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Crl.RC.No.981 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**Crl.R.C.No.981 of 2017**

Rajanpuri

Proprietor: Prince of Foot wear

...Petitioner

Vs

Ravindrakumar Agarwal

Proprietor: Ravindra Agency

...Respondent

**Prayer:-** Criminal Revision petition has been filed, under Section 397 r/w 401 of Cr.P.C, to set aside the judgement dated 8.06.2017 passed in C.A.No.80 of 2017 on the file of the Additional Sessions, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, Erode District confirming the judgement dated 29.08.2016 passed in S.T.C.No.210 of 2012 on the file of the Judicial Magistrate (Fast Track) Court No.II, Erode by allowing the present Criminal Revision Petition.



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For Petitioner : Mr.I.C.Vasudevan  
For Respondent : Mr. C.Ramkumar

### **ORDER**

This Criminal Revision Case has been preferred against the Judgement passed in C.A.No.80 of 2017 on the file of the Additional Sessions, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode District, confirming the judgement dated 29.08.2016 passed in S.T.C.No.210 of 2012 on the file of the Judicial Magistrate (Fast Track) Court No.II, Erode.

2.The respondent filed a complaint under Section 138 of Negotiable Instrument Act, alleging that he had given a loan of Rs.5,00,000/-(Rupees Five Lakhs only) to the accused/petitioner herein and towards the discharge



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of the said loan, the petitioner had issued a cheque for Rs.5,00,000/-

(Rupees Five Lakhs only) dated 18.01.2012; that the cheque was presented for collection and was returned by the Bank for the reason "**Funds insufficient**"; then he had issued a statutory notice to the correct address and the same was returned unserved with an endorsement "not claimed".

The respondent examined himself as P.W.1 and marked Ex.P.1 to Ex.P.5.

The petitioner examined one witness on his side and marked five documents. The petitioner's defence during the trial was that the cheque was not issued in discharge of his liability, and it was issued only as a security.

3.After considering the evidence on record and hearing either side, the trial Court by the judgement dated 29.10.2016 in S.T.C.No.210 of 2012 convicted the petitioner under Section 138 of Negotiable Instrument Act and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/-, in default to suffer Simple Imprisonment for three



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months. The petitioner challenged the conviction and sentence before the

Additional Sessions, Magalir Neethi Mandram, (Fast Track Mahila Court),

Erode District in C.A.No.80 of 2017 and the same was dismissed and

confirmed the judgement of the trial Court. Aggrieved by the concurrent

findings of the Courts below, the accused has preferred the present

Criminal Revision.

4.Heard Mr.I.C.Vasudevan, learned counsel appearing for the revision petitioner and Mr.C.Ramkumar, learned counsel appearing for the respondent.

5.The learned counsel for the revision petitioner would submit that the Courts below erred in convicting the petitioner, without considering the material fact that there was no legally enforceable debt and that the cheque was given only as security. Learned Counsel further submit that in the complaint, the respondent stated that the cheque was issued for discharge of



loan amount. Further, in the cross examination he admits that the cheque was issued only as security for repayment of the said amount. He further submit that the complainant/respondent did not establish the fact that he had sufficient means to advance the loan amount.

6. The learned counsel for the respondent/complainant would submit that the complainant has proved his case beyond reasonable doubt; that the petitioner has not rebutted the statutory presumption in the manner known to law. He further submits that the Courts below have rightly disbelieved the defence of the petitioner and convicted him for the offence under Section 138 Negotiable Instrument Act. The cheque was given only for discharge of the liability of the petitioner.

7. Before advertng to the rival submissions, it is necessary to reiterate the principle that while exercising Revisional Jurisdiction involving concurrent finding of the Courts below, this Court cannot act as



a second Appellate Court.

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8. It is trite law that in a Revision challenging Appellate Court's judgement, confirming the judgement of trial Court, the Court can appreciate the evidence only to the limited extent of ascertaining if the finding is perverse, unreasonable or implausible.

9. In the case of hand, we find that the complainant has established the fact that the cheque was issued by the accused; that the cheque was dishonoured for the reason "*Funds insufficient*" and that statutory notice was sent to the correct address. Since he has established the foundational facts the statutory presumption under Section 139 of Negotiable Instrument Act, enures to his favour. The next question is whether the accused has rebutted that presumption. It is the case of the petitioner, that the cheques were not given for any liability. Apart from pointing out the fact that P.W.1 admitted in his cross examination that the cheque was given as security, the



petitioner has not probablised his version that he was not liable to make any payment to the respondent. Both the Courts below, have rightly disbelieved the defence version of the petitioner and found that the petitioner has not rebutted the statutory presumption.

10. It is well settled that the presumption under Section 139 Negotiable Instrument Act, is a rebuttable presumption. The accused can rebut the presumption either by improbablising the version of the complainant through cross examination or by adducing evidence on his side. The accused can discharge the said burden by preponderance of probability. We find that the accused has failed to rebut the statutory presumption either by cross-examination of the complainant's witnesses or by adducing evidence on his side. The Courts below have found that the accused has not probablised his version and hence found him guilty. We do not find any infirmity or illegality or perversity in the finding of the Courts below.



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11. In the result, this Criminal Revision stands dismissed as being devoid of merits. The conviction and sentence imposed by the trial Court, which is confirmed by the Appellate Court stands unaltered. The trial Court is hereby directed to secure the accused and commit him to prison to undergo the remaining sentence. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

**08.07.2022**

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

vsn

To:

1. The Additional Sessions,  
Magalir Neethi Mandram, (Fast Track Mahila Court),  
Erode District



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2. The Judicial Magistrate (Fast Track) Court No.II, Erode

3. The Public Prosecutor, High Court, Madras

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SUNDER MOHAN, J.

vsn

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