



Crl.R.C.(MD)No.265 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2023

CORAM

**THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN**

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P.John Devaraj

... Petitioner

Vs.

1.C.Kumaradhas

2.The State of Tamil Nadu,  
Represented by the Public  
Prosecutor, Kanyakumari District  
at Nagercoil.  
Kanyakumari District.

... Respondents

**PRAYER :** Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and judgment dated 27.02.2018 in C.A.No.119 of 2006 of Sessions Court, Kanyakumari District at Nagercoil confirming the judgment and conviction made in the judgment dated 11.05.2006 in C.C.No.485 of 2002 on the file of the Court of the Judicial Magistrate No.II, Nagercoil and accordingly this criminal revision be allowed and petitioner/accused be acquitted or in the alternative, the case may be remanded to the trial Court for a fresh disposal according to law.



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For Petitioner : Mr.S.Vashik Ali  
for M/S.R.Murugan

For R2 : Mr.M.Vaikkam Karunanithi,  
Government Advocate (Crl. Side)

R1-Died

### **ORDER**

This Criminal Revision Case has been filed to set aside the judgment dated 27.02.2018 in C.A.No.119 of 2006 of Sessions Court, Kanyakumari District at Nagercoil confirming the judgment and conviction made in the judgment dated 11.05.2006 in C.C.No.485 of 2002 on the file of the Court of the Judicial Magistrate No.II, Nagercoil.

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

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.1,00,000/- from the first respondent on 02.05.2002 and also executed pro-note and agreed to repay the principal amount with interest



at the rate of 12% per annum. In order to repay the principal amount, the petitioner issued cheque. It was presented for collection and the same was returned dishonoured for the reason “Funds Insufficient”. After causing statutory notice, the first respondent lodged complaint. On the side of the first respondent, in order to prove the case, he examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. On the side of the petitioner, he examined D.W.1 to D.W.3 and marked Ex.D.1 and Ex.D.2. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- i/d to undergo two months simple imprisonment for the offence punishable under Section 138 of the Negotiable Instruments Act. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

4.The petitioner raised grounds that there was absolutely no evidence to prove that there was money transaction between the petitioner and the respondent. After receipt of statutory notice, the



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petitioner failed to sent reply notice. However, it was not amount for conviction and as such both the Courts below ought not to have convicted the petitioner. The petitioner categorically denied the issuance of the cheque and Ex.P.1 and Ex.P.2 were not genuine and valid document. However, he submitted that the petitioner is ready and willing to settle the cheque amount in order to avoid the sentence.

5.Considering the said submission, this Court confirms the conviction imposed by the Courts below for the offence punishable under Section 138 of Negotiable Instruments Act. Insofar as the sentence is concerned, it is modified to the effect that the petitioner shall deposit the cheque amount to the credit of C.C.No.485 of 2002 before the learned Judicial Magistrate No.II, Nagercoil on or before 22.05.2023. On such deposit, the legal heirs of the first respondent are permitted to withdraw the same by way of filing appropriate application. If the petitioner fails to deposit the cheque amount, the sentence imposed by the Courts below will be restored and the legal heirs of the first respondent are at liberty to take appropriate steps against the petitioner to serve the remaining period of sentence.



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6.In the result, this criminal revision case is partly allowed.

**11.04.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
gns

To

- 1.The Sessions Court, Kanyakumari District at Nagercoil
- 2.The Judicial Magistrate No.II, Nagercoil
- 3.The Public Prosecutor,  
Kanyakumari District  
at Nagercoil.  
Kanyakumari District.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**G.K.ILANTHIRAIYAN,J.**

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