IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09-10-2025**

CORAM

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**CRL RC NO.30 of 2022**

G.Sathishkumar

Petitioner(s)

Vs

P.Saravanan

Respondent(s)

**PRAYER :** Criminal Revision is filed under Sections 397 and 401 of Code of Criminal Procedure, to set aside the conviction imposed in the judgment dated 08.11.2021 made in C.A. No.37 of 2021 on the file of the learned Principal Sessions Judge, Tiruppur confirming the judgment dated 22.04.2021 made in C.C. No.53 of 2014 on the file of the learned Fast Track Court at Magisterial level, Tiruppur.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.K.M.C.Arunmohan

**ORDER**

The petitioner/accused was convicted under Section 138 case filed by the respondent in C.C.No. 53 of 2014 had preferred the appeal before the Sessions Court in C.A.No.37 of 2021. The Sessions Court dismissed the appeal against which the present Revision Petition has been filed.

2.The contention of the learned counsel for the petitioner is that the petitioner and the respondent are relatives as well as friends. It is projected by the respondent that the petitioner had approached him in the month of June 2011 for financial assistance to meet his urgent family and business expenses, and the respondent on 02.06.2011, had given sum of Rs.3,00,000/-. The petitioner agreed to repay the said amount with interest at 1.50% per Rs.100/- per month. The respondent, having agreed to receive the said loan amount from the petitioner along with subsequent interest within 6 months. On 02.06.2011, the complainant had executed a Demand Promissory Note for Rs.3,00,000/-. Thereafter, after repeated requests and demands by the respondent, the petitioner had issued a cheque bearing Registration No.341728 dated 19.12.2011 drawn on Axis Bank Limited, Tiruppur for a sum of Rs.3,00,000/-. The cheque was presented on 19.12.2011 and returned on 20.12.2011 for the reason "funds insufficient". The respondent issued a legal notice dated 27.12.2011, acknowledgment of service on 28.12.2011 received, the petitioner, after receipt of legal notice, neither paid the cheque amount nor sent any reply. Hence, the complaint filed on 09.02.2012 before the Judicial Magistrate No.II, Tiruppur in S.T.C.No.53 of 2014.

3.During the Trial, the complainant examined himself as P.W.1 and marked exhibits Ex.P.1 to P6. On the side of the defence, two witnesses namely DW1 - Sundararajan, the uncle of the petitioner and DW2 – Sathishkumar, the petitioner himself both examined, and through them Ex.D1 to D4 marked. The Trial Court, on conclusion of Trial, convicted the petitioner and sentenced him to undergo six months Simple Imprisonment and to pay a cheque amount of Rs.3,00,000/- to the respondent as compensation. Aggrieved by the same, appeal filed before the Sessions Court in C.A.No.37 of 2021. The Session Judge by judgment dated 08.11.2021 dismissed the appeal, confirming the conviction and sentence of the Trial Court. Against the same, the present Revision Petition filed.

4.The learned counsel for the petitioner submitted that the respondent in this case has not come with true facts and clean hands, and he had suppressed material facts before the court below. In this case, the petitioner, to prove and substantiate his defence, had examined two witnesses including the accused himself. The respondent had given a letter to the Tiruppur North Police Station during July 2012 that the petitioner denied repayment of the amount of Rs.3,00,000/- and had also given life threat. Ex.D2 dated 21.07.2012, is the letter by the petitioner confirming respondent admitting the receipt of promissory notes signed in green sheet and two cheques of Axis Bank, and also taking a cheque from his uncle, DW.1 and a promissory note and green sheet. Thereafter, his claim was limited to Rs.2,00,000/-. The respondent received Rs.25,000/- as first payment on 21.07.2012 and the balance amount of Rs.75,000/- to be paid on 21.10.2012 and Rs.1,00,000/- on 21.01.2013.

5.He further referred to Ex.D.3, a letter by the respondent to the police confirming that on 09.07.2012 he had given a complaint against the petitioner limiting his claim to Rs.2,00,000/- and acknowledged receipt of Rs.25,000/- on 21.07.2012 and further stated that on receipt of the balance amount, he will withdraw the complaint, but failed to do. These vital facts not disclosed and with such suppression, the present complaint filed.

6.The learned counsel further submitted that once the petitioner received part of the cheque amount, he is not entitled to claim the entire cheque amount. In this case, not only he reduced his claim to Rs.2,00,000/- he had also received Rs.25,000/- as part payment. In view of the same, Section 56 comes into play, and as per Section 15, an endorsement ought to have been made and thereafter the cheque ought to have been presented. In this case, it is not so. Hence, no proceedings under Section 138 can be initiated.

7.In support of his contention, he relied upon the Judgment of the Apex Court reported in **2022 Live Law (SC) 830**, in the case of **Dashrathbhai Trikambhai Patel Vs Hitesh Mahendrabhai Patel and Another,** wherein the appellate court had referred to the judgment of the case of Kerala High Court and Gujarat High Court had held that:

"Under Section 56 read with 15 of N.I. and the endorsement may *be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When the such endorsement was made, the instrument could still be used to negotiate the balance amount to when a part payment of the debt is made after the cheque was drawn but before the cheque is encashed, but if the cheque is unendorsed and presented and such event, the offence under Section 138 would not be attracted".*

8.The learned counsel for the respondent further submitted that in this case, the petitioner suffered conviction by the Trial Court, which is further confirmed by the dismissal by the Sessions Court. The petitioner not raised any such objection during the trial and he cannot now go into the facts of the case. During the trial, the petitioner not disputed the issuance and signature of the cheque. Hence, the statutory presumption under Section 118 and 139 comes into play.

9.He further submitted that the petitioner not raised any such ground before the Trial Court or before the Appellate Court. His stand is that after limiting the claim to 2,00,000/- and receiving Rs.25,000/- as part payment, the case cannot be proceeded further. For this point, he relied upon Ex.D1 and Ex.D3. He further submitted that in this case, the complaint was filed on 10.02.2012 before the Judicial Magistrate No.II, Tiruppur. Ex.D1, Ex.D2 and Ex.D.3 are all subsequent documents, namely during July 2012. Hence the petitioner's reliance upon Ex.D1, D2 and D3 to substantiate his defence cannot be considered now, since the subsequent developments after filing of the complaint is not sustainable. Likewise the petitioner's contention that Section 56 is violated and that there is no endorsement as per Section 15 would not be applicable to the facts and circumstances of the present case. The other contention of the petitioner is that the respondent had no financial capacity is also untenable, when the receipt of loan and repayment were admitted by the petitioner. In such circumstances, it cannot now be contended that the respondent had no source of income. The respondent had marked Ex.P6, the bank statement of the account to show several transactions wherein there are regular debit and credit entries running to several thousands and lakhs of rupees. Thus, the petitioner's contention regarding the financial capacity of the respondent effectively defused.

10.The Trial Court as well as the Lower Appellate Court rightly found respondent proved his case beyond all reasonable doubt and had rightly convicted the petitioner. The petitioner taking a prevaricated stand, clearly exposed the criminal intention only for not paying the loan amount to the respondent. In support of his contention, the learned counsel for the respondent relied upon the decision of the Apex Court in the case of **Ashok Singh vs State Of U.P** reported in **2025 INSC 427,** wherein, the Apex court in para 22 had held that

> *22. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if any objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan.*

11.He further relied on the point that in revision, this Court is not required to go into the facts of the case, and that the revisional jurisdiction is limited. For this point, he relied upon the decisions of the Apex Court in **Bir Singh Vs Mukesh Kumar** reported in **(2019) 4 SCC**

**197**, wherein the Apex Court had held that in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on records.

12.This Court in Crl.R.C.No.1096 of 2013 dated 31.01.2010 had followed the **Bir Singh's case**. Thus, the petitioner's contention that the case has not been considered on merits cannot be accepted, as there is no perversity or reason warranting interference with the findings of the Courts below, and the Revision Petition is liable to be dismissed.

13.Considering the submissions and on perusal of the materials, it is seen that the complainant had filed a private complaint against the petitioner, and thereafter, during the trial, he examined himself as PW.1 and marked Ex.P1 to P.6. Ex.P1 is the promissory note for Rs,3,00,000/- Ex.P2, is the cheque for Rs.3,00,000/-, Ex.P3 is the bank return memo and Ex.P4 is the statutory notice Ex.P5 is the postal acknowledgment card signed by the petitioner and Ex.P6 is the statement of account.

14.The accused examined himself as DW.2 and his uncle, Sundarrajan as DW.1 and through them Ex.D1 to Ex.D4 were marked. Ex.D1 to Ex.D3 are letters which had been given by the petitioner as well as the respondent to the police during an earlier enquiry. Ex.D4 is the document which the petitioner had collected through RTI. In this case, the petitioner not seriously disputed the relationship between the petitioner and the respondent and their acquaintance, and they are in fact relatives and friends. For petitioner's urgent need, he had taken a loan of Rs.3,00,000/- and thereafter executed the promissory notes and issued the cheque, Ex.P2.

15.The primary contention of the petitioner is that the respondent had not disclosed the happenings during July 2012, whereas in this case the complaint was filed on 10.02.2012. Hence, it is quite natural that the subsequent happenings will not find place either in the statutory notice or in the complaint. The petitioner's contention is that the endorsement required under Sections 56 and 15 will be applicable to the facts and circumstances of the case is not correct and cannot be accepted. The petitioner's contention regarding the payment of Rs.25,000/- is also not sustainable. Though the petitioner's specific admission is that the loan amount reduced to Rs.2,00,000/- and cheque filled up for Rs.3,00,000/-, but no such ground raised with regard to Ex.P1, the promissory note, which is for Rs.3,00,000/- which only confirms petitioner took a loan of Rs.3,00,000/-. It is also seen from the Judgment of Lower Appellate Court that the petitioner agreed for a settlement of Rs.2,00,000/- to resolve the issue, for which reliance was placed on Ex.D.2, wherein payment of Rs.25,000/- and the balance payment of Rs.75,000/- and Rs.1,25,000/- were agreed. But on the contrary, the settlement not taken place, which only confirms the case of the respondent. The petitioner having issued the cheque towards discharge of liability, and same not honoured, hence, liable to pay the cheque amount to discharge his liability. In view of the facts and circumstances of the case, the Courts below had rightly convicted the petitioner.

16.In view of the above, this Court is not inclined to entertain this revision. Accordingly, this Criminal Revision Case stands dismissed and the judgment dated 22.04.2021 in C.C.No.53 of 2014 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruppur and the judgment dated 08.11.2021 in Crl.A.No.37 of 2021 passed by the learned Principal Sessions Judge, Tiruppur are confirmed.

17.The Trial Court is directed to issue the conviction warrant and secure the petitioner to undergo the period of his conviction. It is made clear that, in the interregnum, if the petitioner comes forward and settles the cheque amount of Rs.3,00,000/- to the respondent, the same can be entertained by the trial Court and the case can be compounded.

18.At the time of preferring the appeal before the lower appellate Court, the petitioner deposited a sum of Rs.50,000/- in C.C.No.53 of 2024. This amount with accrued interest if any shall be paid to the respondent/complainant dispensing with notice to the petitioner, on filing of appropriate petition/memo by the respondent/complainant. This amount of Rs.50,000/- can be given credit if any settlement arrived in repayment of the cheque amount of Rs.3,00,000/-.

**09-10-2025**

drl

To

1.The Principal Sessions Judge,
Tiruppur.

2.The Judicial Magistrate,
Fast Track Court at Magisterial level,
Tiruppur.

**M.NIRMAL KUMAR, J.,**

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