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Crl.R.C.No.234 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2025

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.No.234 of 2023

S.Gopi

... Petitioner

Vs.

S.Babu

...Respondent

Prayer:

Criminal Revision Case filed under Section 397 r/w Section 401 of Criminal Procedure Code to set aside the Judgment and Conviction dated 29.11.2022 in C.A.No.199 of 2019 by the II Additional City Civil and Sessions Court, Chennai confirming the Judgment of Conviction dated 27.04.2019 passed in C.C.No.1455 of 2016 by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai

For Petitioner : Mr.J.N.Naresh Kumar

For Respondent : Mr.P.G.Thiyagu



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ORDER

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The present Revision has been preferred as against the Judgment passed in C.A.No.199 of 2019 dated 29.11.2022 on the file of II Additional City Civil and Sessions Court, Chennai wherein the Judgment of Conviction and Sentence imposed in C.C.No.1455 of 2016 dated 27.04.2019 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai for offence punishable under Section 138 of Negotiable Instruments Act was confirmed.

2. The petitioner is the accused in the complaint lodged by the respondent for offence punishable under Section 138 of Negotiable Instruments Act. The respondent alleged that the petitioner borrowed a sum of Rs.8 Lakhs for the purpose of business and he had also agreed to repay the amount and issued two cheques. When the cheques were presented for collection, both the cheques were dishonoured on the ground 'funds insufficient'. After causing legal notice, the respondent lodged a complaint.

3. On the side of the respondent, P.W.1 and P.W.2 were examined and exhibits Ex.P.1 to Ex.P.6 were marked. On the side of the petitioner,



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no one was examined and no documents were marked. On a perusal of the documents placed on record, the trial court found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of ten months and to pay a compensation of Rs.8,00,000/- with an interest at the rate of 9% per annum from the date of dishonour to the complainant within one month, in default of payment of compensation, to undergo a further period of two months simple imprisonment. Aggrieved by the same, the petitioner has preferred an appeal and the same was also dismissed, hence the petitioner has come up with the present Revision.

4. The learned counsel for the petitioner submits that the petitioner categorically rebutted the presumption during the cross examination, however, the trial court without considering the same, mechanically convicted the petitioner. That apart, the legal notice was not at all served to the petitioner. The respondent failed to file any acknowledgment proof to show that the statutory notice was served on the petitioner, therefore, there was absolutely no cause of action to file a complaint.



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5. The learned counsel for the petitioner also contends that the respondent also failed to produce any record to show that there was loan transaction between the petitioner and the respondent. Further, the amount, which was allegedly lent to the petitioner does not reflect in the account of the respondent in the IT Assessment. The respondent failed to produce any IT Assessment and the Statement of Accounts of his bank in order to prove the lending of loan to the petitioner. In support of his contention, the petitioner also relied on several judgments.

6. Per contra, the learned counsel for the respondent submitted that the respondent caused legal notice to the petitioner and produced the postal track indicating that the legal notice was duly served on the petitioner. Even after receipt of the same, the petitioner failed to reply and also failed to let in any evidence. Further, mere suggestion would not amount to preponderance of probabilities and cannot be construed as rebuttable of presumption. Therefore, the trial court and the appellate court rightly convicted the petitioner under Section 138 of Negotiable Instruments Act, which does not require any interference from this Court.



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7. Heard the learned counsel on either side and perused the documents placed on record carefully.

8. It is relevant to point out that the petitioner borrowed a sum of Rs.8 Lakhs and issued two cheques in order to repay the amount. When both the cheques were presented for collection, the same were dishonored for the reason 'funds insufficient', immediately, the respondent caused notice, which is marked as Ex.P.5 and the postal track report and receipt was marked as Ex.P.6. Accordingly, as per Ex.P.6, the legal notice was delivered to the petitioner, even then the petitioner did not cause any reply notice and did not let in any evidence in support of his contention raised before this Court.

9. Further, by marking the Exhibits P.1 to P.6, the respondent discharged his initial burden, as contemplated under Section 138 of Negotiable Instruments Act and the presumption arise under Sections 118 and 139 of Negotiable Instruments Act. However, the petitioner failed to rebut the same by any material. Therefore, the Judgments relied on by the petitioner are not at all applicable to the present case on hand. Hence the both the courts below have rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the courts below.



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Accordingly, the present Revision is dismissed.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking order
ssd

To

1. The II Additional City Civil and Sessions Court,
Chennai
2. The learned Metropolitan Magistrate,
Fast Track Court No.IV, George Town,
Chennai
3. The Public Prosecutor,
High Court, Madras



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G.K.ILANTHIRAIYAN, J.,

ssd

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