



Crl.R.C.No.434 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.434 of 2021

and

Crl.M.P.No.720 of 2022

Panneer

...Petitioner/Appellant/Accused

-Vs-

Kokilesh

...Respondent/Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to set aside the order in Crl.A.No.42 of 2019 passed by the learned Principal District and Sessions Judge, Krishnagiri District, dated 09.10.2020 confirming the judgment of the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016 dated 08.08.2019.

For Petitioner : Mr.K.V.Dhanapalan
for M/s.T.Fennwalter Associates

For Respondent : Mr.A.Kripakaran
for Mr.S.Chinnasamy



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ORDER

This Criminal Revision Case is filed to set aside the judgment passed by the learned Principal District and Sessions Judge, Krishnagiri District, in Crl.A.No.42 of 2019 dated 09.10.2020, thereby confirming the order of the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016 dated 08.08.2019.

2. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the Accused before the learned Judicial Magistrate, Uthangarai. The Trial Court had convicted the Accused for the offence under Section 138 of the Negotiable Instruments Act thereby sentencing him to undergo one year simple imprisonment and imposed compensation of Rs.20 lakhs by judgment dated 08.08.2019 in S.T.C.No.394 of 2016. Aggrieved by the same, the Accused had preferred the Criminal Appeal in Crl.A.No.42 of 2019 before the learned Principal District and Sessions Judge, Krishnagiri District. The learned Principal District and Sessions Judge, Krishnagiri, had dismissed the Criminal Appeal by judgment dated 09.10.2020, thereby confirming the judgment of conviction recorded by the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016. Aggrieved by the same, this



Criminal Revision Case has been filed.

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3. It is the submission of the learned Counsel for the Revision Petitioner that the learned Judicial Magistrate, Uthangarai, failed to appreciate the defence of the Accused, which was established as probabilities of the case. The learned Judicial Magistrate, Uthangarai, as per judgment in S.T.C.No.394 of 2016 dated 08.08.2019 had rejected the defence of the Accused on the ground that the Accused himself had not entered the witness box. The case of the defence of the Accused need not be proved beyond reasonable doubt. It is sufficient for the Accused to establish the probabilities of the case. To establish and probabalize the defence of the Accused, that will be sufficient to shift the burden on the Complainant to prove the case.

4. Learned Counsel for the Revision Petitioner invited the attention of this Court to Section 118 of the Negotiable Instruments Act, which reads as follows:

***“118. Presumptions as to negotiable instruments.—
Until the contrary is proved, the following presumptions shall
be made:—***

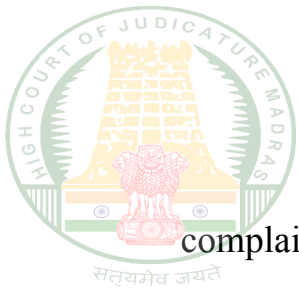
***(g) that holder is a holder in due course:—that the
holder of a negotiable instrument is a holder in due course:
provided that, where the instrument has been obtained from its
lawful owner, or from any person in lawful custody thereof, by
means of an offence or fraud, or has been obtained from the
maker or acceptor thereof by means of an offence or fraud, or***



for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

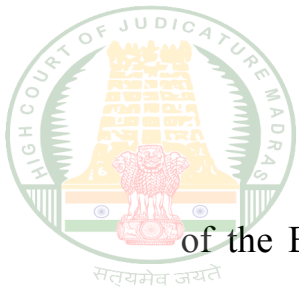
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5. It is the case of the defence of the Accused before the learned Judicial Magistrate, Uthangarai, that he had approached his friend and acquaintance, Annadurai for loan. The said Annadurai took him to the Complainant. The Complainant is not a wealthy person, but he can arrange loan. When Annadurai approached the Complainant, the Complainant demanded signed blank cheques for the loan arranged by him. The said Annadurai sought blank cheques from the Revision Petitioner, the Accused before the Trial Court. The said Annadurai handed over the cheques duly signed by the Accused to the Complainant, expecting the loan to be arranged by him. The Complainant accepted the blank signed cheques but had failed to arrange the loan. He took time to arrange the loan, but as promised, he did not arrange the loan. Therefore, the Accused and his friend and acquaintance, Annadurai, went to the residence of the Complainant and sought return of the duly signed blank cheques issued by the Accused to Annadurai. At that time, the Complainant stated that he had misplaced the cheques elsewhere and that he will search and find it out. Therefore, the Accused and Annadurai went to the Dharmapuri Town Police Station, under whose jurisdiction the Complainant was residing, and preferred a complaint regarding missing of the cheques. Subsequently, the Complainant seems to have filled it up for the amount mentioned in the



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complaint and filed a complaint as though the Accused had borrowed money from the Complainant. The Accused is not known to the Complainant. Only Annadurai had taken the Accused to the said Complainant without arranging any loan and had misused the cheques issued by the Accused. The Complainant had preferred a complaint. These facts were brought out in the cross-examination of the Complainant as P.W-1 by the learned Counsel for the Accused. Further, the Accused had challenged the Complainant that he did not have sufficient resources to extend loan for Rs.20 lakhs to the Accused. Therefore, the Accused had obtained the details of the retirement benefits of the father of the Complainant and father-in-law of the Complainant. In the cross-examination, the Complainant as P.W-1, claimed that he had with him the retirement benefits of his father and father-in-law. Both of them were employees at weaving and spinning mills. Therefore, the details of the retirement benefits were obtained by the Accused. Also, Annadurai was examined as D.W-2, who is an acquaintance of the Complainant and also to the Accused. The Complainant is employed in mill, drawing salary of Rs.12,000/- per month. Both Annadurai and the Complainant are employees of the mill. The Complainant as P.W-1, when cross-examined, stated that he had Rs.5 lakhs from his father as retirement benefits. Before 1998, the Complainant was an Electrical Contractor. D.W-2 was the Assistant Manager



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of the Bank, Uthangarai, where the Complainant has his bank account. The Complainant in the complaint had not stated in specific terms how he had acquainted himself with the Accused. How he came to know about the Accused. He had not stated where he had resources to give such loan for Rs.20 lakhs. He would speak only about cheques and dishonour of the cheques. The Accused examined Annadurai as D.W-2. One Rajendran, the authorized witness from the spinning mill where Annadurai and Complainant were employees, was summoned by the Accused as defence witness, D.W-1, and he was examined. Through him, three documents were marked under Ex.D-1 to Ex.D-3, which contained the details of the retirement benefits of the father and father-in-law of the Complainant and the salary details of the Complainant.

6. Learned Counsel for the Revision Petitioner during the course of argument invited the attention of this Court to the cross-examination of the Complainant as P.W-1 and also to the evidence of D.W-2, Annadurai. The Trial Court failed to consider the materials available in the cross-examination of the Complainant as P.W-1 and the evidence of the defence witnesses as D.W-1 and D.W-2 and Ex.D-1 to Ex.D-3. The learned Judicial Magistrate, Uthangarai, had relied on the presumption under Section 118 of the Negotiable Instruments Act in favour of the holder of the cheques and had mechanically



convicted the Accused without considering the defence of the Accused that the

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Complainant does not have sufficient resources to extend loan of Rs.20 lakhs to the Accused. Therefore, the judgment of the learned Judicial Magistrate, Uthangarai, recording conviction against the Accused by sentencing him to one year of simple imprisonment and imposed compensation of Rs.20 lakhs, is perverse. The same is to be set aside.

7. The learned Principal District and Sessions Judge, Krishnagiri District, also failed to appreciate the grounds raised in Appeal by the Accused as Appellant and on the same presumption of the provisions of the Negotiable Instruments Act in favour of the holder of the cheques, mechanically dismissed the Appeal. Therefore, this Criminal Revision Case has been filed.

8. The learned Counsel for the Revision Petitioner contended that the learned Principal District and Sessions Judge, Krishnagiri District, as Appellate Court ought to have reassessed the entire materials available before the Trial Court, the learned Judicial Magistrate, Uthangarai, regarding the evidence of P.W-1 and P.W-2, Ex.P-1 to Ex.P-8 and defence witness, D.W-1 and D.W-2 and Ex.D-1 to Ex.D-3 and had mechanically confirmed the judgment of the learned Judicial Magistrate, Uthangarai, thereby dismissed the



Criminal Appeal.

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9. Regarding the defence of the Accused and probabilities of the case, the learned Counsel for the Revision Petitioner relied on the following rulings:

9.1. In the case of **Rajaram -vs- Maruthachalam** reported in **2023 0**

AIR (SC) 471 the Hon'ble Supreme Court has observed as follows:-

“20. After analyzing all these pieces of evidence, the learned Trial Court found that the Income Tax Returns of the complainant did not disclose that he lent amount to the accused, and that the declared income was not sufficient to give loan of Rs.3 lakh. Therefore, the case of the complainant that he had given a loan to the accused from his agricultural income was found to be unbelievable by the learned Trial Court. The learned Trial Court found that it was highly doubtful as to whether the complainant had lent an amount of Rs.3 lakh to the accused. The learned Trial Court also found that the complaint had failed to produce the promissory note alleged to have been executed by the accused on 25 th October 1998. After taking into consideration the defence witnesses and the attending circumstances, the learned Trial Court found that the defence was a possible defence and as such, the accused was entitled to benefit of doubt. The standard of proof for rebutting the presumption is that of preponderance of probabilities. Applying this principle, the learned Trial Court had found that the accused had rebutted the presumption on the basis of the evidence of the defence witnesses and attending circumstances.”

9.2. In the case of **Basalingappa Vs. Mudibasappa** reported in **2019 2**

ACR 1978 the Hon'ble Supreme Court has held as follows:-

“28. We are of the view that when evidence was led before the Court to indicate that apart from loan of Rs.6 lakhs given to the



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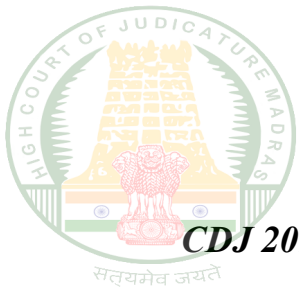
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accused, within 02 years, amount of Rs.18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence. This Court had occasion to consider the expression "perverse" in [Gamini Bala Koteswara Rao and others Vs. State of Andhra Pradesh](#) through Secretary, (2009) 10 SCC 636, this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered with only judgment is against the weight of evidence. In Paragraph No.14 following has been held:-

"14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

29. High Court without discarding the evidence, which was led by defence could not have held that finding of trial court regarding financial capacity of the complainant is perverse. We are, thus, satisfied that accused has raised a probable defence and the findings of the trial court that complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable."

9.3. In the case of ***K.Subramani Vs. K.Damodara Naidu*** reported in



CDJ 2014 SC 935 the Hon'ble Supreme Court has observed as under:-

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“In the present case the complainant and the accused were working as Lecturers in a Government college at the relevant time and the alleged loan of Rs.14 lakhs is claimed to have been paid by cash and it is disputed. Both of them were governed by the Government Servants’ Conduct Rules which prescribes the mode of lending and borrowing. There is nothing on record to show that the prescribed mode was followed. The source claimed by the complainant is savings from his salary and an amount of Rs.5 lakhs derived by him from sale of site No.45 belonging to him. Neither in the complaint nor in the chief-examination of the complainant, there is any averment with regard to the sale price of site No.45. The concerned sale deed was also not produced. Though the complainant was an income-tax assessee he had admitted in his evidence that he had not shown the sale of site No.45 in his income-tax return. On the contrary the complainant has admitted in his evidence that in the year 1997 he had obtained a loan of Rs.1,49,205/- from L.I.C. It is pertinent to note that the alleged loan of Rs.14 lakhs is claimed to have been disbursed in the year 1997 to the accused. Further the complainant did not produce bank statement to substantiate his claim. The trial court took into account the testimony of the wife of the complaint in another criminal case arising under [Section 138](#) of the N.I. Act in which she has stated that the present appellant/accused had not taken any loan from her husband. On a consideration of entire oral and documentary evidence the trial court came to the conclusion that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him.”

9.4. In the case of *Vijay Vs. Laxman & Another* reported in **CDJ**

2013 SC 110 the Hon'ble Supreme Court has held as follows:-

“10. Coming then to the present case, the absence of any details of the date on which the loan was advanced as also the absence of any documentary or other evidence to show that any such loan transaction had indeed taken place between the parties is a significant circumstance. So also the fact that the cheque was presented on the day following the altercation between the parties is a circumstance that cannot be brushed away. The version of the respondent that the cheque was not returned to him and the complainant presented the same to wreak vengeance against him is a circumstance that cannot be easily rejected. Super added to all



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this is the testimony of DW1, Jeevan Guru according to whom the accounts were settled between the father of the complainant and the accused in his presence and upon settlement the accused had demanded return of this cheque given in lieu of the advance. It was further stated by the witness that the complainant's father had avoided to return the cheque and promised to do so on some other day. There is no reason much less a cogent one suggested to us for rejecting the deposition of this witness who has testified that after the incident of altercation between the two parties the accused has been supplying milk to the witness as he is also in the same business. Non- examination of the father of the complainant who was said to be present outside the Court hall on the date the complainant's statement was recorded also assumes importance. It gives rise to an inference that the non- examination was a deliberate attempt of the prosecution to keep him away from the court for otherwise he would have to accept that the accused was actually supplying milk to him and that the accused was given the price of the milk in advance as per the trade practice in acknowledgement and by way of security for which amount the accused had issued a cheque in question.

11. In the totality of the above circumstances, the High Court was perfectly justified in its conclusion that the prosecution had failed to make out a case against the accused and in acquitting him of the charges. With these observations in elucidation of the conclusion drawn by my worthy colleague, I agree that the appeal fails and be dismissed.”

9.5. In the case of *V.Gunasekaran and Another Vs. Mahalakshmi*

Bright Steel Industries Private Limited in Crl.O.P.No.21371 of 2021, dated

27.01.2023 this Court has observed as under:-

“9.As per the reported ruling in 2012 SCC OnLine Mad 2776 : (2012) 2 LW (Cri) 516 [Sama Dharman Proprietary M/s. Sri Sai Tex and another -vs- Natarajan] for a time barred debt a complaint under [Section 138](#) of Negotiable Instruments Act cannot be filed. If it is filed as proof of prior liability then in such circumstances under [Section 25\(3\)](#) of the Indian Contract Act, 1872, there must be separate and distinct promise by the person, who issued cheque that even though it is a time barred debt, he is ready and willing to honour the debt. In the absence of such acknowledgment of time barred debt, the contention of the learned Counsel for the Respondent that the Petitioners herein had issued cheque



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bearing No.002880 for the prior liability that is for the invoice-cum-delivery challan of the year 2015 bearing No.MBSI/1646 is found unacceptable. The contention of the learned Counsel for the Petitioners is acceptable. Therefore, the objection by the learned Counsel for the Respondent/Complainant that petition under [Section 482](#) of Cr.P.C. is not maintainable and what had been raised by the learned Counsel for the Petitioners is to be considered subject to the evidence before the trial Court and the petition under [Section 482](#) of Cr.P.C. cannot be invoked, is found unacceptable and unreasonable, particularly, in the light of the bank transactions which shows that the claim of the Petitioners that the cheque issued for the prior liabilities was misused by the Respondent is beyond reasonable doubt.”

9.6. In the case of *C.Ponnusamy Vs. M.Anbu* reported in *CDJ 2021*

MHC 1347 this Court has observed as follows:-

“11.This Court is aware of the legal position that the revisional Court cannot re-appreciate the evidence like an Appellate Court, however, when there is wrong appreciation of facts and when the Courts below have not properly analysed the materials and evidence, the power of this Court to go into evidence has been preserved by [Sections 397](#) and [401\(1\)](#) of Cr.P.C. to satisfy itself as to the correctness, legality or propriety of any finding. This Court carefully perused the evidence and materials on record.

12. The complainant in his evidence has deposed about running a tailoring shop and that he is known to the accused for about 15 years and that on 05.01.2009, he had given a loan of Rs.6 lakhs to the accused for the business of the accused and on the same day, the accused had given a post dated cheque dated 09.03.2009 for the same amount. Thereafter, the cheque was presented for collection on 09.03.2009 and that it has been returned on 14.03.2009 stating as “insufficient funds”. Thereafter, the complainant had sent a legal notice to the accused dated 28.03.2009 and it had been received by the accused on 08.04.2009. Though, the accused had not sent any reply immediately, he had sent a reply on 04.06.2009 denying the issuance of cheque to the complainant and explaining the reason how the cheque could have got into the hands of the complainant and also questioning the financial capacity of the complainant to lend such a huge amount to the accused.

13. While coming to the defence of the accused, the accused had sent a reply to the complainant stating that he does not know the complainant



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and that he along with one Shanthakumar was running a small time travel agency business with few vehicles and due to loss in the business, they had wound up the business and a settlement was arrived at and that in lieu of the settlement, the accused had to pay Rs.2 lakhs to the said Shanthakumar which was agreed to be paid as per the agreement of settlement. Thereby, as a security, the cheque was handed over to the said Shanthakumar by the accused. Though in the initial part of cross examination, the complainant had denied having known the said Shanthakumar, in the later part of the cross examination, he has accepted that the said Shanthakumar and he are living very close by. Further, in this case, the complainant had categorically admitted that all the money transactions by him were done through bank transactions only and that he was having only one bank account, whereas at the later point of time, he had stated that the amounts were paid by his friends.

15. Admittedly, neither any oral nor any documentary evidences had been adduced by the complainant to prove that such a huge amount of Rs.6 lakhs was paid to the accused. Though, the complainant had later stated that the amounts were arranged through his friends, none of his friends were examined to prove the same. Further, it is also highly doubtful that such a huge amount could have been lent to the accused on the strength a post dated cheque. The accused had probabilised his defence by preponderance of probability by letting evidence to prove that the complainant was not having financial capacity to pay/lend such a huge amount of Rs.6 lakhs and that the cheque was not drawn for consideration and it was not issued for the discharge, in whole or in part, of any debt or liability.

17. Applying the propositions of the law based on the above Judgements and analysing the evidence and materials on record, this Court is of the opinion that the accused has discharged the burden under [Section 118\(a\)](#) and [139](#) of the Negotiable Instrument Act satisfactorily by probablising valid defence and when the burden having been discharged, the evidential burden had shifted and moved on to the complainant which, he had failed to prove and therefore, the presumption under [Section 118\(a\)](#) and [139](#) of the Negotiable Instrument Act will not come again to the aid or rescue of the complainant. The Courts below have failed to appreciate the evidences on record with proper perspectives and have erred in convicting the petitioner/accused on perverse finding. Necessarily, the petitioner/accused has to be acquitted.

18. In the result, this Criminal Revision case is Allowed. The Judgement of conviction dated 28.02.2013 passed by the I Additional District and Sessions Judge, Coimbatore, in C.A.No.305 of 2012 confirming the Judgement of conviction and sentence passed by the learned Judicial



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Magistrate, Fast Track Court, Magisterial Level -II, Coimbatore, are set aside. The petitioner/accused is acquitted from all charges levelled against him under [Section 138](#) of N.I. Act. The bail bond if any executed by the petitioner/accused, shall stand cancelled and the fine amount, if any paid by the petitioner/accused, shall be refunded to him.”

9.7. In the case of *Thangaraj Vs. Byrappa* reported in **2016 0**

Supreme (Mad) 3186 this Court has observed as under:-

“34. Suffice it for this Court to point out that on behalf of the Appellant / Complainant while letting in legal evidence, the averments in the complaint are to be proved on his side in the manner known to law and in accordance with Law. However, this Court taking into account of the evidence of P.W.1 to P.W.5 and Exs.P.1 to P.12, and evidence of D.W.1 and Exs.D1 and D.2 and also considering the facts and circumstances of the present case in an integral manner comes to an inevitable conclusion that the Appellant / Complainant had not established his case that the Respondent / Accused had committed an offence under [Section 138](#) of N.I.Act to the subjective conscience of this Court. Viewed in that perspective, the ultimate conclusion arrived at by the trial court in Judgment in STC No.233 of 2014 dated 07.08.2015 that the Respondent / Accused was not found guilty in respect of an offence under [Section 138](#) of N.I.Act and the resultant acquittal under [Section 255\(1\)](#) of Cr.P.C., in the considered opinion of this Court are free from any legal flaw. Consequently, the Criminal Appeal is dismissed.”

9.8. In the case of *M.Palanisamy Vs. K.Karvannan* reported in **2015**

5 CIJ 684 this Court has observed as under:

“14.The first and foremost point of the appellant/complainant is to prove that Ex.P1 cheque has been issued to him. But here, there is no evidence to show that cheque has been issued to the appellant on 31.01.2002. In his evidence, he fairly conceded that he has no financial status. Furthermore, the defence raised by the respondent has been proved by way of preponderance of probabilities. In such circumstances, it is the duty bound upon the appellant to examine his father-in-law and friend Rajendran, to prove that he obtained the amount of Rs.1,00,000/- and Rs.1,25,000/- from them respectively.”



WEB COPY 9.9. In the case of ***Muthukumaran Vs. Periyasamy*** reported in ***CDJ***

2012 MHC 1815 this Court has held as under:-

“27. If all the above said aspects are taken into consideration, we can come to the only conclusion that the revision petitioner/accused was able to establish the improbabilities of the case of the respondent/complainant and also prove his defence case by preponderance of probabilities and that the respondent/ complainant has not discharged his reverse burden of proving that the cheque was issued in his favour for a legally recoverable debt or other liability. The respondent/complainant has also failed to prove that the revision petitioner/accused has committed an offence under [section 138](#) of the Negotiable Instruments Act, 1881 beyond reasonable doubt to dislodge the general presumption, which stands cast on the respondent/complainant on due rebuttal of the presumption under [section 139](#) of the Negotiable Instruments Act, 1881. Both the courts below have not properly appreciated the evidence in this regard and the principles of law governing the degree of proof required for an accused facing a charge under [section 138](#) of the Negotiable Instruments Act, 1881 to rebut the presumption under [section 139](#) of the Act and the degree of proof required on the part of the complainant when such rebuttal takes place. This court is also of the opinion that the courts below would have arrived at a conclusion that the charge was not proved beyond reasonable doubt and the revision petitioner/accused was entitled to be acquitted, as he could not be found guilty of the offence with which he stood charged, had they properly appreciated the evidence and applied legal principles [referred above](#) correctly. For all the reasons stated above, this court comes to the conclusion that the judgment of the trial court convicting the appellant and that of the lower appellate court confirming the conviction, are defective, infirm and are liable to be interfered with and set aside by invoking the revisional powers of this court.”

9.10. In the case of ***K.Ilayarajalingam Vs. K.Karthikeyan*** in

Crl.R.C.No.1123 of 2017, dated 20.06.2022 this Court has held as under:-

“10. The deposition of PW-1/complainant indicates that on 16.10.2015 he advanced loan of Rs.9 lakhs to the petitioner on his promise that he will repay the money within one month. The Cheque drawn at Axis Bank, Tiruppur Branch dated 16.11.2015 for Rs.9 lakhs was given to him as security. The petitioner promised that if the cheque is presented



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on the date it bears, he can realise the money. However, on presentation, the cheque bounced with an endorsement “insufficient fund”. In the cross examination, the complainant admits that he did not receive any other document as proof for advancing loan of Rs.9 lakhs, except the subject cheque. The cash was given in 500 and 1000 rupees denomination at his house. It was the savings kept in the house and not drawn from the bank. Except he and the petitioner, none were present in his house at that time. Though he claims, he has 6 acres of land, he admits that he has not produced any document to show that he hold 6 acres of land. It is suggested in the cross examination to PW-1 that he has no source of income to advance loan of Rs.9 lakhs and that is the reason why he has not produced any document to prove his income.

11. The consistent defence of the petitioner ever since he received the statutory notice from the complainant/respondent is that there was no privity of contract and the cheque was not given to the complainant to discharge any legally enforceable debt and further, the complainant has no source of income to advance Rs.9 lakhs. When a specific defence raised by the accused person at the inception itself even before filing the complaint, the complainant is bound to explain in his complaint regarding the source of income. Failure to explain his source of income is fatal to the complaint. The person capacity to advance loan of Rs.9 lakhs is a very fundamental fact when the capacity is questioned. To add, the complainant admits that he did not receive any other document for advancing loan of Rs.9 lakhs, except the postdated cheque given to him. In any transaction, when cheque is issued, it is presumed to be issued to discharge the existing debt. Offence under [Section 138](#) of Negotiable Instruments Act will get attracted, if the said debt happens to be legally enforceable. Therefore, the existing debt pre-suppose a presumption. If the accused able to prove by preponderance of probabilities that there was no existing debt on the date on which the cheque bears, then the complainant under [Section 138](#) of the Negotiable Instruments Act cannot have the advantage of the statutory presumption under [Section 139](#) of the Negotiable Instruments Act.

12. As pointed out by the Hon'ble Supreme Court in *Basalingappa v. Mudiasappa* reported in (2019) 5 SCC 418 (cited supra), when the capacity to advance loan or transaction for which the alleged cheque given is denied, the complainant cannot take advantage of [Section 139](#) of the Negotiable Instruments Act without discharging his burden of proving the fundamental fact regarding transaction, which has created an existing debt (or) his capacity to advance loan atleast equivalent to the amount found in the cheque. In this case, for the cheque amount is Rs.9 lakhs, no other previous existing debt (or) transaction claimed in the



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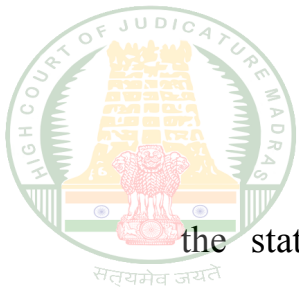
complaint. No evidence was produced by the complainant to prove his financial capacity to advance a huge sum of Rs.9 lakhs.

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13. Taking into consideration his background admittedly a small time farmer holding 6 acres of land and not even a bank savings account claiming he advanced loan of Rs.9 lakhs as against the postdated cheque and no other document obtained for the money transaction, is obviously bound to be suspected.”

10. In the light of the above rulings, the learned Counsel for the Revision Petitioner seeks to allow this Criminal Revision Case and to set aside the judgment of conviction recorded by the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016 dated 08.08.2019 and also the judgment of the learned Principal District and Sessions Judge, Krishnagiri District, in Crl.A.No.42 of 2019 dated 09.10.2020, as both are perverse.

11. Learned Counsel for the Respondent (Complainant before the Trial Court) objected to the line of argument to the learned Counsel for the Revision Petitioner, stating that the Revision Petitioner as Accused before the Trial Court, was aware of the fact that the cheques bounced. He expected statutory notice for the bounced cheques through the lawyer of the Complainant. Therefore, he cleverly avoided service of notice. The statutory notice issued by the Complainant after return of the cheques for insufficient funds was sent to the Accused to the proper address of the Accused. The Accused evaded receiving. Therefore, the registered postal cover containing



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the statutory notice issued on behalf of the Complainant was returned

unserved.

12. Learned Counsel for the Respondent (Complainant before the Trial Court) had drawn the attention of this Court to Exhibits marked on the side of the Complainant in the private complaint in S.T.C.No.394 of 2016 on the file of the learned Judicial Magistrate, Uthangarai. Ex.P-1 is the cheque dated 01.03.2015 bearing cheque No.681401 for Rs.10 lakhs. Ex.P-2 is the cheque dated 01.03.2015 bearing cheque No.681402 for Rs.10 lakhs. Ex.P-3 is the memo for return of the cheques under Ex.P-1 and Ex.P-2 from the State Bank of India, Ellakimpatti Branch, Dharmapuri District (the Bank where the Accused maintained his account). Ex.P-4 is the written memo from the Indian Bank Ellakimpatti Branch, Dharmapuri District, where the Complainant maintained his account. Ex.P-5 is the statutory notice issued on 23.03.2015 by the Complainant. Ex.P-6 is the returned registered postal cover along with acknowledgement card. Ex.P-7 is the returned cover. Ex.P-8 is the salary slip for the salary received by the father of the Complainant, Arumugam. The Accused had not entered the witness box. He had examined Thiru.Rajendran, who is the Authorized Officer from the spinning mill where the friend of the Accused, Annadurai and the Complainant were employed. Ex.D-1 is the



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authorization letter issued by the Managing Director of the mill in favour of Rajendran, to adduce evidence on behalf of the Managing Director of the spinning mill. Ex.D-2 is the salary details of the Complainant, who is an employee of weaving spinning mill from January 2014 till April 2019. Ex.D-3 is the salary details and retirement benefits details of the Complainant, Kokilesh, and the details of the retirement benefits of the father of the Complainant, Ganesh and the father-in-law of the Complainant, Arumugam.

13. Learned Counsel for the Respondent (Complainant before the Trial Court) submitted that at the time of admission of the Appeal before the learned Principal District and Sessions Judge, Krishnagiri District, the Accused was directed to deposit Rs.4 lakhs to the credit of S.T.C.No.394 of 2016 on the file of the learned Judicial Magistrate, Uthangarai. Accordingly, the Accused had deposited Rs.4 lakhs. After filing Crl.R.C.No.434 of 2021 against the dismissal of Crl.A.No.42 of 2019 passed by the learned Principal District and Sessions Judge, Krishnagiri District, the Revision Petitioner/Accused before the learned Judicial Magistrate, Uthangarai, had filed Crl.M.P.No.7082 of 2021 in Crl.R.C.No.434 of 2021, seeking suspension of sentence. This Court by order dated 02.09.2021, granted suspension of sentence on condition that the Accused/Revision Petitioner in Crl.R.C.No.434



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of 2021 had deposited Rs.6 lakhs to the credit of S.T.C.No.394 of 2016 on the file of the learned Judicial Magistrate, Uthangarai. Accordingly, he had deposited the amount. Therefore, Crl.M.P.No.12393 of 2021 in Crl.R.C.No.434 of 2021 had been filed seeking permission of this Court to withdraw the amount of Rs.6 lakhs pending on the file of the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016.

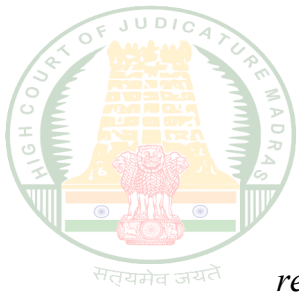
14. When Crl.M.P.No.12393 of 2021 in Crl.R.C.No.434 of 2021 came up for hearing before the learned Single Judge of this Court, the learned Single Judge of this Court, as per order dated 25.01.2022, passed the following order:-

“The present petition has been filed by the complainant seeking to direct the learned Judicial Magistrate, Uthangarai to release a sum of Rs.6,00,000/- deposited into the court in S.T.C.No.394 of 2016 to the petitioner.

2. Learned counsel for the petitioner/complainant would bring to the notice of the court the following aspects in support of the petition:-

(i) The petitioner is the complainant in S.T.C.No.394 of 2016 on the file of the learned Judicial Magistrate, Uthangarai, Krishnagiri District filed against the respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act in respect of a dishonour of a cheque for a sum of Rs.20,00,000/-.

(ii) After a full-fledged trial, the learned Judicial Magistrate had found the respondent/accused guilty by order dated 8.8.2019 and convicted and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.20,00,000/- as compensation to the petitioner/complainant.



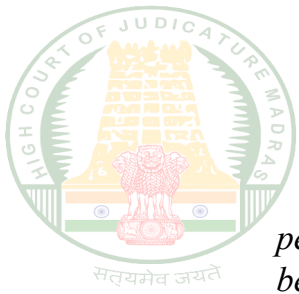
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(iii) Against such conviction and sentence, the respondent/accused filed Criminal Appeal No.42 of 2019 on the file of the Principal Sessions Judge, Krishnagiri. During the pendency of the Appeal, the respondent/accused was directed to deposit a sum of Rs.4,00,000/- to the credit of S.T.C.No.394 of 2016 and the respondent has also deposited the amount. The petitioner/complainant had filed Crl.M.P.No.681 of 2020 seeking permission to withdraw the amount and the learned Appellate Judge, by order dated 9.10.2020, permitted the petitioner/complainant to withdraw the said sum of Rs.4,00,000/-. Subsequently, the Appeal preferred by the respondent/accused was dismissed and the Judgment of the Trial Court was confirmed by order dated 9.10.2020.

(iv) Against the dismissal of Appeal, the respondent/accused had preferred Crl.R.C.No.434 of 2021 and the same is pending before this court. In the Criminal Revision Case, the respondent/accused had filed Crl.M.P.No.7082 of 2021 seeking suspension of sentence and this court, by order dated 2.9.2021, was pleased to grant suspension of sentence on a condition that the respondent/accused shall deposit a sum of Rs.6,00,000/- to the credit of S.T.C.No.394 of 2016. The respondent/accused has also deposited a sum of Rs.6,00,000/-.

(v) The Summary Trial Case was filed for dishonour of cheque that was issued by the respondent/accused during March 2015 in repayment of amount paid by the petitioner/complainant on 10.1.2015 and due to the long delay, the petitioner/complainant is put to severe financial hardship and thereby the present petition has been filed seeking to withdraw the sum of Rs.6,00,000/- deposited before the Trial Court. The petitioner/complainant has got a good chance for obtaining favourable order in the present Criminal Revision Case and he undertakes that in event the respondent/accused succeeds in the present Criminal Revision Case, he would return the money to the respondent/accused. He is also prepared to file necessary Affidavit of Undertaking before the Judicial Magistrate concerned.

3. The present Civil Miscellaneous Petition was listed on 1.12.2021 and on that date, the learned counsel for the revision petitioner/accused submitted that the revision petitioner is ready for final hearing of the main revision and thereby the matter was listed for final hearing on 15.12.2021. On that date also, at the request of the learned counsel for the revision petitioner, the matter stood adjourned and when it was listed on 19.1.2022, once again, it was adjourned to 21.1.2022 on the request of the learned counsel for the revision petitioner and thereafter, on 21.1.2022, it was once again adjourned on the submission of the learned counsel for the revision



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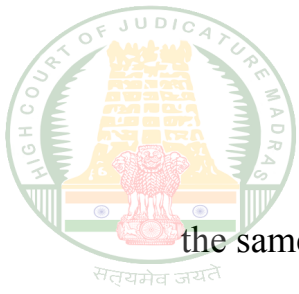
petitioner that a compounding petition has been filed and now, it has been listed today. Even today, the learned counsel for the respondent/revision petitioner seeks further time reiterating the ground that a petition seeking to compound the case has been filed. However, it is submitted by the learned counsel for the petitioner/complainant that no approach has been made by the revision petitioner for compounding and it is only a dilatory tactics to delay the case.

4. From the conduct of the counsel for the revision petitioner, it is seen that the revision petitioner is not interested to conduct the case and give quietus to the issue. Further, it is the stand of the revision petitioner that a petition for compounding the offence has been filed and steps are being taken to resolve the issue. In such circumstances, this court is of the opinion that the complainant/petitioner herein may be permitted to withdraw the the sum of Rs.6,00,000/- which has been deposited before the Trial Court. Accordingly, he is permitted to withdraw the said sum of Rs.6,00,000/- lying in deposit before the Trial Court in S.T.C.No.394 of 2016 by filing an Affidavit of Undertaking before the court concerned undertaking to return the amount with bank interest in the event of the revision being allowed in favour of the revision petitioner/accused.

List the Criminal Revision Case for final hearing in the third week of February 2022.”

15. The learned Single Judge had observed that the Criminal Revision Case shall be posted in the 3rd week of February, 2022. Subsequently, the Revision Petitioner had filed Crl.M.P.No.720 of 2022 in Crl.R.C.No.434 of 2021, seeking compounding of the offence along with his affidavit so that Rs.10 lakhs have already been deposited on the file of the learned Judicial Magistrate, Uthangarai, and the balance amount will be paid directly to the Respondent or deposited before the learned Judicial Magistrate, Uthangarai.

So that the sentence of imprisonment shall be compounded and took time for



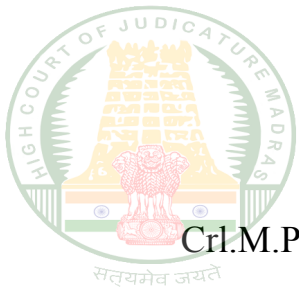
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the same repeatedly.

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16. It is the submission of the learned Counsel for the Respondent (Complainant before the Trial Court) in Crl.R.C.No.434 of 2021 till date, this Crl.M.P.No.720 of 2022 in Crl.R.C.No.434 of 2021 is pending along with his affidavit of the Revision Petitioner, the Accused before the learned Judicial Magistrate, Uthangarai. While so, in the Criminal Revision Case, he is raising a contradictory argument that he did not borrow any amount and the Complainant did not expect any loan. The Complainant had accepted postdated blank cheques duly signed by the Accused. Also, the learned Counsel for the Respondent (Complainant before the Trial Court) before the learned Judicial Magistrate, Uthangarai, would submit that the complaint was preferred with the Dharmapuri Town Police Station, claiming cheques book containing cheque leaves with numbers was missed by the Accused in the Dharmapuri Bus Stand. Based on which, the CSR issued by the Dharmapuri Town Police Station, which was filed before the learned Judicial Magistrate, Uthangarai, was not marked.

17. Learned Counsel for the Respondent (Complainant before the Trial Court) had submitted that the date of missing of the cheques was 2015.



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Crl.M.P.No.720 of 2022 in Crl.R.C.No.434 of 2021 is pending before this

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Court for compounding of the offence. The cheques issued by the Accused on 10.01.2015. The cheques was presented by the Complainant on 09.03.2015. The complaint given by the Accused on 06.04.2015. Based on which, CSR issued by the Dharmapuri Town Police Station in C.S.R.No.199 of 2015, in which it is clearly mentioned that cheque book containing cheque Nos.681401 to 681425, was lost in the Dharmapuri Bus Stand, it is clearly an afterthought to wriggle out from the legal procedures through the Court of law for the offence under Section 138 of the Negotiable Instruments Act committed by the Accused.

18. Learned Counsel for the Respondent (Complainant before the Trial Court) also invited the attention of this Court to the complaint given by the Complainant, Kokilesh, dated 06.04.2015. It is to be noted that the Accused wantonly evaded the statutory notice.

19. If what had been submitted by the learned Counsel for the Accused regarding probabilities of the defence, probabilities of the case are proved. The Accused is not known to the Complainant. The Accused approached the Complainant through Annadurai, who was examined as D.W-2



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in this case. Both Annadurai and Complainant, Kokilesh are employees of the spinning mill at Uthangarai. If that be so, the Accused is not known to the Complainant. The Accused approached the Complainant through Annadurai for a loan. The Complainant promised to arrange the loan and obtained duly signed blank cheques from Annadurai, which were signed by the Accused and promised to arrange the loan. In spite of repeated time sought by the Complainant, he did not arrange the loan. Therefore, the Accused and his friend Annadurai went to the residence of the Complainant, seeking to get back the duly signed blank cheques from the Complainant. At that time, the Complainant claimed that he had misplaced the cheques. Therefore, the Accused had given a complaint to the Dharmapuri Town Police Station. If what had been stated by the Accused is true, what prevented the Accused from issuing the statutory notice to the Complainant that he should not present the cheques for withdrawal of the amount from the account of the Accused? He shall not present the cheques. What prevented the Accused from issuing notice to his bank not to honour the cheques, as he had preferred the complaint to the Dharmapuri Town Police Station that he had lost his cheque book? What prevented the Accused from issuing notice to his own bank, State Bank of India, Ellakiampatti Branch, Dharmapuri District, that he had lost the entire cheque book containing cheque Nos.681401 to 681425? Apart from that, the



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Accused himself avoided the witness box. Therefore, the learned Judicial Magistrate, Uthangarai, was right in rejecting the defence of the Accused and convicted the Accused based on the evidence available before the Trial Court, based on the presumptions in favour of the holder of the cheques, the Complainant herein.

20. Learned Counsel for the Respondent (Complainant before the Trial Court) invited the attention of this Court to the presumption under Sections 118 and Section 139 of the Negotiable Instruments Act. Also, it is the submission of the learned Counsel for the Respondent (Complainant before the Trial Court) that the ruling relied on by the learned Counsel for the Revision Petitioner is not at all applicable to the facts of this case. The learned Counsel for the Revision Petitioner relied on the order passed by this Court in the case of *V.Gunasekaran and Another Vs. Mahalakshmi Bright Steel Industries Private Limited* in *Crl.O.P.No.21371 of 2021*, wherein this Court had quashed the criminal complaint under Section 138 of the Negotiable Instruments Act on the ground that the cheques were issued by the Accused. In that case, the outstanding claim was already time barred and that facts will not be applicable to the facts of this case. Here, the facts are different. As per the defence of the Accused, the Complainant promised to arrange the loan. It is not the case of



the Accused that the Complainant did not arrange the loan. When the Complainant was cross-examined regarding the resources, he had clearly stated that his father and father-in-law retired as employees of the spinning mill, and the retirement benefits were available with him. After availing the loan and committing default, the Accused cannot be permitted to question the resources of the Complainant. Only to protect persons who had advanced loans under the Negotiable Instruments Act had been brought in to curb the illegal and unlawful activities of the persons like the Accused.

21. Learned Counsel for the Respondent (Complainant before the Trial Court) invited the attention of this Court to the analysis of the evidence before the learned Judicial Magistrate, Uthangarai, in the judgment in paras 10 to 14 and rightly rejected the defence of the Accused. It is not the case that the learned Judicial Magistrate, Uthangarai, had not considered the defence. The learned Judicial Magistrate, Uthangarai, considered the defence in the light of the reported ruling. The learned Counsel for the Respondent (Complainant before the Trial Court) had rejected the defence of the Accused from the conduct of the Accused before the Trial Court avoiding the witness box.

22. In support of his contention, the learned Counsel for the Respondent (Complainant before the Trial Court) relied on the following



reported rulings:

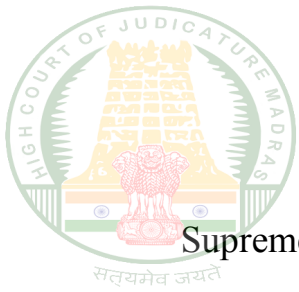
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22.1. In the case of ***Rangappa Vs. Sri Mohan*** in ***Crl.App.No.1020 of 2010*** dated ***07.05.2010*** the Hon'ble Supreme Court has held as follows:-

“15. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under [Section 138](#) of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant.

16. In conclusion, we find no reason to interfere with the final order of the High Court, dated 26-10-2005, which recorded a finding of conviction against the appellant. The present appeal is disposed of accordingly.”

22.2. In the case of ***Rohitbhai Jivanlal Patel Vs. State of Gujarat & Anr.*** in ***Crl.App.No.508 of 2019*** dated ***15.03.2019*** the ruling of the Hon'ble



Supreme Court has held as follows:-

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“21. The result of discussion in the foregoing paragraphs is that the major considerations on which the Trial Court chose to proceed clearly show its fundamental error of approach where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond reasonable doubt. Such being the fundamental flaw on the part of the Trial Court, the High Court cannot be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. As noticed hereinabove, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the Trial Court and after examining the evidence on record as a whole, found that the findings of the Trial Court are vitiated by perversity. Hence, interference by the High Court was inevitable; rather had to be made for just and proper decision of the matter.

22. For what has been discussed hereinabove, the findings of the High Court convicting the accused-appellant for offence under [Section 138](#) of the NI Act deserves to be, and are, confirmed.”

22.3. In the case of *Ms.Kalamani Tex & Anr. Vs. P.Balasubramanian* in *Crl.App.No.123 of 2021* dated *10.02.2021* the Hon'ble Supreme Court has observed as under:-

“22. For the reasons stated above, the present appeal is liable to be dismissed. We order accordingly. Ordinarily and as a necessary sequel thereto, Appellant No.2 would be liable to undergo the sentence of simple imprisonment as awarded by the High Court. However, given the peculiar facts and circumstances of the case, namely, that the appellants volunteered and thereafter have deposited the cheque amount with the Registry of this Court in the year 2018, we are inclined to take a lenient view. The impugned judgment of the High Court dated 09.11.2017 is thus modified, and it is directed that Appellant No.2 shall not be required to undergo the awarded sentence. The registry of this Court is directed to transfer the amount of Rs.11.20 lakhs along with interest accrued thereupon to the respondent within two weeks.”

Point for consideration:

Whether the judgment of the learned Principal



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District and Sessions Judge, Krishnagiri District, dismissed Crl.A.No.42 of 2019 by judgment dated 09.10.2020, thereby confirming the judgment of the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016 dated 08.08.2019 are perverse and are to be set aside?

23. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent and perused the typed set furnished by both parties containing the copies of depositions and the copies of the documents relied on by the learned Judicial Magistrate, Uthangarai, to assess the materials and arrived at the conclusion, thereby convicting the Accused for the offence under Section 138 of the Negotiable Instruments Act, and perused the judgment of the learned Principal District and Sessions Judge, Krishnagiri District.

24. On consideration of the rival submission and on perusal of the judgment of the learned Judicial Magistrate, Uthangarai, as rightly pointed out by the learned Counsel for the Respondent (Complainant before the Trial Court), the learned Judicial Magistrate, Uthangarai, had rejected the defence of the Accused on the ground that the defence of the Accused is not probabalized through the evidence of D.W-1 and D.W-2. The learned Judicial Magistrate, Uthangarai, had observed that the Accused had not denied the signatures



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found on the blank cheques. The Accused had not denied the issuance of cheques. Also, the learned Judicial Magistrate, Uthangarai, had observed that the statutory notice sent to the address of the Accused returned unserved. Therefore, the learned Judicial Magistrate, Uthangarai, had observed that the presumptions in favour of the Complainant as the Accused wantonly evaded statutory notice.

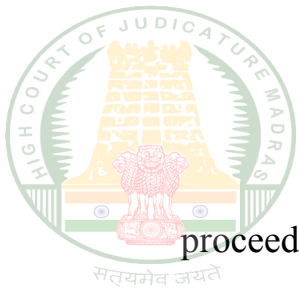
25. The submission of the learned Counsel for the Revision Petitioner that the learned Judicial Magistrate, Uthangarai, failed to appreciate the evidence in proper perspective by considering the points raised by way of defence cannot be accepted by this Court in Revision on the ground that the Accused was aware that he issued cheques through Annadurai. The Accused is aware that he did not receive the loan when he approached the Complainant. If the submission of the learned Counsel for the Revision Petitioner is to be accepted by this Court, the Accused as a normal prudent man, ought to have issued notice to the Bank, calling upon the Bank that he had lost the cheques. Therefore, the cheques need not be honoured by the Bank. He had not done so till the filing of the complaint. The conduct of the Accused before the Trial Court in not entering the witness box itself gives presumption to the Trial Court. The Trial Court is within its powers to draw adverse inferences from



the conduct of the Accused.

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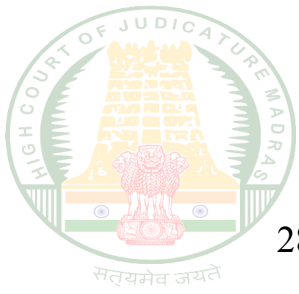
26. If what had been argued by the learned Counsel for the Revision Petitioner is to be accepted, the Revision Petitioner as Accused before the Trial Court is a stranger to the Complainant. The Complainant as a stranger to the Accused, is not expected to lend huge amount to a person with whom he is not acquainted. In this case, the Accused submits that Annadurai and Complainant are employees of the spinning mill at Uthangarai. Annadurai stated that the Complainant can arrange loan. When they approached the Complainant, he promised to arrange the loan on the ground that if the blank duly signed cheques were handed over to him, subsequently, he did not arrange the loan. Then what prevented as normal prudent man from issuing notice to the Bank not to honour the cheques bearing cheque Nos.681401 to 681425. If the complaint given to the Dharmapuri Town Police Station by the Accused had been true, the complaint should have been followed by the Accused by issuing statutory notice to the Bank not to honour the cheques. He had not done so. Apart from that, after receiving summons from the Court, he appeared before the Court. At the time of appearing before the Court, what had been stated in the complaint had been true, he could have sought time to settle the dues or if he had denied the claim of the complainant he should have



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proceeded with the trial and discharge the burden cast upon him to prove his claim. It is the case of the Accused that he did not receive any amount. If that had been the case, what prevented him from entering the witness box? The conduct of the Accused avoiding witness box itself had to be considered in this case by the learned Judicial Magistrate, Uthangarai, drawing adverse inference against the Accused. Under those circumstances, the submission of the learned Counsel for the Revision Petitioner that the probabilities of the case was not appreciated by the learned Judicial Magistrate, Uthangarai, will not hold good in the facts and circumstances of this case.

27. The first point is that the Accused evaded notice sent by the Complainant. The second point is that the Accused having knowledge that he lost 10 cheque leaves as per his own complaint before the Dharmapuri Town Police Station. He should have followed it by issuing notice to the Bank bearing cheques Nos.681401 to 681425. He had not done so. The third point is that when he denies borrowal of loan, it is for him to enter the witness box and adduce evidence. Instead, he challenges the economic resources of the Complainant saying that the Complainant did not have sufficient resources to extend the huge loan of Rs.20 lakhs.



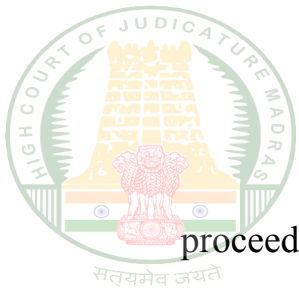
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28. As rightly pointed out by the learned Counsel for the Respondent

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pending before this Court, already when the Appeal was filed before the learned Principal District and Sessions Judge, Krishnagiri District, for suspension of sentence before the Trial Court, Rs.4 lakhs was imposed by the learned Principal District and Sessions Judge, Krishnagiri District. Accordingly, he had deposited Rs.4 lakhs. When the Criminal Revision Case came up for hearing for admission before this Court, he had filed Crl.M.P.No.7082 of 2021 in Crl.R.C.No.434 of 2021 seeking suspension of sentence. This Court, by order dated 02.09.2021, directed the Revision Petitioner to deposit Rs.6 lakhs before the Trial Court. Therefore, he had deposited Rs.6 lakhs. Subsequently, the Complainant before the Trial Court filed Crl.M.P.No.12393 of 2021 in Crl.R.C.No.434 of 2021, seeking permission of this Court to withdraw the amount of Rs.6 lakhs pending on the file of the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016, which was also ordered by the learned Single Judge of this Court by order dated 25.01.2022, in which the learned Single Judge has observed as above-mentioned in para 14 above. Even after the Roster changed, even after several adjournments, the Revision Petitioner did not come forward to argue.

Therefore, this Court has directed that on the adjourned date, if he does not



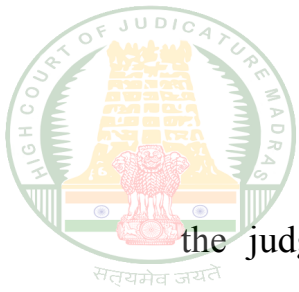
proceed with the argument, the subject matter will be reserved for judgment.

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Only then he volunteered to argue. That shows the Revision Petitioner wanted to evade the judgment of the learned Judicial Magistrate, Uthangarai, by filing this Criminal Revision Case.

29. As rightly pointed out by the learned Counsel for the Respondent (Complainant before the Trial Court) when two Courts had held concurrently against the Accused, the Revision has no merit. What are all argued by the learned Counsel for the Revision Petitioner cannot be accepted when he had not exercised his right of defence at the first instance by accepting the legal notice by the Complainant and replying to the same. He had failed in his duty. Therefore, the observation by the learned Judicial Magistrate, Uthangarai, in paragraphs 10 to 14 is found to be well-reasoned order in the facts and circumstances of this case, as gathered from the evidence available from the Trial Court.

30. Again, the same was agitated by the Accused as Appellant before the learned Principal District and Sessions Judge, Krishnagiri District, in Crl.A.No.42 of 2019. After reassessing the same, evidence available analyzing



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the judgment of the learned Judicial Magistrate, Uthangarai, the learned Principal District and Sessions Judge, Krishnagiri, had dismissed the Appeal by judgment dated 09.10.2020. Therefore, as rightly pointed out by the learned Counsel for the Respondent (Complainant before the Trial Court), this Criminal Revision Case has no merit.

31. As per order passed by this Court in *V.Gunasekaran and Another Vs. Mahalakshmi Bright Steel Industries Private Limited* in *Crl.O.P.No.21371 of 2021* is the case where time barred debt as alleged to have been settled by issuing all the cheques. In this case, the cheques was presented by the Complainant before the learned Judicial Magistrate, Uthangarai, after 5 years of the issuance of cheques. The invoice raised by the Complainant in that case itself was time barred. Money claims had to be claimed by the claimant within a specified time of 3 years as per the Limitation Act. In that case, the claim was made after five years in in *Crl.O.P.No.21371 of 2021*. The defence of the Accused before the learned Judicial Magistrate, Uthangarai, was that the Accused had stopped purchasing material from the Complainant. The cheques already issued by him five years prior was filled up and presented by the Complainant. In that case the invoice relied on by the Complainant was time barred after 5 years for which no prudent, reasonable



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man would give cheques. Therefore, the criminal complaint under Section 138 of the Negotiable Instruments Act was quashed. The said ruling cannot be pressed into service by the Revision Petitioner herein as the facts are different. As per the defence of the Accused, he had never availed loan from the Complainant. The said fact cannot be accepted in the light of the judgment of the learned Judicial Magistrate, Uthangarai, in paragraphs 10 to 14 of the judgment, which was confirmed in the Appeal by the learned Principal District and Sessions Judge, Krishnagiri District. Therefore, the learned Counsel for the Appellant placing reliance on the ruling of the Hon'ble Supreme Court will not help this case. If he had replied to the statutory notice by stating that he had not availed loan. He had issued cheques expecting loan. But the loan was not extended. The rule will not support him. Here is a case where the Accused had admitted the signature and as per the defence of the Accused, he issued cheques to accept the loan but the loan was not granted. While so, he had preferred a criminal complaint. He had lost the entire cheque book containing 10 cheque leaves in the Dharmapuri Bus Stand. As rightly pointed out by the learned Counsel for the Respondent (Complainant before the Trial Court), it is only to wriggle out from the consequences of the case under Section 138 of the Negotiable Instruments Act. Therefore, contradictory stand taken by the Accused is to be rejected, automatically, the burden shift on the Accused. The



presumption drawn by the Court automatically will be in favour of the Complainant. By all means, the conduct of the Accused before the Trial Court has strong presumption to draw an adverse inference against the Accused.

32. The ruling cited on behalf of the Revision Petitioner/Accused before the trial Court will not help the case of the Revision Petitioner in the light of the proceedings recorded by the learned Judge of this Court in paragraph 14 above. When the Accused before the trial Court had questioned the wherewithal and the financial position of the Complainant, he ought to have issued notice calling upon the complainant not to present the cheque as he had not received any money from the Complainant. As he was aware the cheque duly signed by him is in the custody of the Complainant, the Complainant had obtained it from the friend of the Accused who is the acquaintance of the Complainant Annadurai and as promised by the Complainant, he had not arranged loan for Rs.20,00,000/- (Rupees Twenty Lakhs only) but had received the cheque issued by the Accused.

33. When the amount had not been received by the Accused, what prevented the Accused from issuing a notice calling upon the Complainant not to present the cheque. He had not done so. He had evaded statutory notice



issued by the Complainant. When he had not received statutory notice, he can make up his defence on receiving copies before the trial Court. In cases under the summary trial proceedings/STC cases, when the Accused appeared the copies are furnished on the same day they are questioned, unlike in warrant cases where the charges are framed after furnishing copies, after hearing the arguments of the Prosecution and the defence. Here it is not the case. The Accused is questioned on the date when the Accused appeared and copies of the Complaint are furnished. On such date, the Accused would have stated his defence and sought time for put forth his claim. In support of his claim, he had not done so. After completion of the Complainant's evidence, he sought to examine defence witness he did not enter into the witness box. Therefore, naturally, the Court draws an adverse presumption against the Accused under Section 114 of the Indian Evidence Act.

34. After the trial Court had convicted the Accused, the Accused went in Appeal before the learned Principal District and Sessions Judge, Krishnagiri, where the Appeal filed by the Accused was dismissed. Therefore, the finding of the trial Court was confirmed in Appeal. Aggrieved by the dismissal of the Appeal, the Accused before the trial Court and the Appellant before the Appellate Court had come with this Criminal Revision. In Revision



usually the Court cannot sit in Appeal and peruse the entire materials.

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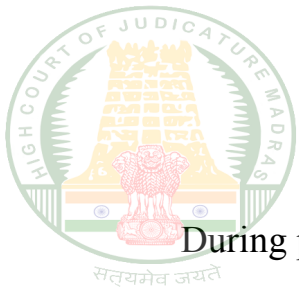
Therefore, the claim of the Revision Petitioner/Accused that both the Courts had failed to appreciate evidence cannot be considered by this Court exercising revisional jurisdiction. Under those circumstances, the rulings relied on by the Revision Petitioner in *Basalingappa Vs. Mudibasappa* reported in *2019 2 ACR 1978*; *K.Subramani Vs. K.Damodara Naidu* reported in *CDJ 2014 SC 935*; *Vijay Vs. Laxman & Another* reported in *CDJ 2013 SC 110*; *V.Gunasekaran and Another Vs. Mahalakshmi Bright Steel Industries Private Limited* in *Crl.O.P.No.21371 of 2021*; *M.Palanisamy Vs. K.Karvannan* reported in *2015 5 CIJ 684*; *Thangaraj vs. Byrappa* reported in *2016 0 Supreme (Mad) 3186*; *C.Ponnusamy Vs. M.Anbu* reported in *CDJ 2021 MHC 1347* will not help the Revision Petitioner's case.

35. In the light of the circumstances pointed out by the learned Judge of this Court in paragraph 14 above, when the Criminal Revision was pending, the learned Counsel for the Revision Petitioner sought time to file memo for compounding the offence between the parties and now attempting to argue the case on merits as though he had never borrowed the amount, is found contradictory. On the one hand the Revision Petitioner seeks to set aside the judgment of the trial Court on the ground that the trial Court failed to



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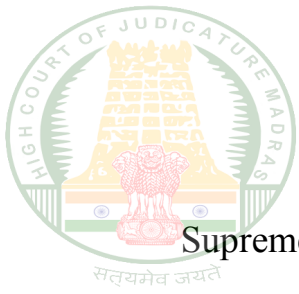
appreciate the evidence in its proper perspective the Appellate Court had confirmed the judgment in Appeal and dismissed the Appeal. After filing revision he had sought time to compound the offence that goes at the root of the case of the Revision Petitioner. Under those circumstances, the rulings cited by the learned Counsel for the Revision Petitioner need not be considered by this Court, as already observed, the facts of each of the case are different. In the case of ***C.Ponnusamy vs. M.Anbu*** reported in ***CDJ 2021 MHC 1347*** that was the case where the Accused had issued lawyers notice to the Complainant warning him that he should not present the cheques. Here, the Accused had evaded statutory notice before filing of the complaint by the Respondent in this Criminal Revision Petition. While pending criminal revision, the Accused had sought time to file memo to compound the offence. That itself goes against the Revision Petitioner taking contradictory stand before the High Court. In ***Thangaraj vs. Byrappa*** reported in ***2016 0 Supreme (Mad) 3186*** the Accused had taken a stand that the Accused had not received any amount from the Appellant/Complainant and not issued any cheque. The learned Judicial Magistrate believed the version of the Accused and acquitted the Accused. Here, by the conduct of the Accused, the learned Judicial Magistrate, Uthangarai had not believed the version of the Accused. The Accused could not succeed in Appeal. Therefore, this Revision is filed.



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During pendency of the Revision, the learned Judge of this Court had observed in paragraph 14 above. The ruling of this Court in *V.Gunasekaran and Another Vs. Mahalakshmi Bright Steel Industries Private Limited* in *Crl.O.P.No.21371 of 2021*, the subject matter is different. There in the reported ruling, the Accused is alleged to have issued cheque towards settling the dues. As per the evidence available before the trial Court, the goods were supplied five years prior to the date of filing of the complaint. Based on the invoices raised by the Complainant, the invoices are found five years time barred debt. Therefore, for the time barred debt, the Accused is not expected to issue cheque. The cheques issued by the Accused subsequent to the alleged date of dishonour were honoured. Therefore, the Court did not believe the version of the Complainant in that case and thereby acquitted the Accused in Crl.O.P.No.21371 of 2021. Here it is not so. The defence of the Accused is that he had not received any amount. Under those circumstances, the contradictory stand taken before this High Court in Criminal Revision seeking time for settling dues by filing memo to compound the offences as observed by the learned Judge in paragraph 14 above. Under those circumstances, the rulings relied on by the learned Counsel for the Revision Petitioner will not help the case of the Revision Petitioner. Hence, the same are rejected. The conduct of the Accused raises presumption as per the ruling of the Hon'ble



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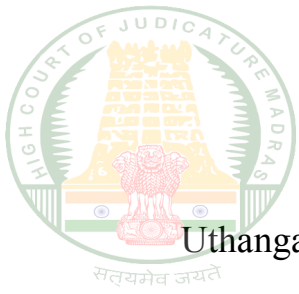
Supreme Court in the case of ***Rangappa Vs. Sri Mohan*** in ***Crl.App.No.1020 of 2010*** dated ***07.05.2010***. The Accused had not given complaint to the Police

regarding the missing of cheques which has made the Court to draw adverse inference against the Accused. Therefore, the presumption was drawn against the Accused under Section 139 of Negotiable Instruments Act and thereby convicted the Accused. In ***Ms.Kalamani Tex & Anr. Vs. P.Balasubramanian*** in ***Crl.App.No.123 of 2021*** dated ***10.02.2021*** once presumption is drawn under Section 118 and 139 of the Negotiable Instruments Act, the statute mandates that once the signature of an Accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. Such a situation the obligation shifts upon the Accused to discharge the presumption imposed upon him. Here the Accused had not discharged the burden cast upon him. After having suffered conviction and dismissal of the Appeal confirming the judgment of the trial Court, the Accused had preferred this Criminal Revision Case. As already observed by the learned Judge of this Court in paragraph 14 above, the Accused during the pendency of the Criminal Revision sought time to file memo to compound the offences. Therefore, he had made contradictory stand before this Court. Under such circumstances, the reported rulings cited by the learned Counsel for the Revision Petitioner are rejected.



WEB COPY36. As per the reported decision relied by the learned Counsel for the Respondent/Complainant the presumption is always in favour of the Complainant and against the Accused when the signature on the cheque is not denied, the presumption under Sections 118 and 139 of the Negotiable Instruments Act, is in favour of the Complainant. Apart from the above, the Accused evaded statutory notice. He himself had not issued notice calling upon the Complainant not to present the cheque as he had not received amount as was promised by the Complainant. Under those circumstances, the rulings cited by the learned Counsel for the Respondent are accepted. The rulings relied on by the learned Counsel for the Revision Petitioner cannot be accepted in the light of the fact that the Revision Petitioner sought time to file memo to compound the offences during the pendency of this Criminal Revision Case. Therefore, the rulings cited by the learned Counsel for the Revision Petitioner need not be considered by this Court and hence, the same are rejected.

37. In the light of the above discussion, the point for consideration is answered in favour of the Respondent and against the Revision Petitioner. The judgment of conviction recorded by the learned Judicial Magistrate,



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Uthangarai, in S.T.C.No.394 of 2016 dated 08.08.2019 and confirmed by the judgment of the learned Principal District and Sessions Judge, Krishnagiri District, dismissed Crl.A.No.42 of 2019 by judgment dated 09.10.2020 are found to be well-reasoned judgment and does not warrant interference by this Court. Therefore, the same are to be confirmed.

In the result, the **Criminal Revision Case stands dismissed** as having no merits. The judgment of conviction recorded by the learned Principal District and Sessions Judge, Krishnagiri District, dismissing Crl.A.No.42 of 2019 by judgment dated 09.10.2020, thereby confirming the judgment of the learned Judicial Magistrate, Uthangarai, in S.T.C.No.394 of 2016 dated 08.08.2019, are hereby confirmed.

The Revision Petitioner is directed to surrender before the learned Judicial Magistrate, Uthangarai, within a period of two weeks from the date of uploading the order.

The learned Judicial Magistrate, Uthangarai, is directed to issue warrant in continuation of judgment of conviction recorded by the learned Judicial Magistrate, Uthangarai, as per judgment in S.T.C.No.394 of 2016 dated



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08.08.2019 and to detain the Accused in prison to undergo period of sentence

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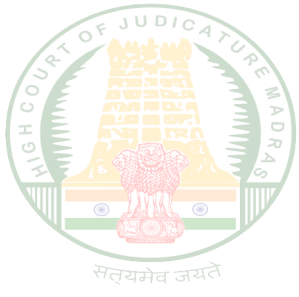
The learned Judicial Magistrate, Uthangarai, is directed to further proceed with the case. If the Accused does not surrender or abscond, the Complainant in this case ought to file appropriate Petition to declare the Accused as Proclaimed Offender. The jurisdiction Police shall be directed to assist the Court of the learned Judicial Magistrate, Uthangarai, to attach the movable and immovable properties of the Accused and bring them to sale by public auction and to declare him as Proclaimed Offender. The learned Judicial Magistrate, Uthangarai, is directed to act accordingly. Consequently, connected Criminal Miscellaneous Petition is closed.

29.04.2024

cda/srm

Index : Yes/No

Speaking/Non-speaking order



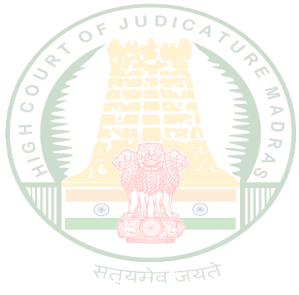
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To

- 1.The Judicial Magistrate, Uthangarai.
- 2.The Principal District and Sessions Judge,
Krishnagiri District.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda/srm

Order in
CrI.R.C.No.434 of 2021

29.04.2024