



WEB COPY



CRL.R.C.Nos.132, 133 & 138 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

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

CRL.R.C.Nos.132, 133 & 138 of 2018

M.Kathiravan

... Petitioner in all cases

Vs.

C.S.Srinivasan

... Respondent in all cases

Common prayer: The Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the common judgment passed in C.A.Nos.72, 71 and 70 of 2015 respectively on the file of the I Additional District and Sessions Judge, Coimbatore, dated 21.07.2017, confirming the judgment passed in S.T.C.Nos.237, 235 and 236 of 2012 respectively on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore.

(In all the cases)

For Petitioner : Mr.P.Jayachandran

For Respondent : No appearance

COMMON ORDER

These Criminal Revision cases have been filed to set aside the common judgment passed in C.A.Nos.72, 71 and 70 of 2015 respectively on the file of the I Additional District and Sessions Judge, Coimbatore, dated 21.07.2017,



CRL.R.C.Nos.132, 133 & 138 of 2018

thereby confirming the judgment passed in S.T.C.Nos.237, 235 and 236 of 2012 respectively on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. Though this Court ordered notice to the respondent, the petitioner failed to take any steps to issue notice to the respondent and also failed to take any steps to issue private notice to the respondent herein. When the matter was posted on 22.09.2022, again this Court ordered fresh notice to the respondent returnable by 13.10.2022 and also permitted the petitioner to take private notice on the respondent, even then the petitioner did not take any steps to issue notice to the respondent and failed to take any steps to issue private notice to the respondent. Therefore, this Court decided to pass orders on merits.

3. The petitioner and the respondent in all the cases are one and the same. The petitioner borrowed loan of Rs.5,00,000/- from the respondent on 03.07.2011 and agreed to repay the said loan amount with interest at the rate of 24% per annum. He also borrowed an another sum of Rs.5,00,000/- on 10.07.2011 from the respondent and agreed to return the same with interest at



the rate of 24% per annum. He had also executed a Promissory Note for the like sum agreed to repay the loan amount with interest at the rate of 24% per annum. In order to repay the said loan amount, he issued four cheques as follows;

<i>Sl.No.</i>	<i>Date</i>	<i>Cheque Nos.</i>	<i>Name of the Bank</i>	<i>Amount Rs.</i>
1	24.08.2011	176571	IDIBI Bank, Trichy Road, Coimbatore.	Rs.4.00 Lakhs
2	31.08.2011	176570	IDIBI Bank, Trichy Road, Coimbatore.	Rs.3.00 Lakhs
3	14.09.2011	176569	IDIBI Bank, Trichy Road, Coimbatore.	Rs.3.00 Lakhs
4	21.09.2011	176572	IDIBI Bank, Trichy Road, Coimbatore.	Rs.1.00 Lakhs

when the aforesaid cheques were presented for collection, the same were returned dishonored for the reason "funds insufficient". Therefore, the respondent caused notice to the petitioner and on receipt of the same, the petitioner neither sent any reply nor settled the cheque amount. Hence, the respondent lodged three complaints.

4. On the side of the respondent PW1 was examined and Exs.P1 to 7



were marked as exhibits and on the side of the petitioner, no one was examined and no document was marked as exhibits.

5. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act, and sentenced him to undergo ten months simple imprisonment with fine of Rs.2000/- in default, shall undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and confirmed the conviction order passed by the trial Court.

6. The learned counsel for the petitioner raised grounds that the legal notice issued by the respondent in all the cases have not disclosed the purpose for which the loan amount was borrowed by the petitioner herein. The petitioner has entered into a construction agreement with the brother of the respondent and issued cheques and promissory notes for the said purpose, those cheques were misused by the respondent and filed these complaints.

7. Therefore, the cheques were not at all issued for any legally



enforceable debt since no consideration was passed for issuance of cheques.

Therefore, the respondent failed to prove the complaints as required under Section 138 of Negotiable Instruments Act. However, both the Courts without considering the facts, mechanically convicted the petitioner for the offence under Section 138 of NI Act.

8. On perusal of documents revealed that the petitioner's sentence was suspended by this Court by an order dated 14.02.2018 with condition that the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate, Fast Track Court Magisterial Level-II, Coimbatore. However, the petitioner failed to comply with the said condition even till today.

9. On perusal of records revealed that the petitioner borrowed totally a sum of Rs.10,00,000/- on 03.07.2011 and 10.07.2011 respectively from the respondent herein and agreed to repay the said amount with interest at the rate of 24% per annum and also executed promissory notes for the said amount. The said promissory notes were marked as Ex.P1 and P2. In order to repay the the said amount, he issued four cheques for a sum of Rs.4 Lakhs, Rs.3 lakhs, Rs.3 lakhs and Rs.1 lakh respectively, when all the said cheques were



presented for collection and the same were returned dishonored for the reason "funds insufficient". Therefore, the respondent caused legal notice to the petitioner, which was marked as Ex.P6 and the same were duly served on the petitioner herein. Even then the petitioner failed to send any reply and also failed to settle the said cheque amount.

10 Though the petitioner raised grounds that the said promissory notes were issued in favour of the brother of the respondent herein and not for legally enforceable debt in favour of the respondent, he did not even examined the witnesses and did not even produced any iota of evidence to substantiate his contention before the trial Court. Therefore, the presumption under Section 139 of NI Act is in favour of the respondent herein. It is made clear that until the contrary is proved, it is presumed that the cheques in these revisions were issued towards legally enforceable debt or liability. The burden is now on the accused to either prove or at the least to probablize his case. It is true that though the presumption is in favour of the respondent, the same is a rebuttable presumption. The standard of proof available for the defense side is preponderance of probability. It is not imperative on the accused to rebut the presumption by examining himself as a witness. It would suffice if the accused



CRL.R.C.Nos.132, 133 & 138 of 2018

is able to rebut the presumption from the materials available on the complainant side.

11. In the case on hand, the petitioner failed to rebut the evidence of the respondent herein by producing iota of evidence. That apart, though the petitioner issued cheques and promissory notes only to the brother of the respondent that too as a security for an agreement regarding construction of a house, this contention stands only as a suggestion and not proved on probable evidence. That apart, while suspending the sentence of the petitioner, this Court imposed condition that the petitioner shall deposit the cheque amount before the trial Court. However, the petitioner failed to comply with the said condition even till today. Therefore, the Courts below rightly convicted the petitioner for the offence under Section 138 of NI Act, and this Court finds no infirmity or illegality in the orders passed by the Courts below.

12. Accordingly, these Criminal Revision cases stand dismissed.

13.10.2022

ata

Index : Yes / No

Speaking / Non Speaking order

To



CRL.R.C.Nos.132, 133 & 138 of 2018

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate, Fast Track Court at Magisterial Level-II,
Coimbatore.



WEB COPY



CRL.R.C.Nos.132, 133 & 138 of 2018

G.K.ILANTHIRAIYAN, J.
ata

Crl.R.C.Nos.132, 133 & 138 of 2018

13.10.2022