



Crl.R.C(MD)No.23 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.23 of 2019

S.Jegadeesan ... Petitioner/
Appellant/Complainant

Vs.

N.Vaithiyalingam ... Respondent/
Respondent/Accused

PRAYER: Criminal Revision Case filed under Sections 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the acquittal Judgment passed in S.T.C.No.198 of 2012 on the file of the learned Judicial Magistrate cum Fast Track Court No.2, Madurai, dated 14.09.2016 and confirmed by the Judgment dated 09.11.2018 in C.A.No.91 of 2016 on the file of IV Additional District and Sessions Judge, Madurai.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondent : Mr.S.Ayyanar Prem Kumar
for M/s.P.Sepana Alias Sree



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ORDER

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This revision has been filed to set aside the order passed in S.T.C.No.198 of 2012, dated 14.09.2016, on the file of the learned Judicial Magistrate cum Fast Track Court No.2, Madurai, confirming the Judgment made in C.A.No.91 of 2016, dated 09.11.2018 on the file of the learned IV Additional District and Sessions Judge, Madurai.

2.The petitioner is the complainant and the respondent is an accused in the complaint lodged by the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the petitioner had lent a sum of Rs.5,30,000/- to the respondent for his urgent business purpose and also to meet out the expenses for the reconstruction of his lodge. Towards repayment of the said amount, the respondent issued a cheque for a sum of Rs.5,30,000/- and the same was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the petitioner lodged a complaint.



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4.In order to prove his complaint, the petitioner himself was examined as P.W.1 and also marked Exs.P.1 to P.5 and on the side of the respondent, he had examined D.W.1 to D.W.4 and Ex.D.1 to Ex.D.3 were marked.

5.On perusal of the oral and documentary evidence, the trial Court found the accused not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted the respondent. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.91 of 2016 on the file of the learned IV Additional District and Sessions Judge, Madurai and the Appellate Court also dismissed the same, confirming the order of the trial Court. Hence, the present revision.

6.The learned counsel appearing for the petitioner would submit that the signature and issuance of cheque were not denied by the respondent. Therefore, the petitioner had discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. That apart, the respondent failed to rebut the presumption arising under Sections 118 and 139 of the Negotiable



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Instruments Act by cogent evidence. Though the respondent had examined D.W.2/Banker and he deposed that he cannot say that the cheque would not have been issued in the year 2011, though the subsequent cheque Ex.P.1 was honoured during the year 2006-2007. Even assuming that the said cheque was issued for the purpose of security, the respondent did not take any steps to return back the cheque, after repaying the entire loan amount. Further, the respondent stated that in the earlier transaction, the cheque was issued as a security and after completion of the said loan, the cheque which was issued for security was not returned by the petitioner, the respondent failed to produce any iota of evidence to show that there was an earlier transaction between the petitioner and the respondent herein in order to prove that Ex.P.1 was issued for the purpose of security. In support of his contention, he relied on the following Judgments:-

**(i) T.Vasanthakumar Vs. Vijaykumari
reported in (2015) 8 SCC 378.**

**(ii) M.Senguttuvan Vs. S.Balasubramanian
[Crl.R.C.No.779 of 2018, dated 09.11.2022.]**

**(iii) Gunasekaran Vs. Dhandapani
[Crl.R.C.No.12 of 2018, dated 19.01.2021.]**



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(iv) *T.P.Murugan (dead) through legal representatives Vs. Bojan reported in (2018) 8 SCC 469.*

7.Per contra, the learned counsel appearing for the respondent would submit that the alleged cheque was issued for the purpose of security, that too, the cheque was of the year 2006-2007. No prudent man would lend such a huge amount without any documents. That apart, the loan amount was repaid by the respondent within a period of one month by issuance of Ex.P.1. Therefore, the respondent categorically rebutted the presumption and as such, the burden again shifted on the shoulder of the petitioner. Even then, the petitioner failed to prove that the cheque was issued for any legally enforceable debt and as such, both the Courts below rightly acquitted the petitioner for the offence under Section 138 of the Negotiable Instruments Act.

8.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.



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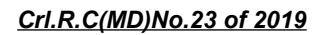
9. According to the petitioner, he is a moneylender and he lent a sum of Rs.5,30,000/- as loan to the respondent on 20.09.2011. In order to repay the same, the respondent issued the cheque for a sum of Rs.5,30,000/-, which was marked as Ex.P.1. It was presented for collection and the same was returned dishonoured for the reason "funds insufficient". The petitioner caused statutory notice as contemplated under Section 138 of the Negotiable Instruments Act. On receipt of the same, the respondent issued a reply notice, which was marked as Ex.P.5. On perusal of the reply notice revealed that the respondent categorically denied the issuance of the cheque for any legally enforceable debt as alleged in the statutory notice. The alleged cheque was issued as security while the respondent borrowed a loan in the year 2006-2007. Even after discharging the entire loan amount, the cheque was not returned by the petitioner. Therefore, with ill motive, the petitioner presented the cheque for collection which was issued for security purposes and not issued for any legally enforceable debt and got bounced. Further, the respondent stated that in the year 2006 while borrowing the loan, the respondent issued a pro-note in which his wife also signed as a witness. Therefore, in the reply notice, the respondent called upon the petitioner to return the cheque and promissory note which was



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executed at the time of borrowal of loan in the year 2006. On receipt of the same, the petitioner failed to send any rejoinder denying the allegations made in the reply notice. Thereafter, the petitioner lodged a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act. On perusal of the complaint, the contention raised in the reply notice was denied by the petitioner simply without any explanation for each and every allegation made in the reply notice.

10.The respondent had examined D.W.1 to D.W.4. He was examined himself as D.W.1 and his banker was examined as D.W.2. D.W.2 categorically deposed that Ex.P.1 was issued in favour of the respondent in the year 2006-2007. Further, subsequent to Ex.P.1, namely cheque bearing Nos. 476047, 476049, 476048, 476042, 476043, 476044 and 476045 had been presented for collection in the year 2006-2010 itself and all the cheques were formatted. Through D.W.2, the statement of accounts were also marked as Ex.D.1 and Ex.D.2. The statement of account for the period from 21.10.2011 to 16.02.2016 was marked as Ex.D.1 and the statement of account for the period from 01.01.2005 to present date was marked as Ex.D.2. Thus, it is clear that Ex.P.1 was issued in the year 2006-2007. If at all the cheque was given in the year



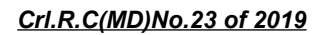
11. In ***T. Vasanthakumar Vs. Vijaykumari*** reported **8 SCC 378**, the Honourable Supreme Court of India held

“9. Therefore, in the present case since the cheque as well as the signature has been accepted by the accused respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque



was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence”.

12.However, in the present case on hand, huge lending of Rs.5,30,000/- to the respondent without even assurance to return back the said amount within a stipulated time, on-demand the respondent issued Ex.P.1 is not a believable one. No prudent man would borrow such a huge amount with assurance of repaying the same within a period of one month and similarly, no prudent man would lend such a huge amount without any security documents. It is also seen from Ex.P.1, which is a typed one. According to the petitioner, when he made a demand in the house of the respondent, the respondent issued cheque at about 08.00 a.m.



Therefore, the respondent categorically rebutted the presumption and even then, the petitioner failed to prove his case that Ex.P.1 was issued for any legally enforceable debt. Hence, both the Courts below rightly acquitted the respondent. In view of the dictum laid down by the Honourable Supreme of India and this Court, the Judgments cited by the learned counsel for the petitioner are not applicable to the case on hand, since the respondent categorically rebutted the presumption and this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision Case is dismissed.

16.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1.The Judicial Magistrate cum
Fast Track Court No.2,
Madurai.

2.The IV Additional District and Sessions Judge,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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