



CRL.RC.No.546 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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R.Lakshmanan

... Petitioner

Versus

T.Arumugam

... Respondent

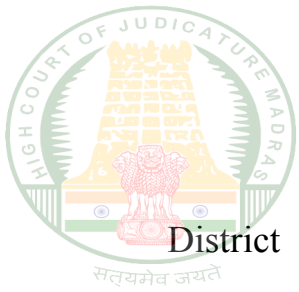
PRAYER: Criminal Revision has been filed under Section 397 and 401 of the Code of Criminal Procedure, praying to call for the records and judgment in Crl.Appeal.No.100 of 2021 on the file of the IV Additional District Judge, Ponneri confirming the order made in STC.No.1562 of 2015 on the file of the Judicial Magistrate at Tiruvottiur and revise the same and allow the revision.

For Petitioner : Mr.P.Manikannan

For Respondent : No appearance

ORDER

This criminal revision case has been preferred against the judgment passed in Crl.Appeal.No.100 of 2021 on the file of the IV Additional



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WEB **COM** District Judge, Ponneri, thereby confirmed the conviction and sentence imposed in STC.No.1562 of 2015 on the file of the Judicial Magistrate at Tiruvottiyur, for the offence punishable under section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under section 138 of NI Act alleging that the petitioner borrowed a sum of Rs.4,50,000/- in the month of January 2014 as hand loan from the respondent and agreed to repay the same within a period of six months. Towards repayment of the said loan, the petitioner issued cheque and the same was presented for collection. However, it was returned dishonoured for the reason 'insufficient funds'. After causing statutory notice, the respondent lodged the aforesaid complaint.

3. On the side of the respondent, he had examined himself as PW 1 and marked Ex.P1 to P8. On the side of the petitioner, he had examined himself as DW1 and marked Ex.D1 to D4. On the basis of the oral and documentary evidences, the trial court found the petitioner guilty for the offence punishable under section 138 of NI Act and sentenced him to undergo 6 months simple imprisonment and also awarded compensation to the tune of the cheque amount, in default to undergo one month simple imprisonment.



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Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and the conviction and sentence imposed by the trial court were upheld, against which the present criminal revision case has been filed.

4. The learned Counsel for the petitioner would submit that the respondent failed to prove that there was legally enforceable debt and no piece of evidence was produced by the respondent to prove that the petitioner borrowed a sum of rupees Rs.4.5 lakhs for his family expenses. He deposed before that trial court that the petitioner borrowed a sum of Rs.10,000/- and Rs.20,000/- on various dates, which accumulated to the tune of Rs.4,50,000/-, for which the petitioner issued the cheque. However in the statutory notice as well as the complaint, he categorically deposed that on single stroke, the petitioner borrowed a sum of Rs.4.50 lakhs during the month of January 2014. The petitioner marked Ex.D2 dated 12.05.2011, which was executed between the petitioner and the respondent, thereby stated that no more money transaction was there and the petitioner is not liable to pay anything after settling Rs.15,000/- on that day. While being so, there is absolutely no room to borrow any amount after execution of the said letter dated 12.05.2011, since on that date itself, they closed the financial transactions. At no point of time, the petitioner borrowed such a huge sum of Rs.4,50,000/- from the respondent.



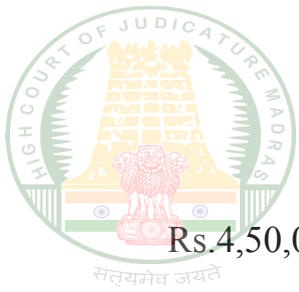
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Further, the petitioner marked Ex.D1, which was the agreement for sale executed between the petitioner and the respondent. Accordingly, the respondent received a sum of Rs.1,00,000/- as an advance and subsequently agreement was not acted upon. However, without considering the above facts and circumstances, that trial court and the appellate Court convicted the petitioner for the offence punishable under section 138 of NI Act.

5. Accordingly to the respondent, the petitioner never denied the signature of the cheque and the issuance of the cheque. The petitioner also failed to rebut the presumption under section 138 of NI Act. Once the petitioner admits his signature and the issuance of the cheque, then the initial presumption contemplated under Section 139 of NI Act has to be raised by the court in favour of the respondent. Therefore, the trial court and the appellate court rightly convicted the petitioner and the same does not warrant any inference by this court.

6. Heard, the learned counsel for the petitioner and perused all the materials placed before this Court.

7. The case of the respondent is that the petitioner borrowed a sum of



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Rs.4,50,000/- in the month of January 2014 and in order to repay the same, he

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issued the cheque and it was returned dishonoured for the reason 'funds insufficient'. On perusal of the deposition of PW1, it is revealed that the petitioner used to borrow loan by Rs.10,000/- and Rs.20,000/- on various dates and finally it accumulated to the tune of Rs.4,50,000/-. Therefore the petitioner did not borrow a sum of Rs.4,50,000/- on a single day. In order to rebut the presumption, the petitioner marked Ex.D2 dated 12.05.2011 and it revealed that it was executed by both the petitioner as well as the respondent and disclosed that the respondent received a sum of rupees Rs.50,000/- towards loan obtained by the petitioner. From 12.05.2011 onwards, there was no money transaction between them. The execution of the said document was not denied by the respondent.

8. Further, the petitioner marked Ex.D4, which is nothing but the complaint lodged by the respondent before the Inspector of Police, M6 Manali Police Station, Chennai alleging that the petitioner borrowed loan on various occasions and it finally accumulated to the tune of Rs.4,50,000/-. When the respondent asked for refund of the said loan amount, the petitioner issued cheque. Even after issuance of the cheque, there was money transaction and when the responded asked for repayment of the said loan amount, the



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petitioner scolded him with filthy languages and also threatened him with dire

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consequences. The said complaint was lodged on 11.07.2014 i.e. after the presentation of the cheque for collection. However, the respondent did not even whisper about the presentation of the cheque and the return of the cheque. The alleged cheque in this case was presented for collection on 02.04.2014 and the same was returned dishonoured on 04.07.2014 by return memo dated 04.07.2014. Therefore, the respondent had full knowledge about the dishonour of the cheque and even then, he did not whisper about the same in his complaint dated 11.07.2014. The said complaint was also not denied by the respondent. Therefore, the respondent wantonly lodged the complaint in order to initiate proceedings under section 138 of NI Act against the petitioner. Therefore, the respondent failed to prove that the cheque was issued for any legally enforceable debt since there is absolutely no evidence to show that the petitioner borrowed a sum of Rs.4,50,000/-, that too in a single stroke. As such, the impugned judgments are liable to be set aside.

9. Accordingly, this criminal revision stands allowed and the judgment dated 30.11.2022 passed in Crl.Appeal.No.100 of 2021 on the file of the IV Additional District Judge, Ponneri and the judgment dated 19.11.2021 passed in STC.No.1562 of 2015 on the file of the Judicial Magistrate at



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Tiruvottiyur are set aside. The petitioner is acquitted from all the charges under

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Section 138 of NI Act. The bail bond, if any executed by the petitioner, shall stand cancelled. Fine amount, if any paid, shall be refunded to the petitioner forthwith.

03.06.2025

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To
1.V Additional District Judge, Ponneri
2.The Judicial Magistrate at Tiruvottiyur

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