



Crl.R.C.No.1133 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 21.03.2023**

**PRONOUNCED ON : 06.04.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**Crl.R.C.No.1133 of 2021**

M.Ashok Kumar

... Petitioner

Vs.

B.T.Jayaraman

... Respondent

**PRAYER:** Criminal Revision filed under Section 397 & 401 of Cr.P.C. to set aside the conviction and sentence imposed on the petitioner by the judgment passed in Crl.A.No.541 of 2018 on the file of the IV Additional District and Sessions Court, Coimbatore, dated 11.03.2021 confirming the conviction and sentence imposed by judgment in C.C.No.427 of 2014 on the file of the Judicial Magistrate Fast Track Court at Magistrate Level-1, Coimbatore dated 08.11.2018 by allowing the present Criminal Revision case.



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For petitioner : Mr.B.Kumarasamy

For Respondents : Mr.V.Veeraraghavan

### **ORDER**

Challenging the conviction and sentence imposed on the petitioner by the judgment passed in Crl.A.No.541 of 2018 on the file of the IV Additional District and Sessions Court, Coimbatore, dated 11.03.2021 confirming the conviction and sentence imposed by judgment in C.C.No.427 of 2014 on the file of the Judicial Magistrate Fast Track Court at Magistrate Level-1, Coimbatore dated 08.11.2018, the present Criminal Revision case has been filed.

2. The fact of the case is that the revision petitioner is the accused and the respondent is the complainant in C.C.No.427 of 2014 on the file of the Judicial Magistrate, Fast Track Court Magisterial Level - I, Coimbatore and appellant and respondent in C.A.No.541 of 2018 on the file of IV



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Additional District and Sessions Judge, Coimbatore. The respondent/complainant filed a complaint against the petitioner/accused for dishonour of two cheques dated 07.11.2013 for the offence under section 138 of Negotiable Instruments Act.

3. Before the trial Court, the complainant examined 4 witnesses and filed 18 documents. The respondent has not let in any oral evidence, but filed two documents Ex.D.1 and Ex.D.2. On consideration of the evidence, the trial Court found the petitioner guilty for the offence under section 138 of Negotiable Instruments Act and convicted the petitioner under section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of six months besides ordered the petitioner to pay compensation of Rs.12,00,000/- under section 357 [3] of Cr.P.C. Challenging this finding, the accused filed an appeal in Criminal Appeal in C.A.No.541 of 2018 before the IV District and Sessions Judge, Coimbatore. The lower appellate Judge, after reappraising the evidence and the impugned judgment, confirmed the judgment of the trial Court and



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dismissed the appeal. Aggrieved over the same, the present Criminal Revision is filed before this Court.

4. The learned counsel for the revision petitioner/accused submitted that the trial Court and the lower appellate Court did not appreciate evidence properly. The trial Court and the lower appellate Court failed to note the fact that the complainant had not discharged his initial burden of lending of loan Rs.12 lakhs to the accused. In the absence of any evidence for lending of the amount by the complainant, no presumption under section 139 Negotiable Instruments Act can be operated against the accused persons. The trial Court and the lower appellate Court erred in applying presumption against the accused persons and thus committed error and convicted the accused. Hence, it is liable to be set aside and reiterated the other grounds raised in the grounds of appeal and pleaded to acquit the accused.



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5. The learned counsel appearing for the respondent supported the judgment of the trial Court and the lower appellate Court and stated that it is well reasoned and founded upon due consideration of all relevant factors of the case and there is no reason to interfere with the finding of the trial Court as well as the lower appellate Court and pleaded to dismiss this Criminal Revision Case.

6. I have considered the matter in the light of the submissions of the learned counsel for the parties. I have perused the materials available on record carefully.

7. The respondent/complainant filed a complaint against the revision petitioner/accused for the offence under section 138 of the Negotiable Instruments Act. Before the trial Court, the complainant examined 4 witnesses and marked 18 documents. The complainant himself deposed as P.W.1 and the bank officers were examined as P.W.2, P.W.3 and P.W.4. On



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the defendant side, no oral evidence adduced but two documents Ex.D.1 and Ex.D.2 were marked.

8. In the complaint it is averred that the accused borrowed a sum of Rs.12 lakhs from the complainant on 23.04.2011 on a promise to repay the amount within a period of six months with interest at the rate of 12% p.a. But the respondent failed to repay that amount. On demand, the respondent/accused issued two cheques dated 07.11.2013 bearing Nos.835003 and 083648 drawn on Karur Vysya Bank for a sum of Rs.6 lakhs each in favour of the complainant to discharge his liability. On presentation, the cheques were returned for want of sufficient funds. After issuing legal notice, a complaint has been filed before the trial Court.

9. I have gone through the evidence of the complainant. He had clearly deposed about lending of the amount of Rs.12 lakhs to the accused on 23.04.2011 and receiving of cheques given by the accused and return of the cheques for want of sufficient funds in the accused account which was



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supported by bank officials evidence P.W.2 to P.W.4. The defence of the accused is that he was running Laxmi Jewellers and he lost his business in the year 2013 and some unknown persons, who are friends of the complainant, obtained the cheques of the accused without his knowledge and the complainant misused the above cheques. This defence was not probalised by the accused by sufficient evidence. Further, the bank official P.W.2 Sivachandran deposed before the trial Court about the disputed cheques Ex.P.1 and Ex.P.2 and also deposed that the signature in the cheque is of the accused and the cheques were issued from the account of the accused maintained by the bank. The bank statement has been filed as document Ex.P.14 and the signature of the accused is Ex.P.15. Thus the signature in the disputed cheques Ex.P.1 and Ex.P.2 are that of the accused and the same is proved through bank officials.

10. Once the signature in the cheque is proved, the trial Court has to presume that the cheque was issued towards consideration of a legally enforceable debt. Then the presumption under section 139 of the Negotiable



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Instruments Act would attract. In the absence of any cogent evidence to show that the cheque was not issued towards discharge of any debt, it has to be presumed that the accused has failed to rebut the presumption under section 139 Negotiable Instruments Act in favour of the complainant. In this case also the signature of accused in the cheques Ex.P.1 and Ex.P.2 has been proved by the complainant by examining the bank officials. Therefore, the trial Court has rightly found the accused guilty under section 138 Negotiable Instruments Act and the lower appellate Court rightly confirmed the conviction and sentence imposed by the trial Court and I find no infirmity in the factual finding of the trial Court and the lower appellate Court and there is no merit in the Criminal Revision Case.

11. Accordingly, this Criminal Revision Case is dismissed.

**06.04.2023**

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**To**

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



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**V.SIVAGNANAM, J.**

VTC

**Order in**

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**06.04.2023**