



Crl.R.C.No.486 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 05.08.2025

CORAM:

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

Crl.R.C.No.486 of 2025
and Crl.M.P.No.6087 of 2025

Mohan Kumar

... Petitioner

Vs.

1. Subbiah Educational Trust,
Rep. by Chairman
No.96A, East Street,
Tirukoilur,
Villupuram – 605 757.

2. Annamalai

... Respondents

PRAYER: Criminal Revision has been filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records and set aside the judgment dated 06.09.2024 made in Crl.Appeal No.210 of 2022 on the file of the XIX Additional City Civil Court, Chennai, against C.C.No.1814 of 2011, on the file of the Metropolitan Magistrate, Fast Track Court-I, Allikulam, Chennai.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.R.Darshan
For Mr.P.Krishnan



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ORDER

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This Criminal Revision has been preferred as against the order dated 06.09.2024, passed by the learned XIX Additional Judge, City Civil Court, Chennai, in Crl. Appeal No.210 of 2022, thereby setting aside the order passed by the learned Metropolitan Magistrate, Fast Track Court-I, Allikulam, Chennai, in C.C.No.1814 of 2011 dated 12.08.2022, thereby convicting the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act, (hereinafter referred to as “the NI Act”) and also remanded back to trial Court for fresh trial.

2. The petitioner lodged complaint as against the respondents for the offence punishable under Section 138 of the NI Act alleging that, the first respondent is a trust and the second respondent is the Chairman of the first respondent trust. Further alleged that on 21.10.2010, the respondents borrowed a sum of Rs.5,67,70,000/-. In order to repay the said amount, the second respondent issued a cheque for the sum of Rs.25,00,000/-. The cheque was presented for collection and the same was returned dishonoured for the reason “Payment stopped by drawer”. After causing statutory notice, the petitioner filed the complaint and the same was taken cognizance by the trial Court in C.C.No.1814 of 2011.



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3. On the side of the petitioner, he examined himself as P.W.1 and also marked documents in Ex.P.1 to Ex.5. On the side respondents, they did not examine any witness and did not mark any document. On perusal of the oral and documentary evidences, the trial Court found both the respondents guilty for the offence punishable under Section 138 of the NI Act and sentenced the second respondent to undergo two years simple imprisonment with compensation of double the cheque amount, in default, to undergo simple imprisonment for further period of six months. Aggrieved by the same, the respondents preferred an appeal and the appellate Court remanded back the matter to the trial Court for denova trial. Challenging the said order, the petitioner filed the present revision.

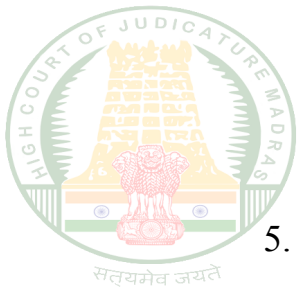
4. The learned counsel appearing for the petitioner submitted that the appellate Court ought not to have remanded back the matter to the trial Court, since the petitioner discharged his initial burden of proof as contemplated under Section 139 of the NI Act, and the respondents failed to rebut the presumption. In fact, the complaint was of the year 2011. The respondents dragged the trial for the past 11 years and finally the trial Court convicted the respondents by the judgment dated 12.08.2022, for the offence punishable



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under Section 138 of the NI Act. However, the appellate Court remanded back the matter to the trial Court for denova trial on two grounds. Firstly, no order was passed by the trial Court in pursuance of the memo filed by the respondents on 04.12.2021. Secondly, in view of the order passed in Crl.M.P.No.28728 of 2023 & 17928 of 2024, thereby allowing the application filed under Section 391 of Cr.P.C., to receive additional documents, the trial Court was directed to permit the respondents as well as the petitioner to adduce both oral and documentary evidence during the fresh trial.

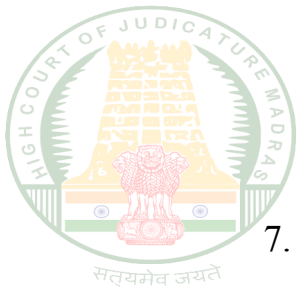
4.1. He further submitted that, the respondents failed to raise any ground for allowing the application filed under Section 391 of Cr.P.C., hence it is nothing but to fill up lacuna. In support of his contention, he relied upon the judgment reported in *AIR 1963 SC 1531* in the case of *Ukha Kolhe Vd. The State of Maharastra*, in which the Hon'ble Supreme Court of India held that, the retrial shall not be ordered merely to enable prosecution to adduce additional evidence for filling up lacuna. Proper course is to resort to procedure under Section 428(1) of Cr.P.C., when additional evidence is thought necessary. Hence, he prayed to set aside the impugned order and confirm the conviction imposed by the trial Court.



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5. Per contra, the learned counsel appearing for the respondents submitted that the petitioner did not produce any statement of account to show the source of Rs.5,67,70,000/-. The petitioner did not even whisper about how such a huge amount was lent out in favour of the respondents. Originally, the respondents borrowed a sum of Rs.1,93,00,000/- between 05.09.2009 and 09.01.2010 from the petitioner and repaid a sum of Rs.3,63,00,000/- on various dates through bank transfer between 17.08.2009 and 10.08.2011. The alleged cheques were obtained from the respondents under coercion that too, in the complaint lodged before the District Crime Branch, Villupuram. Further, the loan amount, which was allegedly borrowed by the respondents, is Rs.5,67,70,000/-. However, the cheque was issued only for a sum of Rs.25,00,000/- and there is no explanation for the balance due. Therefore, it is directly hit under Section 56 of the NI Act. Therefore, the appellate Court rightly remanded the case back for denova trial and prayer for dismissal of this revision.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



7. On perusal of the complaint lodged by the petitioner, it is revealed

that on 21.10.2010, the respondents borrowed a sum of Rs.5,67,70,000/-. In order to repay the said amount, the second respondent issued a cheque for the sum of Rs.25,00,000/-. The cheque was presented for collection and the same was returned dishonoured for the reason "Payment stopped by the drawer".

8. The specific defence of the respondents was that they borrowed only a sum of Rs. 1,93,00,000/- and they repaid the same between 17.08.2009 and 10.08.2011 to the tune of Rs.3,63,00,000/- to the petitioner. However, the respondents failed to mark any statement of account before the trial Court. It shows that there was money transaction between them. Further the alleged cheque amount is Rs.25,00,000/- only. Hence, it hit the provision under Section 56 of the NI Act, since the amount allegedly borrowed by the respondents is Rs.5,67,70,000/-. Further, merely admitting the signature found in the cheque and also issuance of the cheque is not enough to prove the complaint under Section 138 of the NI Act. Thus, initial burden was shifted to the petitioner.

9. In the case on hand, the petitioner herein miserably failed to prove the initial burden of proof as contemplated under Section 138 of the NI Act. The alleged borrowal is a sum of Rs.5,67,70,000/-, whereas the cheque was

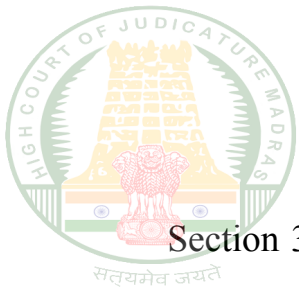


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issued for a sum of Rs.25,00,000/- only. Therefore, the respondents need not to rebut the presumption. Further the petitioner also failed to prove that he had financial source to lend such a huge amount of Rs.5,67,70,000/-. The petitioner did not produce any piece of evidence to prove that the loan was paid in favour of the respondents.

10. According to the respondents, the cheque and the pronote were issued for security purpose at the time of initial borrowal of loan to the tune of Rs.1,93,00,000/-. Therefore, the petitioner failed to prove that the cheque was issued for legally enforceable debt. Further, the respondents filed petition in Crl.M.P.No.28728 of 2023 under Section 391 of Cr.P.C., to receive additional documents to mark the bank statement showing that there were money transactions between the petitioner and the respondents. That apart, the respondents also filed memo before the trial Court requesting to adopt the cross examination of P.W.1 recorded in C.C.No.1812 of 2011 and the documents marked as Ex.D.1 to Ex.D.4 to other cases filed by the petitioner in C.C.Nos.1809, 1814 & 1815 of 2011. However, no order was passed by the trial Court in the said memo.

11. On perusal of the petition in Crl.M.P.No.28728 of 2023 filed under



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Section 391 of Cr.P.C., the respondents filed that petition to receive additional documents viz., bank statement pertaining to the year 2009-2012 showing the entire transactions between the petitioner and the respondents. Further, the respondents also filed an another petition in Crl.MP.No.17928 of 2024 for filing additional documents. Therefore, the appellate Court rightly allowed both the petitions in order to mark those documents.

12. That apart, the appellate Court granted liberty to the petitioner to prove his complaint that the cheque was issued for the legally enforceable debt by relying upon the materials. Therefore, it cannot be said that, the petition under Section 391 of Cr.P.C., was filed to fill up lacuna. Hence, the judgment cited by the learned counsel appearing for the petitioner is not helpful to the case on hand.

13. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. The trial Court viz. the learned Metropolitan Magistrate, Fast Track Court-I, Allikulam, Chennai, is directed to complete the trial in C.C.No.1812 of 2011, as directed by the appellate Court, within a period of three months from the date of the receipt of a copy of this Order. It is also made clear that the petitioner as well as the respondents are



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permitted to let in both oral and documentary evidences before the trial Court.

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14. Accordingly, the Criminal Revision Case stands dismissed.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The XIX Additional Judge,
City Civil Court, Chennai.

2. The Metropolitan Magistrate,
Fast Track Court-I, Allikulam,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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