



*Cr1.RC.No.901 of 2019*

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

|                                       |                                         |
|---------------------------------------|-----------------------------------------|
| Date of Reserving Order<br>06.06.2023 | Date of Pronouncing Order<br>21.08.2023 |
|---------------------------------------|-----------------------------------------|

**CORAM**

**THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN**

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D.Vinoth Kumar M/A 39  
Son of Durai  
No.1/315, Pranesh Illam  
Adhava City PNG Pudur  
Vadamadurai,  
Coimbatore.

... Petitioner

**Vs.**

B.Krishnan, M/A 51  
S/o.Bhiruman  
No.79, Hulical Village and Post  
Coonoor Taluk, The Nilgiris.

Now residing at  
No.41/B2, 1<sup>st</sup> Floor  
Duraismy Nagar  
Gold Wiunes, Civil Aerodrom Post  
Coimbatore.

... Respondent

**Prayer:** Criminal Revision Case filed under Section 397 and 104 of CrI.P.C.,  
against the Judgment dated 20.07.2019 made in C.A.No.386 of 2018 on the file



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of the II Additional District and Sessions Judge, Erode, confirming the conviction imposed in the Judgment dated 12.11.2018 made in S.T.C.No.670 of 2016 on the file of the District Munsif cum Judicial Magistrate, Kodumudi sentencing the Petitioner/Accused to undergo simple imprisonment for a period of one year under Section 138 of the Negotiable Instrument Act.

For Petitioner : Mr.M.Guruprasad

For Respondent : No appearance

### O R D E R

This Petition has been filed against the Judgment dated 20.07.2019 made in C.A.No.386 of 2018 on the file of the II Additional District and Sessions Judge, Erode, confirming the conviction imposed by Judgment dated 12.11.2018 made in S.T.C.No.670 of 2016 on the file of the District Munsif cum Judicial Magistrate, Kodumudi sentencing the Petitioner/Accused to undergo simple imprisonment for a period of one year under Section 138 of the Negotiable Instrument Act.



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2(a).The Petitioner/A1 along with his wife had borrowed a sum of Rs.5,00,000/- from the Respondent/Complainant for their urgent expenses and that on demand, they had issued a post dated cheque bearing No.580792 drawn on ICICI Bank, Coonoor Branch dated 28.06.2016. When the said cheque was presented on 28.06.2016 for encashment, that was returned unpaid on the ground of insufficient funds and “Drawer's signature incomplete/differs/required”.

2(b).Hence, a legal notice dated 29.06.2016 was issued by the complainant and though the Petitioner/A1 received the notice on 30.06.2016 and sent a reply on 15.07.2016, the second accused evaded to receive the notice. Hence, the complainant had filed a private complaint for the offence under Section 138 of the Negotiable Instruments Act, before the District Munsif cum Judicial Magistrate, Kodumudi, in STC.No.670/2016 wherein the trial Court acquitted A2/Wife of the Petitioner herein while the Petitioner/A1 was found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced to undergo one year simple imprisonment.



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2(c).As against the said judgment of conviction and sentence, the Petitioner/A1 had preferred an appeal in C.A.No.386/2018, before the II Additional District and Sessions Judge, Erode and the said Appeal was dismissed by the impugned order. Hence the above Criminal Revision Case.

3.Learned counsel for the Petitioner contended that it is the specific case of the Petitioner/Accused that the cheque which was given as security to one Sasikumar of Athikaraipatti village was misused and it was neither denied by return notice nor in the Complaint.

4.Heard the learned counsel appearing on behalf of the Petitioner.

5.After hearing the learned counsel for the Petitioner and after perusing the orders passed by the Courts below, I find that the complainant has been examined as PW1 and marked Ex.P.1 to Ex.P.7. Under Ex.P2 written endorsement made by the bank for insufficient funds, legal notice has been issued, duly served and reply notice also taken note of. The Accused has not entered into witness box and he has also not produced any document to show that he had money transaction with the Sasikumar as alleged during the cross examination of PW1.



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6.Both the Courts below taking note of the fact that the signature in Ex.P.1/cheque was admitted and the amount has been returned for insufficient funds as could be seen from Ex.P.2, had rightly come to the conclusion that the complainant is entitled for presumption under Section 138 of Negotiable Instruments Act and consequently called upon the Accused/Petitioner to rebut the same. Unfortunately there is no such positive evidence to rebut the statutory presumption as stated supra. It remains to be stated that in Ex.P.7/reply notice, he denied the issuance of cheque in favour of Sasikumar but he has not denied the execution of cheque.

7.According to the Accused, under Ex.P.7, he was doing business and at that time, the accused was in need of money and Sasikumar arranged finance for a sum of Rs.2,00,000/- and the Revision Petitioner had repaid the amount. At that time, the complainant had taken a blank cheque leaf and it has been misused. After receipt of the legal notice under Ex.P3, the revision Petitioner/first accused came to know about the fact that the cheque has been presented by the complainant for the huge sum, for which a reply was issued. There was no action even after coming to know about his cheque being misused to draw amount from his account. Such a conduct of the first accused appears to



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be improbable. Even from reply notice, I find that the cheque has been issued for discharge of liability. However, he would state that it was not for the complainant but for his brother in law Sasikumar. He has not taken any steps to examine the said Sasikumar by issuing Court witness summons. Hence both the Courts below has rightly come to the conclusion that the accused has failed to rebut statutory presumption that arose in favour of the private complainant and consequently held that he is liable to be convicted under Section 138 of NI Act. Such a concurrent finding given by the Courts below is just and proper and does not appear to suffer from any perversity.

8.Hence I find that the concurrent finding of both the Courts below does not require any interference of this Court. Accordingly this Revision Petition is dismissed.

21.08.2023

Index : Yes/No  
Neutral citation : Yes/No  
Speaking Order/Non-Speaking Order

*sai*



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To

1.The II Additional District and Sessions Judge,  
Erode.

2.The District Munsif cum Judicial Magistrate,  
Kodumudi.

3.The Public Prosecutor,  
High Court,  
Chennai.



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**RMT.TEEKAA RAMAN.J,**

*sai*

Pre-delivery Order made in

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Dated: 21.08.2023