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CRL RC NOS.384 & 385 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-02-2025

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THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

**CRL RC NOS. 384 & 385 of 2024**

**AND**

**CRL MP NOS. 3492 & 3493 OF 2024**

Suresh Sanjay  
S/o.A.R.Devarajulu Naidu, prop of  
M/s.A.R.Devarajulu and Sons, Muruguan Bhavan,  
No.751, P.H.Road, Kilpauk, Chennai - 600 004.

Petitioner(s)

Vs

Hema Kumar  
S/o.Kothandapani, No.51/122, Periyar Pathai,  
Raagaas Flat D Block, Choolaimedu, Chennai - 600  
094.

Respondent(s)

**CRL MP NO. 3493 of 2024**

Suresh Sanjay  
S/o.A.R.Devarajulu Naidu, prop of  
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**CRL RC NO. 385 of 2024**

Suresh Sanjay



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Appellant(s)

Vs

Hema Kumar  
S/o.Kothandapani, No.51/122, Periyar Pathai,  
Raagaas Flat D Block,  
Choolaimedu, Chennai - 600 094.

Respondent(s)

**For Petitioner(s) in both Crl.R.Cs.:**

Mr.R.Prabakar

**For Respondent(s) in both Crl.R.Cs.:**

Mr.M. Mohamed Riyaz  
for Mr.K.Balakrishnan



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## **COMMON ORDER**

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Today, the matter is listed under the caption “For reporting compliance”.

2.This Court, on 30.10.2024, had passed the following order:

*“Criminal Revisions filed against the Judgment, dated 05.02.2024 in Crl.A.No.302 of 2022 and Crl.A.No.311 of 2022, on the file of the VI Additional Sessions Judge at Chennai, confirming the conviction and sentence under Section 138 of N.I.Act, imposed on the petitioner in C.C.No.964 of 2020, and partly allowing the appeal by enhancing the compensation amount twice the cheque amount, in C.C.No.964 of 2020, respectively on the file of IV FTC / Metropolitan Magistrate, George Town, Chennai, dated 18.10.2022.*

*2. The gist of the case is as follows:-*

*The accused borrowed a sum of Rs.10,00,000/- for the development of business. Believing his words, the complainant given a sum of Rs.10,00,000/- as loan, by way of RTGS from the complainant's wife Account No.SBINR52017012500035925 from State Bank of India Branch, Koyembedu MKT Comp. Chennai. The petitioner executed the Promissory Note, dated 25.01.2017, for a sum of Rs.10,00,000/-, in favour of the complainant's wife R.Smitham. The accused given a letter on 24.12.2019 to the complainant that he will repay the loan amount along with the*



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*interest on or before 24.06.2020. But the accused has not repaid any amount either principal nor interest. In order to discharge the partial liability, the accused issued a cheque, bearing No.212861, in favour of the complainant, for a sum of Rs.17,85,000/-, dated 09.07.2020, drawn on State Bank of India, Chinmaya Nagar Branch. When presented the said cheque for collection on 09.07.2020 with his banker M/s. Equitas Small Finance Bank, Parrys, Chennai it was returned unpaid with an endorsement '04 refer to drawer'. A statutory legal notice was issued through the counsel to the accused dated 16.07.2020. The accused replied to the said Notice, dated 07.08.2020. However till date the accused has not made any payment towards the cheque amount. Hence, the complaint .*

*3. Mr.R.Prabhakar, the learned counsel appearing for the petitioner would submit that during pendency of the appeal, 20% of the cheque amount paid and at the time of the admission of the Revisions, the petitioner paid 30% of the cheque amount, totally, the petitioner deposited 50% of the cheque amount of Rs.17,85,000/- to the credit of C.C.No.964 of 2020 before the Trial Court. Further, the learned counsel submitted that on 22.10.2024, the petitioner paid a sum of Rs.2,23,125/- vide Demand Draft No.166129 of State Bank of India, Koyambedu Branch in the name of the Respondent / K.Hema Kumar and further paid Rs.2,23,125/- on 29.10.2024, vide Demand Draft No.166136 of State Bank of India, Koyambedu Branch in the name of the Respondent / K.Hema Kumar being 25% of the cheque amount. So far, the petitioner paid a sum of Rs.13,38,750/- being 75% of the cheque amount. Since the petitioner is in severe*



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*financial crunch and he is ready to pay the remaining 25% of the cheque amount being Rs.4,46,250/- on or before 31<sup>st</sup> December 2024.*

*4. Mr.Mohammed Riyaz, the learned counsel appearing for the respondent / complainant would submit the petitioner is the accused in C.C.No.964 of 2020 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai. He found guilty of the offence under Section 138 of Negotiable Instruments Act, and convicted and sentenced to undergo S.I for 3 months and to pay a sum of Rs.17,85,000/- as compensation within a period of two months. The petitioner preferred an appeal in C.A.No.302 of 2022, before the learned VI Additional Sessions Judge, Chennai and the same was dismissed on 05.02.2024 confirming the conviction and sentence of the Trial Court. The respondent / complainant preferred an appeal in C.A.No.311 of 2022 seeking for enhancement of compensation and the same was partly allowed, and the accused/petitioner was directed to pay double the cheque amount of Rs.35,70,000/- along with simple interest at 9% p.a.,*

*5. The learned counsel for the respondent further submitted that the respondent received a sum of Rs.13,38,750/- being 75% of the cheque amount. Further, the respondent has not objection for receiving the remaining 25% of the cheque amount being Rs.4,46,250/- on or before 31<sup>st</sup> December 2024.*



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6. *I have heard the learned counsels appearing on either side and perused the materials available on record.*

7. *On perusal of the records it is seen that the respondent filed a complaint in C.C.No.964 of 2020, before the learned Metropolitan Magistrate, FTC, George Town, Chennai, under Section 138 of Negotiable Instruments Act, against the petitioner, for dishoour of cheque amount of Rs.17,85,000/-. After trial, the petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act and sentenced to under go three months Simple Imprisonment, besides the cheque amount was ordered to be paid as compensation, by Judgment dated 18.10.2022. Challenging the conviction and sentence, the petitioner preferred an Appeal in Crl.A.No.302 of 2022 before the learned VI Additional Sessions Judge, Chennai, Further, the respondent filed an appeal for enhancement of compensation in Crl.A.No.311 of 2022. During pendency of the Appeal, the petitioner deposited 20% of the cheque amount being Rs.3,57,000/-, as per the direction of the lower appellate Court in the Suspense of Sentence application. Both the appeals heard together by the learned Additional City Civil Judge, Chennai, and the Appeal filed by the petitioner in Crl.A.No.302 of 2022 was dismissed, confirming the conviction and sentence passed by the trial Court. The Appeal filed by the Respondent in Crl.A.No.311 of 2022 was partly allowed, by enhancing the compensation amount to twice the cheque amount along with interest at 9% per annum. Against which the present Revisions.*



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8. *Section 138 of Negotiable Instrument Act empowers the court to punish the accused for imprisonment, for a term which may extend to two years or with fine, which may extend to twice the amount of cheque or with both. It is seen from the records that the intention of the respondent is to get the double the cheque amount, since the petitioner has not paid the cheque amount earlier. This Court is of the view that only in order to harass the petitioner, or to receive the double the cheque amount, the complainant filed the Criminal Appeal in Crl.A.No.311 of 2022, and he succeeds in his attempt. When 75% of the cheque amount paid by the petitioner and the complainant received the same and further the petitioner undertaking to pay the remaining 25% of the cheque amount within the stipulated time, this Court has no reason to proceed with the punitive aspect and the petitioner is liable to be discharged of the alleged offence.*

9. *In the result, the Criminal Revision Cases stand allowed and the Judgment dated 05.02.2024 passed in Crl.A.No.302 of 2022, by the learned VI Additional Sessions Judge at Chennai, confirming the conviction and sentence under Section 138 of Negotiable Instruments Act imposed on the petitioner in Judgment dated 18.10.2022 made in C.C.No.964 of 2020, on the file of IV FTC / Metropolitan Magistrate, George Town, Chennai, to undergo 3 months Simple Imprisonment and the Judgment, dated 05.02.2024 made in Crl.A.No.311 of 2022, by the VI Additional Sessions Judge*



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*at Chennai, by enhancing the compensation amount by twice the cheque amount, in C.C.No.964 of 2020, on the file of IV FTC / Metropolitan Magistrate, George Town, Chennai, dated 18.10.2022 are all set aside. The Petitioner / Accused is acquitted from all charges but with condition that that the petitioner shall pay remaining 25% of the cheque amount being Rs.4,46,250/- on or before 31<sup>st</sup> December 2024. This conditional order to be complied without deviation. In the event of noncompliance, the above order setting aside the sentence and conviction will automatically stands cancelled.*

*10. Post the Revision on 10.02.2025, for compliance.”*

3.In continuation and conjunction to the earlier order passed by this Court on 30.10.2024, today, the learned counsel for the petitioner produced a copy of the Demand Draft bearing No.166196 dated 24.12.2024 drawn on State Bank of India, Chennai for a sum of Rs.4,46,250/- in favour of the respondent/complainant.

4.The learned counsel for the respondent/complainant is present. He admits the receipt of Demand Draft. In view of the above, the entire cheque amount has been paid. Hence, the petitioner complied with the orders passed by this Court on 30.10.2024. The compliance is recorded.



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5.It is submitted by the learned counsel for petitioner that this amount settled by the petitioner may be considered in the E.P. Proceedings, which is pending between the petitioner and respondent in E.P.No.3077 of 2023 on the file of IX Assistant City Civil Court, Chennai. The Execution Court to consider the same.

**18-02-2025**

rsi

To

- 1.Hema Kumar  
S/o.Kothandapani, No.51/122, Periyar Pathai,  
Raagaas Flat D Block, Choolaimedu,  
Chennai - 600 094.
- 2.The VI Additional Sessions Judge,  
City Civil Court, Chennai.
- 3.The Metropolitan Magistrate,  
Fast Track Court No.IV,  
George Town, Chennai.



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**M. NIRMAL KUMAR, J.**

rsi

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**18.02.2025**