



Crl.R.C.No.45 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2025

CORAM:

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

Crl.R.C.No.45 of 2023

Thiruthanivasan

..... Petitioner

Vs

K.Murugan

..... Respondent

PRAYER:

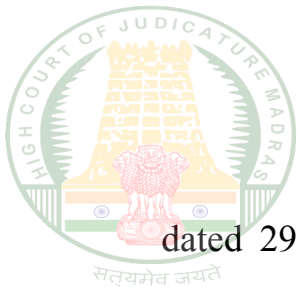
Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., praying to pass an order to set aside the judgment and conviction imposed in the judgment dated 22.11.2022 made in CA.No.77 of 2022 on the file of the learned 4th Additional District and Sessions Judge, Erode District at Bhavani by confirming the judgment of conviction passed in STC.No.572 of 2019 by the learned Judicial Magistrate No.1 of Bhavani and allowing the criminal revision petition throughout by acquitting the revision petitioner.

For Petitioner : Mr.S.Lakshmipathy

For Respondent : Mr.E.C.Ramesh

ORDER

This criminal revision case has been preferred against the judgment passed in CA.No.77 of 2022 dated 22.11.2022 on the file of the IV Additional District and Sessions Judge, Erode at Bhavani, thereby modified the judgment



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dated 29.04.2019 passed in STC.No.572 of 2019 on the file of the Judicial

Magistrate-I, Bhavani, thereby the petitioner was convicted for the offence punishable under Section 138 of NI Act.

2. The respondent is the complainant and the petitioner is the accused in the complaint in STC.No.572 of 2019. It was alleged that the petitioner borrowed a sum of Rs.5,00,000/- on 18.05.2014 for his family expenses and on the same day, he issued post-dated cheque dated 18.06.2014 for a sum of Rs.2,00,000/- and another post-dated cheque dated 18.06.2014 for a sum of Rs.3,00,000/-. On instruction, both the cheques were presented for collection and both were returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent filed complaint.

3. The respondent had examined PW1 and marked Ex.P1 to Ex.P7. On the side of the petitioner, no one was examined and no documents were marked. On perusal of 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 one year simple imprisonment and also awarded compensation to the tune of the cheque amounts. Aggrieved by the same, the petitioner preferred appeal and the same was partly allowed, thereby the



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conviction in respect of Ex.P1 was set aside and the conviction and sentence in

respect of Ex.P2 was confirmed, against which the present criminal revision case has been filed.

4. The learned counsel for the petitioner would submit that the cheque was not issued for any legally enforceable debt. Since there was no existence of legally enforceable debt to discharge by the petitioner, mere issuance of cheque would not amount to borrowal of loan by the petitioner. In fact, the first appellate court found that one of the cheques was legally not sustainable and reduced the compensation from Rs.5,00,000/- to Rs.3,00,000/-. Therefore, the appellate court ought to have acquitted the petitioner in full. He further submitted that both the cheques were issued by the same person, but the handwriting differs and also there is overwriting in the letters. Further, the word 'lakh' was wrongly mentioned in the second cheque. When the same person issued both the cheques on the same day, there could not be any difference between the cheques. Therefore, the cheques were not issued for any legally enforceable debt and both the courts erred in holding that the petitioner is liable to be punished for the offence punishable under Section 138 of NI Act.

5. Heard, the learned counsel appearing on either side and perused, all

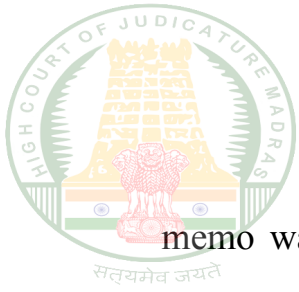


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the materials placed before this Court.

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6. On perusal of records, it is revealed that the petitioner borrowed a sum of Rs.5,00,000/- and issued two cheques for a sum of Rs.2,00,000/- and for a sum of Rs.3,00,000/-. Both the cheques were presented for collection and both were returned dishonoured for the reason 'funds insufficient'. Though the respondent caused statutory notice, on receipt of the same, the petitioner did not even reply to rebut the presumption arising out of provisions under Section 138 of NI Act. Therefore, the respondent proved the execution of both the cheques and discharged the initial burden as contemplated under Section 138 of NI Act. Hence, presumption can be drawn for the offence under Sections 118 and 139 of NI Act in favour of the respondent herein. It is true that the presumption drawn under Sections 118 and 139 of NI Act are rebuttable in nature and preponderance of probabilities are sufficient to rebut the presumption drawn. However, the petitioner failed to rebut the same even by issuance of reply notice or by letting in evidence. The petitioner did not dispute the signature of the cheque and the issuance of the cheque. On perusal of Ex.P1 and Ex.P2, there was overwriting in letters, but it is not the reason to completely negate the cheque. However, the respondent failed to prove that Ex.P1 was returned only on 07.07.2014. Though it was presented for collection on 18.06.2014, the return



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memo was issued on 07.07.2014. In order to prove the same, the respondent failed to examine the bank manager. Therefore, the appellate court rightly set aside the conviction insofar as Ex.P1 and confirmed the conviction and sentence in respect of Ex.P2. Therefore, this criminal revision case is liable to be dismissed.

7. Accordingly, this criminal revision case is dismissed.

04.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.



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To

- 1.The learned 4th Additional District and Sessions Judge, Erode District at Bhavani
- 2.The learned Judicial Magistrate No.1 of Bhavani

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