



received the notice on 06.10.2004, he did not repay the amount as called upon in the legal notice and therefore, on the expiry of the fifteen days, the respondent/complainant had filed a complaint as against the petitioner for the offence under Section 138 of NI Act.

3. During the trial, the respondent / complainant was cross examined as PW1 and the cheque dated 17.09.2004 was marked as ExP1, the return memo was marked as ExP2 and legal notice dated 05.10.2004 and the acknowledgment dated 06.10.2004 are marked as ExP3 and ExP4 respectively.

4. The incriminating circumstances were put to the accused under Section 313 CrPC and the petitioner/ accused denied the same and though he has stated that there is evidence on his behalf, he has not produced any evidence.

5. In conclusion of the trial, the trial Court found the petitioner / accused guilty for the offence under Section 138 of NI Act and convicted and sentenced him to undergo rigorous imprisonment for a period of six months and with a fine of Rs.5,000/-, in default of fine amount to undergo simple imprisonment for a period of one month. Aggrieved over the same, the petitioner / accused preferred an appeal before the Court of Sessions and the same was taken by the III Additional District Judge, Tiruchirappalli in C.A.No.20 of 2012. The appellate Court, by judgment dated 29.11.2012 has confirmed the conviction and sentence imposed by the trial Court. Aggrieved over the orders passed by the Courts below, the present criminal revision case has been filed.

6. Heard Ms.Karthigai Priya, learned Counsel representing Mr.K.P.Narayanakumar, Counsel on record for the revision petitioner and Mr.S.Ramakrishnan, learned Counsel representing Mr.B.Jameel Arasu, Counsel on record for the respondent.

7. The learned Counsel appearing for the revision petitioner by relying upon the evidence of PW1 complainant and by referring the cheque [ExP1] would contend that the blank cheque given to the complainant has been fabricated by him. According to her, the cheque ExP1 was filled by the accused in the presence of the complainant in the complainant's house with the handwriting of the accused and handed over to the complainant on 17.09.2004. But the cheque ExP1 is a typed one. In the cross examination, the complainant has admitted that it was in his handwriting the accused has filled the cheque and handed over it to the respondent/complainant.

8. Per contra, the learned Counsel appearing for the respondent submitted that the accused has not denied his signature found in Ex.P1. Moreover, he has also received the statutory notice issued under Section 138(b) of NI Act and the accused has received the same on 06.10.2004. Even after the receipt of the notice, the



any reply notice and the Courts below have rightly found this accused guilty under Section 138 of NI Act.

9.This Court has paid its best attention and anxious consideration to the rival submissions and perused the materials placed on record.

10.A perusal of the complaint would disclose that the complainant has not stated about the date on which, the accused borrowed the money and he has simply referred that in discharge of the liability, the accused gave a cheque on 17.09.2004 for a sum of Rs.52,000/- and instructed him to present the same for collection on or after the date mentioned in the cheque. Even in the complaint, he has not disclosed, when this cheque ExP1 was given to the complainant. During his evidence, before the trial Court, the complainant stated that the accused came to his house on 16.09.2004 and gave the cheque after filling it up on his own handwriting in his presence to the complainant on 16.09.2004, whereas, ExP1 is in a typed form. Even according to the complainant, the accused was working as an Auto Driver and he borrowed the money for purchasing a car. It is not the case that the accused is running a company, where the cheque has been typed and issued. When it is the specific case of the respondent / complainant that the accused came to his house on 16.09.2014 and written this cheque in his presence and handed over ExP1 and when it is found in a typed form, a reasonable doubt is arising in this case. Moreover, the complainant has not stated in his complaint the date on which, the accused borrowed a sum of Rs.52,000/- from the complainant.

11.Considering the evidence of PW1 and his conduct, in not even informing the date of borrowal of the amount in the complaint, coupled with the fact that the cheque ExP1 is in typed form, this Court is inclined to give the benefit of doubt to the accused and the accused is acquitted from the charges under Section 138 of NI Act.

12.In the result, this criminal revision case is allowed and the judgment passed by the learned III Additional District Judge, Trichy in Criminal Appeal No.20 of 2012 dated 29.11.2012 by confirming the conviction and sentence passed by the learned Judicial Magistrate No.3, Trichy, in C.C.647 of 2004 dated 20.02.2012 are set aside. The bail bonds if any executed by the petitioner shall stand cancelled.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1.The III Additional District Judge,
Tiruchirappalli.

2.The Judicial Magistrate No.III,
Tiruchirappalli.

3.The Principal District Judge, Trichy.

4.The Chief Judicial Magistrate, Trichy.

5.The Superintendent,
Central Prison, Trichy.

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-98951[F] dated 18/11/2019)

+1 CC to M/s.K.P. NARAYANA KUMAR, Advocate (SR-99309[F] dated 19/11/2019)

CrI.R.C(MD)No.219 of 2014
15.11.2019

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