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CrI.RC.No.526 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.RC.No.526 of 2023

C.Gavaskar

... Petitioner

Vs.

P.E.Vijayakumar

Represented by his power of attorney

G.Pichandi

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 & 401 of Cr.P.C. to set aside the judgment by the VI Additional Sessions Judge at Chennai in CA.No.26 of 2020 dated 23.08.2022 call for the records and acquit the petitioner from all the charges.

For Petitioner : Mr.N.Saravanan

For Respondent : Mr.M.Deivanandam

ORDER

This criminal revision case has been filed against the judgment passed in CA.No.26 of 2020 dated 23.08.2022 on the file of the VI Additional Sessions Judge at Chennai thereby confirming the order of conviction and sentence imposed by the trial court in CC.No.8133 of 2017 dated 02.11.2019 on the file of the Metropolitan Magistrate, Fast



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Track No.II, Egmore, Chennai for the offence punishable under Section 138 of NI Act.

2. The respondent lodged complaint against the petitioner alleging that the petitioner is a close relative and he received a sum of Rs.18,37,000/- on various date during the year 2006 as hand loan. In order to repay the said amount, the accused had issued cheque for the said sum of Rs.18,37,000/- and the same was presented for collection. However it was returned dishonoured for the reason 'insufficient funds'. After causing statutory notice, the respondent lodged complaint and the same was taken cognizance by the trial court.

3. In order to prove the complaint, the respondent had examined PW1 and PW2 and marked Ex.P1 to Ex.P6. On the side of the accused, no one was examined and no documents were produced to disprove the complaint. On perusal of the oral and documentary evidences, the trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo one year simple imprisonment. He was also ordered to pay compensation of Rs.18,37,000/-. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed confirming the order of conviction and



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sentence imposed by the trial court. Hence, the present criminal revision case has been filed by the accused.

4. The learned counsel for the petitioner would submit that the cheque was not issued for any legally enforceable debt. The petitioner never borrowed such huge amount from the respondent. The respondent failed to produce any income tax returns and also statement of accounts to show that he had financial source to lend such huge money. Further, the complaint was filed by the power of attorney and he did not know the acquaintance between the petitioner and the respondent and he did not know about the transaction between the petitioner and the respondent. The petitioner was not served with any statutory notice and as such, there is absolutely no cause of action to lodge complaint for the offence punishable under Section 138 of NI Act. Further, it was categorically stated in the statement recorded under Section 313 Cr.P.C. that the accused never issued any cheque for any loan and the cheque was not issued for any legally enforceable debt. Even then, the trial court and the appellate court mechanically convicted the petitioner.

5. Per contra, the learned counsel for the respondent submits that the petitioner did not deny the signature found in the cheque and also

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the issuance of cheque. Therefore, the respondent had discharged his initial burden as contemplated under Section 138 of NI Act. In order to rebut the presumption, the accused did not examine anybody and failed to elicit anything during the cross examination of PW2. Further, for the complaint filed through power of attorney, the respondent was examined as PW2. Therefore, the trial court and the appellate court rightly convicted the petitioner for the offence punishable under Section 138 of NI Act and the same does not warrant any interference of this Court.

6. Heard the learned counsel appearing on either side and perused all the materials placed before this Court.

7. The crux of the allegations in the complaint lodged by the respondent is that the petitioner had borrowed a sum of Rs.18,37,000/- on various dates during the year 2006. However, the respondent did not even whisper that on what date and what amount was borrowed by the petitioner. Further, the respondent also failed to state that how the petitioner / accused was acquainted with him to lend such huge amount, that too without any security document. During the cross examination, he stated that the petitioner / accused is a relative. However, no prudent person would lend such huge money without any security document.



Though the respondent deposed that on various dates, the accused borrowed amount, he did not state any specific date on which the alleged amount was borrowed by the petitioner. Further, the respondent failed to bring any other document to show that he had financial source to lend such huge amount. It was also not accounted by the respondent. Therefore, the respondent was specifically cross examined by the accused about his financial capacity to lend such huge amount. The relevant portion of that cross examination is as follows:

எதிரிக்கு நான் கொடுத்த தொகைக்கு மட்டுமே அவர் காசோலை கொடுத்தார். வட்டித் தொகை எதுவும் சேர்க்கப்படவில்லை. எதிரிக்கு தொகை கொடுத்த போதெல்லாம் அதற்காக ஆவணம் எதுவும் எழுதிப் பெறவில்லை. எதிரிக்கு கடன் கொடுத்த தொகையை எனது வருமான வரி கணக்கு விவரத்தில் தெரிவித்தள்ளேனா என கேட்டால் எனது தணிக்கையாளரை கேட்டுதான் சொல்ல இயலும். எதிரிக்கு கொடுத்த தொகை எனது கைவசம் இருந்து தொகையில் இருந்து கொடுக்கப்பட்டது. நான் டோட்டல் மற்றும் லாட்ஜ் நடத்தினேன். அதில் கிடைத்த வருமானத்தை வைத்திருந்து அதிலிருந்து எதிரிக்கு தொகை கொடுத்தேன். எதிரிக்கு கொடுத்த தொகையை வங்கியில் இருந்து எடுத்து கொடுக்கவில்லை. எதிரியின் வீட்டிற்கு நான் சென்றதில்லை. காசோலையில் உள்ள பெயர் மற்றும் தேதி மற்றும் தொகை விவரங்களை யார் எழுதியது என கேட்டால் அதுபற்றி எனக்கு



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தெரியாது. காசோலையை எதிரிதான் கொடுத்தார். எதிரியிடம் எப்போது

காசோலை பெற்றேன் என்பது சரியாக ஞாபகம் இல்லை.

8. Thus it is clear that the cheque was not issued for any legally enforceable debt. Further, the respondent also did not know that on what date the cheque was issued to him. The respondent had lent such huge amount of Rs.18,37,000/-, however no prudent person would fail to remember that on what date cheque was issued to him. In fact, he did not know that who filled the cheque. Therefore the cheque was clearly misused by the respondent to initiate proceedings under Section 138 of NI Act. Though the accused did not enter into box, he categorically rebutted the presumption by way of cross examination. Further, the statement of the accused is also very clear under Section 313 of Cr.P.C, the relevant portion of which is as follows:

வழக்கு காசோலை என்னுடையது தான். வா.சா.2 என்னுடைய சித்தப்பா. அவர் எங்களது வீட்டிற்கு வந்து போவார். அவரிடம் காசோலை நான் தரவில்லை. அவரிடம் எப்படி சென்றது என்று எனக்கு தெரியவில்லை. நீதிமன்ற அழைப்பாணை வந்த பிறகு தான் எனக்கு தெரியும். காசோலையில் உள்ள கையொப்பம் என்னுடையது தான். குடும்ப பிரச்சினையால் வழக்கு தாக்கல் செய்துவிட்டார்.



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9. Even then, the trial court mechanically convicted the petitioner / accused on the ground that he admitted his signature and not disputed the same. Mere admission of the signature would not amount to admitting the guilt. It should be presumed under Section 139 of NI Act that the cheque was issued for legally enforceable debt. However, it is rebuttable in nature. The accused categorically rebutted the presumption and even then, the respondent failed to prove that the cheque was issued for any legally enforceable debt. Therefore, the impugned judgment is liable to be set aside.

10. Accordingly, this criminal revision case is allowed and the judgment passed in CA.No.26 of 2020 dated 23.08.2022 on the file of the VI Additional Sessions Judge at Chennai and the judgment passed in CC.No.8133 of 2017 dated 02.11.2019 on the file of the Metropolitan Magistrate, Fast Track No.II, Egmore, Chennai are set aside. The petitioner is acquitted of all the charges under Section 138 of NI Act. He is directed to be set at liberty forthwith. Bail bond, if any, shall stand cancelled. Fine amount, if any paid, shall be refunded forthwith.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1.VI Additional Sessions Judge at Chennai

2.Metropolitan Magistrate, Fast Track No.II, Egmore, Chennai

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