussed about the production of the original cheque at the time of sworn statement, testing the bona fide of the cheque and also an endorsement to that effect was made by the Trial Court, the Trial Court

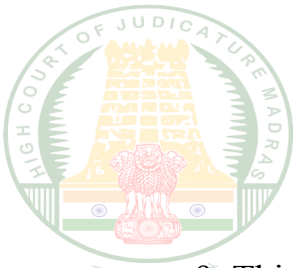


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ought to have accepted the xerox copy of the cheque in question as a secondary evidence, as per the provisions of Sections 63(2) and 65 of the Indian Evidence Act. The learned counsel has further submitted that the Petitioner has a good case and that if the xerox copy of the cheque in question is not allowed to be received as a secondary evidence, he will be put to huge monetary loss and thus, the learned counsel prays for allowing this Criminal Revision Case.

7. The learned counsel for the Petitioner, in support of his contentions, has relied on the judgement and order of the Coordinate Bench of this Court, dated 16.10.2019, passed in Crl.RC(MD)No.161 of 2014, in similar circumstances.
8. On the other hand, the learned counsel for the Respondent, reiterating the averments made in the counter affidavit, has submitted that since there is no evidence to prove that the original cheque was lost, as the erstwhile Advocate of the Petitioner had misplaced the same with the bundles and as marking of the xerox copy can be permitted only after comparing the same with the original, the Trial Court had rightly dismissed the Petition, to accept xerox copy of the original cheque, by the impugned order, which does not warrant any interference by this Court.



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9. This Court considered the submissions of the learned counsel for the parties and also perused the entire materials available on record.

10. According to the Petitioner, the original cheque, which was filed along with the case in STC.No.476 of 2016, was returned to him, by the Trial Court, after the sworn statement was recorded on 15.07.2014 and after making an endorsement to that effect by the Trial Court and thereafter, it was lost by his erstwhile Advocate and hence, as per the provisions of Sections 63 and 65 of the Indian Evidence Act, the Trial Court ought to have accepted the xerox copy of the original cheque as a secondary evidence, but it failed to do so.

11. It is the case of the Respondent that only after comparison of the xerox copy of the original cheque with the original cheque, the xerox copy of the same can be received as a secondary evidence and that the xerox copy of the original cheque cannot be marked as secondary evidence, as it would cause prejudice to the Respondent and that since the Petitioner had failed to prove the missing of the original cheque, by producing valid and concrete evidence, the Trial Court had rightly refused to receive the xerox copy of the original cheque in question, by the impugned order.

12. In the present case, the amount involved is Rs.5,50,000/-. An order of



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interim stay of the further proceedings in STC.No.476 of 2016 was granted by the Coordinate Bench of this Court on 23.06.2025 and it was subsequently extended periodically and made absolute on 25.08.2025. A copy of the sworn statement of the Petitioner recorded on 15.07.2014 is also produced by the Petitioner by way of Additional Typed Set of Papers.

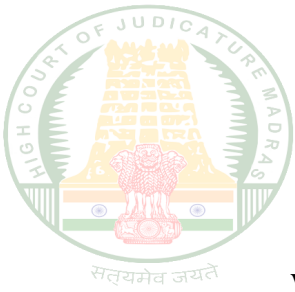
13.Be that as it may. Now, the question that arises for consideration is as to whether the impugned order, rejecting the prayer of the Petitioner to receive the xerox copy of the original cheque in question as a secondary evidence is justifiable and maintainable and whether it was passed in commensurate with the relevant provisions of law, namely, Sections 63 and 65 of the Indian Evidence Act?

14.The admissibility of photocopies as secondary evidence is primarily governed by the Indian Evidence Act, 1872, particularly, Sections 63 and 65. For deciding the said issue, it would be worthwhile to reproduce the Sections 63 and 65 of the Indian Evidence Act, as under:-

63. Secondary Evidence:- Secondary evidence means and includes -

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by the mechanical processes



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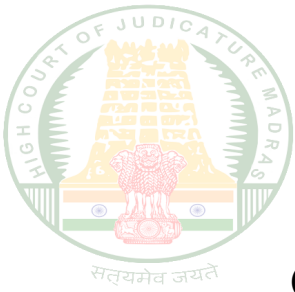
which in themselves insure the accuracy of the copy, and copies compared with such copies;

- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

64. Proof of documents by primary evidence:- Documents must be proved by primary evidence except in the cases herein after mentioned.

65. Cases in which secondary evidence relating to document may be given:- Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-

- (a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;
- (b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) When the original is of such a nature as not to be easily movable;



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(e)When the original is a public document within the meaning of section 74;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g)When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

15.The general principle is that if the original document exists and is available, it must be produced because it is the best evidence. However, if the original is lost or destroyed, detained by the opponent, or third person, who does not produce it before the Court or physically irrecoverable, the secondary evidence is admissible.

16. The reading of the proviso to Section 65 of the Indian Evidence Act would make it clear that Section 65 of the Act has been enacted in order to safeguard the interest of the person, who is unable to produce the



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original. Thus, the secondary evidence relating to document may be given.

17.As per Sections 63(2) and 63(3) of the Indian Evidence Act, secondary evidence means and includes copies made from the original by mechanical process, which themselves ensure the accuracy of the copy and copies made from or compared with the original, respectively.

18.Section 64 of the Indian Evidence Act embodies the Rule that the documents must be proved by primary evidence by production of original documents. But, Section 65 of the Indian Evidence Act provides exception to the aforesaid Rule, which envisages various classes of cases, in which, the secondary evidence relating to the documents can be produced.

19.As per Section 65(c) of the Indian Evidence Act, secondary evidence is admissible when the original has been destroyed or lost.

20.In the present case, it is seen from the impugned order and also from the copy of the sworn statement of the Petitioner recorded on 15.07.2014, that the Trial Court gave a finding in paragraph 5(iv) of the impugned order to the effect that on 15.07.2014, sworn statement of the Petitioner, was recorded and on the same day, the Petitioner received back the original cheque and in paragraph (v) of the impugned order



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also, there is another finding of the Trial Court that the original cheque was received by the Petitioner and an endorsement to that effect was made, thereby meaning that the Trial Court itself received the original cheque, verified the same and returned to the Petitioner on the same date, on retaining the xerox copy of the same. Thus, it can be held that the Trial Court, only after due enquiry, satisfaction and comparison, it had returned the original cheque to the Petitioner, after retaining the xerox copy of the same. Thus, the provisions of Sections 63(2) and (3) are satisfied.

21.Further, in the present case, the original cheque is lost. Section 65(c) of the Indian Evidence Act permits the admissibility of the secondary evidence, if the original document is lost. Thus, the provisions of Section 65(c) of the Indian Evidence Act are also met.

22.Hence, this Court is of the view that the Trial Court, having given a finding that after recording of sworn statement of the Petitioner on 15.07.2014 and after making an endorsement to that effect in the sworn statement, the Petitioner had taken back the original cheque, which would mean that the Trial Court itself verified the original cheque in question and satisfied with the same and returned the same to the Petitioner, ought to have received the xerox copy of the original cheque



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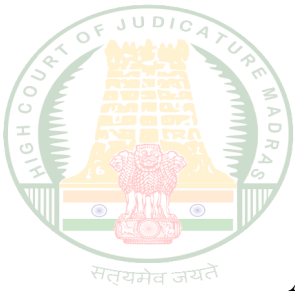
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as a secondary evidence, by allowing Crl.M.P.No.101 of 2025, filed by the Petitioner, seeking to receive the xerox copy of the original cheque as secondary evidence, but, it failed to do so, resulting in great miscarriage of justice.

23.The Coordinate Bench of this Court, **by its judgement and order, dated 16.10.2019, in Crl.RC(MD)No.161 of 2014**, in similar circumstances, was pleased to observe as under:-

“7. This Court, by order dated, 13.09.2019, called for a report from the learned Judicial Magistrate concerned, as to under what circumstances, the original cheque and the pronote were handed over to the Respondent/ complainant and whether any endorsement has been obtained for having returned the cheque and pronote? and the learned Judicial Magistrate has also submitted his report.

8. It is seen that the learned Judicial Magistrate, while recording the sworn statement has verified the pronote and the cheque produced before the Court and retained the xerox copies of those documents. Further, the learned Judicial Magistrate has also made an endorsement in the photo copies of the said pronote and cheque on 13.08.2010 as such the original. After marking those two documents, as Ex.P1 and Ex.P2 in chief examination on 22.07.2011, he returned the pronote and the cheque to the custody of the complainant. But, he ought not to have returned the same and now the complainant has taken a plea that it was lost in his custody. Further, the photo copies of those documents with the endorsement of the learned Judicial Magistrate were very much available before the Trial Court and therefore, the learned Judicial Magistrate allowed this application with costs of Rs.1,000/- to be paid to the District Legal Services



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Authority, Madurai on or before 06.01.2014.

9. Section 64 of the Indian Evidence Act, embodies the Rule that the documents must be proved by primary evidence by production of original documents. Section 65 of the Indian Evidence Act provides exception to the aforesaid Rule, which envisages the various classes of cases in which, the secondary evidence relating to the documents can be produced.

10. After the original is lost or destroyed, the secondary evidence is admissible. As per Section 63(2) of the Indian Evidence Act, the copies made from the original by mechanical process, which themselves ensure the accuracy of the copy as secondary evidence and Section 65(c) of the Indian Evidence Act, permits the admissibility of the secondary evidence, if the original document is lost or destroyed.

11. Section 65 of the Indian Evidence Act, has been made in order to safeguard the interest of the person, who is unable to produce the original. In this case, when the sworn statement of the complainant was recorded by the learned Judicial Magistrate, the original pronote as well as the cheque were produced and were also marked as Ex.P1 and Ex.P2 respectively. After collecting the xerox copies of the said pronote and the cheque, the learned Judicial Magistrate returned the same to the complainant with an endorsement in the xerox copies and when the xerox copies with the endorsement of the learned Judicial Magistrate were very much available, the learned Judicial Magistrate has rightly allowed the Petition and there is no reason to interfere with the orders of the learned Judicial Magistrate.

12. Accordingly, this Criminal Revision Case is dismissed. However, considering the age of the complainant, the Trial Court shall expedite the trial and conclude the same, as expeditiously as possible. ”

24. In the light of the discussions made above and in the light of the



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decisions referred to above, this Court is of the view that the impugned order, refusing to receive the xerox copy of the original cheque, only on the ground that there is no evidence to prove that the cheque was lost, without adhering to the provisions of Sections 63(2) and (3) and 65 of the Indian Evidence Act, cannot be sustained and as such, it requires interference by this Court.

25.In the result, this Criminal Revision Case is **allowed**. The impugned order dated, 15.04.2025, passed in Crl.MP.No.101 of 2025 in STC.No. 476 of 2016, by the Judicial Magistrate I, Pudukottai, is **set aside**. The Judicial Magistrate I, Pudukottai shall receive the xerox copy of the original cheque in question as a secondary evidence on record, expedite the trial and conclude the same, in accordance with law, as expeditiously as possible. There is no order as to costs.

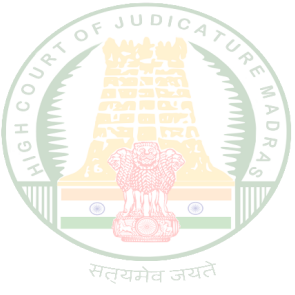
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To

1. The Judicial Magistrate I, Pudukottai

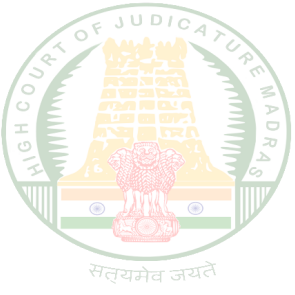
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SHAMIM AHMED, J.

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