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CRL RC No. 686 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-11-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRL RC No. 686 of 2025

1. M/S.Emeth Trading Company
Private Ltd
no.30, vadivelu mudali street,
venkatapuram, ambattur, chennai - 600
053.

2. Mrs.Elizabeth Charles
Director, M/s.Emeth Trading company
private ltd., no.30, vadivelu mudali
street, venkatapuram, ambattur, chennai
- 600 053.

Petitioner(s)

Vs

1. Mr.G.S.Rajasekaran
Director of Nortan Intec Rubbers Pvt
Ltd., old no.7, new no.15, branson
garden road, kilpauk, chennai - 600
010.

Respondent(s)

PRAYER



Criminal Revision filed under Section 438 r/w 442 of BNSS, praying to call for the records in judgment in Crl.A.No.137 of 2023 dated 06.03.2025 on the file of the XVI Additional Sessions Judge at Chennai in confirming the judgment and sentence passed in C.C.No.1098 of 2021 dated 20.02.2023 on the file of court of Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai and set aside the same or other orders as this honourable court deem fit and proper under the facts and circumstances of the case.

For Petitioner(s): Mr.S.Marshall

For Respondent(s): Mr.Praveen Alexander

ORDER

Challenging the concurrent findings of the Courts below, the petitioner has preferred this revision.

2. The learned counsel for the petitioner submitted the petition on the following grounds:

(I) It is Submitted that the courts below had erred in allowing the complaint filed under Section 138 of the Negotiable Instruments Act on mere surmises.

(ii) The judgments of both the Trial Court and the Appellate Court are against



the settled principles of law, the weight of evidence, and the probabilities of the case. Both Courts have failed to properly appreciate the evidence on record and have reached an erroneous conclusion.

(iii). Both Courts failed to consider that the complainant had not proved the essential ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881, as against the 2nd accused. The revision petitioners submit that there is no evidence to establish the liability of the 2nd accused, either individually or vicariously.

(iv). The Appellate Court erred in confirming the conviction rendered by the Trial Court, overlooking the cardinal principle of criminal jurisprudence that the prosecution must prove the guilt of the 2nd accused beyond all reasonable doubt. The presumption under Section 139 was not properly rebutted by cogent evidence from the complainant's side.

(v). Both Courts ignored the crucial fact that the impugned cheque, along with another cheque, was handed over to a common acquaintance, Mr. P.C.R. Suresh, who had arranged investments for AI company. Mr. Suresh had informed the AI

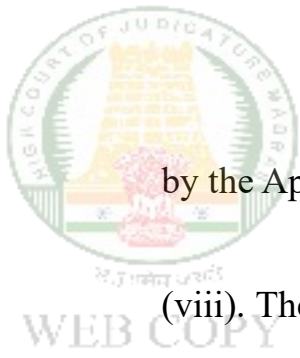


company that a sum of Rs. 10 Lakhs was being transferred by the complainant company, following which two blank cheques were issued to Mr. Suresh by Al.

The investment amount was directly credited to the accused company on Mr. Suresh's instructions. Neither Court appreciated this vital factual background.

(vi). The Trial Court and Appellate Court failed to consider that the very maintainability of the complaint is questionable, as it was filed in the name of an individual and not the company. Both Courts overlooked that the alleged transaction was corporate in nature, but the complaint was prosecuted in an individual capacity.

(vii). The Courts below erred in not properly appreciating that the complainant, Mr. G.S. Rajasekaran, filled the impugned cheque in his personal name, got it dishonoured, and filed the complaint in his personal capacity. The cause title of the complaint clearly shows that it is filed by "G.S. Rajasekaran" and not by the company. The absence of any company seal and authorization from the Board of Directors was ignored by both Courts. The requirement under law that the complaint by a company should be filed through an authorized representative was not fulfilled, and yet cognizance was taken by the Trial Court and affirmed



by the Appellate Court.

(viii). The distinction between a company and an individual was not understood by the Courts below. The complainant had no personal transaction with the accused company. As per law, a company being a juristic entity must sue only through a valid resolution passed by its Board, authorizing the complainant. No such Board Resolution was either filed or marked during the proceedings, which invalidates the entire prosecution.

(ix) The complainant, during cross-examination, admitted that he had no business dealings with the accused company. He stated that he filed the complaint on the basis of a hand loan of Rs. 10 Lakhs allegedly given through Mr. Suresh. The alleged promissory note was neither filed nor marked, which undermines the credibility of the complainant's case. The Trial Court incorrectly held that it was not necessary for the complainant to examine Mr. Suresh, and this view was wrongly endorsed by the Appellate Court.

3. Submitting above grounds, the learned counsel for the petitioner contended that there is no legally enforceable debt between herself and the



respondent, in fact the amount was invested in the accused company under the context of investment and that no loan transaction, as alleged by the defacto complainant. He further submitted that before the Trial Court, the respondent did not produce any relevant material to prove that the loan was disbursed to her. Moreover, the company was not made a party to the proceedings, and in her individual capacity, the petitioner had no right to proceed with the case, but Court below failed to appreciate all the legal lacuna, hence prayed to set aside the findings as perverse.

4. However, on perusal of the records, as rightly pointed out by the counsel for the respondent/defacto complainant, the petitioner had issued a reply notice, Ex. P5, in which she admitted the loan transaction and undertook to pay the amount within six months. Thereafter, she failed to comply, and thereafter respondent initiated proceedings under Section 138 of the Negotiable Instruments Act. Admittedly, the accused has admitted her signature on the cheque and stated that the amount was deposited as an investment, not as a loan. However, there is no evidence on the side of the petitioner/accused to



substantiate this claim nor rebutted the presumption.

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5. The law permits a person / accused to rebut the presumption attached to the Negotiable Instruments Act, but the petitioner has failed to do so. Further, both the Trial Court and the first appellate Court appreciated the evidence submitted by the respondent, including the cheque and other relevant documents, which are sufficient to proceed under Section 138 of the Negotiable Instruments Act. No interference is required. Since the presumption attached to the instrument has not been successfully rebutted, the findings of the courts are confirmed.

6. Accordingly, this Criminal Revision stands dismissed, confirming the order of the Courts below. However, the 2nd petitioner / accused is also directed to pay a sum of Rs.10 lakhs as compensation to the defacto complainant, in addition to the one year of Rigorous imprisonment imposed by the courts below.



7. It appears that, pending this revision, the petitioner / appellant was granted suspension of sentence vide order of this Court dated 09.06.2025. In view of the dismissal of the present Criminal Revision, the 2nd petitioner / appellant is directed to surrender before the trial Court within a period of one weeks from the date of receipt of a copy of this order. The period of imprisonment already undergone by the accused, if any, shall be set off as per Section 428 of Cr.P.C.

27-11-2025

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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Note : Issue order copy on or before 04.12.2025

To

1.Mr.G.S.Rajasekaran

Director of Nortan Intec Rubbers Pvt
Ltd., Old no.7, New no.15,
Branson garden road, Kilpauk,
Chennai - 600 010.

2.The Metropolitan Magistrate,

Fast Track Court-I, Egmore @
Allikulam, Chennai.



3.The Additional Sessions Judge,
Chennai.

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T.V.THAMILSELVI J.
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