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Crl.R.C.No.235 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .05.02.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl. R.C.No.235 of 2025

and

Crl.M.P.No.1834 of 2025

P.Krishnamoorthy

... Petitioner

Vs.

Krishnakumar

... Respondent

PRAYER:

Criminal Revision Petition filed under Sections 438 & 442 of Bhartiya Nagrik Suraksha Sanhita, 2023, to set aside the judgment dated 01.10.2024 passed in C.A.No.21 of 2023 by the learned Principal District and Sessions Judge, Thiruvarur confirming the judgment dated 17.04.2023 passed in S.T.C.No.835 of 2016 by the learned Judicial Magistrate No.I, Mannargudi and allow this revision.

For Petitioner : Mr.C.D.Sugumar



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ORDER

This Criminal Revision Petition has been filed to set aside the judgment dated 01.10.2024 passed in C.A.No.21 of 2023 by the learned Principal District and Sessions Judge, Thiruvarur, confirming the judgment dated 17.04.2023 passed in S.T.C.No.835 of 2016 by the learned Judicial Magistrate No.I, Mannargudi, by allowing this criminal revision petition.

2. The petitioner is the accused in the case in STC No.835 of 2016 on the file of the learned Judicial Magistrate No.I, Mannargudi. The respondent/complainant filed the said case against the petitioner, for the offence under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate No.I, Mannargudi after completion of trial, convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act, vide order dated 17.04.2023. Aggrieved over the same, the petitioner has filed an appeal in C.A.No.21 of 2023 before the learned Principal District and Sessions Judge, Thiruvaur. The



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learned District Judge, after re-appreciating the evidence, dismissed the appeal vide order dated 01.10.2024. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that earlier, financial transaction was entered into between the parties. The petitioner had repaid the entire amount. The petitioner has issued the cheque to the respondent, for discharging the legally enforceable debt. The respondent/complainant has also admitted during cross-examination that financial transaction was entered into between them at earlier point of time and the petitioner used to borrow money from the the respondent and repaid the same. There is no liability for the petitioner to pay any amount to the respondent. Both the courts below failed to appreciate the same. Hence, the revision may be allowed.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.



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5. Admittedly, the petitioner borrowed money from the respondent. The petitioner admitted the signature and also the execution of cheque. Once execution and signature of cheque are admitted, there is a legal presumption that cheque has been issued for legally enforceable debt. Though the petitioner has claimed that it is legally enforceable debt, no materials have been produced by the petitioner, except the statement of P.W.1 during cross-examination that the petitioner used to borrow money from the respondent and repaid the same. During evidence/examination of witness, the respondent/complainant has stated that earlier, the petitioner borrowed money from the respondent and the same was repaid by him, whereas, present transaction is different. Later, the petitioner borrowed money and issued the present cheque. Though the petitioner has stated that he discharged legally enforceable debt, whereas, the petitioner has not explained as to why he has not get back the cheque from the respondent, which was already discharged by him. Further the petitioner has not sent any notice to the respondent even after discharging his debt and no steps have been taken to get back the cheque. Though statutory notice was issued to the petitioner, he has not sent any



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reply to the same. If the petitioner discharged his debt and still the respondent is holding the cheque, the petitioner should have sent the reply or he should have taken steps to get back the cheque.

6. This Court finds that the respondent established the foundational fact that the petitioner borrowed money and issued cheque, subsequently, when the cheque was presented for collection, the same was returned. Hence, it is for the petitioner has to rebut the presumption. On a reading of entire materials, this Court does not find that the petitioner has rebutted the presumption. On a reading of both the judgment of the Courts below, this Court does not find any perversity in appreciation/re-appreciation of evidence.

7. Under the above facts and circumstances of the case, this Court finds that no prima facie grounds are available to admit the criminal revision case. There is no perversity in appreciation of evidence by the first appellate court. There is no merit in the revision and the same is liable to be dismissed.



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8. In view of the same, this Criminal Revision Case is dismissed at the admission stage itself. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Principal District and Sessions Judge, Thiruvarur.
2. The Judicial Magistrate No.I, Mannargudi



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P.VELMURUGAN, J.

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