



Crl.R.C.No.991 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 07.03.2024**

Coram:

**THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**Crl.R.C.No.991 of 2019**

N.Karthick

...Petitioner

Vs

Nirmaladevi

...Respondent

**PRAYER:** Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C to set aside the Judgment and Conviction dated 03.09.2019 made in C.A.No.63 of 2019 on the file of the learned Principal Sessions Judge, Erode by confirming the Judgment and Conviction dated 29.01.2019 made in S.T.C.No.237 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode.

For Petitioner

..

Mr.C.S.Saravanan

For Respondent

..

Ms.D.Sathya  
Legal Aid Counsel

### **ORDER**

Aggrieved by the concurrent finding of the trial Court as well as the Appellate Court, the accused has preferred this criminal revision case.



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| TITLE                        | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name of the Trial Court      | The Judicial Magistrate Fast Track Court II, Erode                                                                                                                                                                                                                                                                                                          |
| Name of the Appellate Court  | The Principal Sessions Court, Erode                                                                                                                                                                                                                                                                                                                         |
| Trial Court Case Number      | S.T.C.No.237 of 2016 dated 29.01.2019                                                                                                                                                                                                                                                                                                                       |
| Criminal Appeal Number       | Crl.A.No.63 of 2019 dated 03.09.2019                                                                                                                                                                                                                                                                                                                        |
| Appellate's Name             | N.Karthik                                                                                                                                                                                                                                                                                                                                                   |
| Respondent's Name            | Nirmaladevi                                                                                                                                                                                                                                                                                                                                                 |
| Order of the Trial Court     | The accused was found guilty for the offence under Section 138 of Negotiable Instruments Act, 1881 and he was convicted and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.3,000/- i/d to undergo three months simple imprisonment for the offence under Section 138 of Negotiable Instruments Act, 1881.                        |
| Order of the Appellate Court | (i) The Criminal Appeal in C.A.No.63 of 2019 is hereby dismissed;<br><br>(ii) the finding of the guilt of the accused under Section 138 of Negotiable Instruments Act, 1881 and sentence imposed on the accused under Section 138 of NI Act in S.T.C.No.237 of 2016 dated 29.01.2019 by the learned Judicial Magistrate Fast Track II, Erode was confirmed. |



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2. The case of the complainant, as stated in the complaint in brief, is given hereunder:-

i) The complainant and the accused are known to each other for the past several years. On 06.06.2015, the accused borrowed a sum of Rs.4,25,000/- from the complainant to meet out his urgent business and family expenses. For that amount, he issued a post dated cheque bearing No.429455, dated 06.07.2015 for Rs.4,25,000/- drawn on State Bank of India, Erode Town Branch.

ii) The cheque was issued to discharge the existing liability.

iii) The cheque was presented for collection on 06.07.2015 to his banker, Indian Overseas Bank, Nasiyanur Branch. The same was dishonoured with the return memorandum stating "Funds Insufficient" on 08.07.2015.

iv) The complainant issued a legal notice on 22.07.2015 calling upon the accused to repay the cheque amount of Rs.4,25,000/- within 15 days from the date of receipt of the notice. Despite receipt of notice, the accused did not choose either to repay the money or to send reply notice.

v) The complainant further states that the accused has issued the



cheque to the complainant without arranging sufficient funds in his bank account with an intention to defraud the complainant's lawful claim. Since the cheque was returned, the factum of return of the cheque was communicated to the accused and having received the legal notice, the loan amount remained unpaid. These acts amount to an offence punishable under Section 138 of the Negotiable Instruments Act.

3. The defence set up by the accused is given in brief as under:-

3.1. The complainant did not have the financial capacity to lend an amount of Rs.4,25,000/-. There is a correction in the cheque in the year 2016. The accused was a subscriber in a chit for Rs.2,00,000/- run by the complainant and the cheque, which was issued for security purpose, was misused and this case is filed by utilising the said cheque.

4. Mr.C.Saravanan, learned counsel appearing for the revision petitioner vehemently contended that the accused did not owe any money to the complainant and the accused was a subscriber of a chit for an amount of Rs.2,00,000/- to the complainant. It is his further argument that the cheque was issued to the complainant as security, was misused and a false case is



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filed by the complainant. He would further strongly contend that the complainant did not have the financial capacity to lend an amount of Rs.4,25,000/-. These details were not taken into account by the trial Court as well as the Appellate Court.

5. *Per contra*, Ms.D.Sathya, learned counsel appearing for the respondent/complainant, (nominated by the High Court Legal Services Committee) strenuously argued that the accused is a known person to the complainant and for the urgent family and business expenses, he obtained a loan amount of Rs.4,25,000/- on 06.06.2015 and for the same, he issued a post-dated cheque on 06.01.2016 for a sum of Rs.4,25,000/- drawn on the State Bank of India, Erode Town Branch. She would further contend that the cheque was issued in order to discharge the legal liability. She would further contend that as the signature found in the cheque is not disputed by the accused, the legal presumption under Section 139 of Negotiable Instruments Act was rightly drawn in favour of the complainant and on failure of the accused to rebut the presumption, the trial Court rightly convicted the accused, which was also confirmed by the Appellate Court.



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6. At trial, the complainant's wife Tmt.Nirmala Devi examined herself as P.W-1 and marked nine documents. Ex.P-3 is the cheque dated 06.07.2015 issued by the accused for an amount of Rs.4,25,000/-. On the respondent's side, the complainant's banker/Senior Manager of Indian Overseas Bank was examined as R.W-1 and two documents were marked.

7. It appears that in the year 2016, as the complainant died, his wife/P.W-1 was brought on record as his legal heir.

8. It is the evidence of P.W-1-Tmt.Nirmala Devi that her husband died on 13.05.2016. She knows the accused for the past several years and the accused received a loan of Rs.4,25,000/- from her husband on 06.06.2015 for his urgent family and business expenses and for the same, on the same date, he issued a post-dated cheque for Rs.4,25,000/- drawn on the State Bank of India, Erode Town Branch.

9. It is her evidence that the said cheque Ex.P-3 was presented to the complainant's banker on 06.07.2015. It was returned through a return memorandum dated 08.07.2015 with an endorsement as "insufficient funds"



(Ex.P-4).

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10. It is not in dispute that the complainant issued a statutory notice dated 22.07.2015 to the accused calling upon him to repay the said loan with interest which was received by the accused on the next day (Acknowledgement card/Ex.P-6). Admittedly, the accused has not issued any reply.

11. The accused states that he was a subscriber in the chit conducted by the complainant. Therefore, it is clear that the accused is a known person to the complainant.

12. The accused strongly contended that he was a subscriber to the chit for an amount of Rs.2,00,000/- and during the course of transaction, the cheque issued by him for security purpose was misused and a false complaint is lodged. When the accused states that he is a subscriber to the chit which was being run by the complainant, then he is expected to file the relevant document such as chit notebook, etc. In order to substantiate his stand, no document was filed which shows that this was put forth only for the



purpose of this case.

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13. As regards the financial capacity of the complainant, the Hon'ble Supreme Court in *Tedhi Singh Vs. Narayan Dass Mahant* reported in 2022 (6) SCC 735 has held that the complainant need not to show at the first instance his financial capacity, unless the accused set up a case questioning complainants capacity in reply to statutory notice. Accused can set up such case by producing independent materials or by pointing to the materials produced by the complainant himself or by cross examining the witnesses of the complainant.

14. The accused did not issue any reply notice questioning the lending capacity of the complainant. However, during the cross examination of P.W.1, the lending capacity of the husband of complainant was questioned.

15. The complainant/P.W-1 states that her husband was running a vegetable shop besides doing real estate business and agriculture. It is her evidence that her husband owns a house and one acre of agricultural land. She had stated that the sale deed, in which she is a vendor, is not marked.



In the given circumstances, the stand of the accused that the complainant did not have the capacity to lend such a huge amount of Rs.4,25,000/-, does not have force.

16. Reverting back to the facts of this case, the accused contended that there was a correction in Ex.P-3-cheque. The complainant's bank/D.W-1 would state that the cheque-Ex.P-3, which is shown to him, contains some corrections. However, he would state that the cheque was returned with the return memo containing an endorsement as "funds insufficient". Ex.R-1 is the cheque return register, evidencing the return of Ex.P-3-cheque (Cheque No.429455). During his cross-examination (D.W-1), he would state that in the return details, some mistakes are there. On perusal of Ex.P-3-cheque, there are some spelling mistakes. When the cheque is processed and returned by the accused/banker, it should not lie in the mouth of the accused to state that the cheque/Ex.P-3 contains corrections.

17. On a thorough perusal of the cross-examination of P.W-1, it is discernible that the signature found in Ex.P-3-cheque is not denied by the accused. Therefore, the legal presumption comes into play as per Section



139 of Negotiable Instruments Act in favour of the complainant that the cheque was issued for the discharge of legal liability.

(I) (2010) 11 SCC 441 in the case of Rangappa Vs. Srimohan

(ii) (2019) 5 SCC 418 in the case of Basalingappa Vs. Mudibasappa

(iii) 2023 10 SCC 148 in the case of Rajesh jain Vs. Ajay Singh

It is profitable to refer to the observations made by the Apex Court in the below said cases.

18. The Hon'ble Supreme Court, in *Rajesh Jain Vs. Ajay Singh* in 2023 10 SCC 148 held that the Court will necessarily presume that the cheque had been issued towards discharge of legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits the issuance of the cheque and secondly, in the event where the complainant proves that the cheque was issued in his favour by the drawer. The Hon'ble Supreme Court has further held that the presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant.

19. The presumption is a rebuttal presumption. The law is well settled



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that the Accused in order to rebut the presumption arise against her, may let in oral and documentary evidence. He may even rely upon the evidence of the complainant. It may compromise of circumstantial evidence, presumption of law or fact. Therefore, the accused must meet the standard of preponderance of probability.

20. When the accused was questioned, under Section 251 of Criminal Procedure Code, after obtaining the copies, he answered that a false case was filed against him. On receipt of legal notice, the accused has not replied. As he has specifically denied the signature found in the cheque, the presumption arises in favour of the complainant as per Section 139 of Negotiable Instruments Act. Whether he has rebutted the presumption and the defence taken by him is probable or not is a mixed question of law and fact. When the Accused was questioned under Section 313 of Cr.P.C., also he has answered that it is a false case.

21. In the given circumstances as the complainant states that the accused borrowed a sum of Rs.4,25,000/- on 06.06.2015 and on the same day, the accused issued post-dated cheque on 06.07.2015 for the said



amount. It was made clear that the cheque under Ex.P-3 was returned with an endorsement as "funds insufficient", is evident by Ex.P-4-return memorandum. D.W-1-Bank Manager of the complainant has clarified the issues raised by the accused. Admittedly, the cheque under Ex.P-3 contains some mistakes. However, the cheque was processed and returned with an endorsement as "insufficient funds". Therefore, based on the oral evidence and documents relied upon, it is pellucid that the Accused having taken loan of Rs.4,25,000/-, issued Ex.P-3-cheque. When it was presented to the complainant's banker, it was returned with an endorsement as "insufficient funds". When the Accused was informed about the return of the cheque through Ex.P-5-statutory notice, which he has received the same (Ex.P-6-AD Card), chosen not to reply the same. When once the signature found in the cheque is not disputed by the accused, presumption arise in favour of the complainant under Section 139 of Negotiable Instruments Act, 1881. I am of the considered view that the defence raised by the accused is not probable.

22. Based on the aforesaid discussions, I find no valid reason to interfere with the Judgment of the trial Court as well as the Appellate Court and the Criminal Revision Case filed by the Revision Petitioner/Accused is



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liable to be dismissed and thereby dismissed.

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23. The Trial Court shall secure the accused by issuing warrant and send him to Prison to serve the sentence imposed by it. Connected miscellaneous petition, if any stands closed.

**07.03.2024**

mac/dh  
Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non-speaking Order



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To:

- 1.The II Additional Sessions Judge,  
Puducherry.
- 2.The Principal Assistant Sessions Judge,  
Puducherry.
3. The Section Officer, VR Records,  
High Court, Madras.



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**R.KALAIMATHI, J.**

mac/dh

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