



Crl.RC.No.602 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.602 of 2023

K.Machekendran

... Petitioner

Vs.

V.Mariaprakasam

... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. to call for the records and set aside the judgment in Crl.A.No.26 of 2022 dated 13.10.2022 passed by the II Additional District and Sessions Judge, Chidambaram confirming the judgment made in STC No.223 of 2020 dated 28.06.2022 passed by learned Judicial Magistrate No.II, Chidambaam and set the petitioner at liberty.

For Petitioner : Mr.G.Pugazhenthii

For Respondent : Mr.S.Ramajeyam



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ORDER

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This Criminal Revision Petition has been filed by the petitioner to set aside the judgment in Crl.A.No.26 of 2022 dated 13.10.2022 passed by the II Additional District and Sessions Judge, Chidambaram confirming the judgment made in STC No.223 of 2020 dated 28.06.2022 passed by learned Judicial Magistrate No.II, Chidambaram and set the petitioner at liberty.

2. The case of the petitioner is that the respondent filed a complaint against the petitioner for the offence under Section 138 and 141 of Negotiable Instruments Act before the Judicial Magistrate No.II, Chidambaram as if, on 04.08.2019, the petitioner borrowed a sum of Rs.95,000/- from the respondent and after repeated demand, the petitioner issued a cheque to the respondent bearing No.861528 dated 20.01.2020 in repayment of the loan amount and as per the instructions of the petitioner, when the respondent presented the cheque for collection on 30.01.2020, the same was returned for reason "funds insufficient" along with return memo dated 31.01.2020. Hence, the respondent



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issued a legal notice dated 09.02.2020 to the petitioner. The notice issued to the

residential address of the petitioner was returned as refused, however, the notice issued to the working place of petitioner was received by the petitioner and despite the receipt of the notice, the petitioner, neither sent any reply nor paid the cheque amount. The said complaint was taken on file in STC No.223 of 2020. The learned Magistrate, after enquiry, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo six months simple imprisonment and to pay compensation of Rs.1,90,000/- to the respondent/complainant within one month from the date of judgment and in default of payment of compensation, to undergo a further period of one month simple imprisonment as default sentence. Aggrieved by the judgment of conviction and sentence, the petitioner preferred an appeal in Crl.A.No.26 of 2022 before the II Additional District and Sessions Judge, Chidambaram. The learned Sessions Judge, dismissed the appeal and confirmed the judgement of conviction passed by the trial Court.



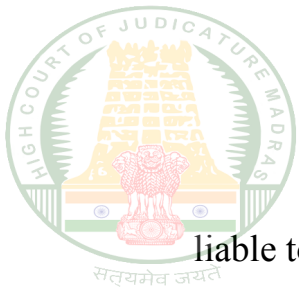
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Hence, challenging the same, the present revision is filed.

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3. According to the petitioner, the respondent/complainant has not proved that the cheque was issued for discharge of any legally enforceable debt. Though the petitioner rebutted the statutory presumption, the trial Court as well as the appellate Court failed to consider that the petitioner rebutted the presumption in the manner known to law. Both the Courts below erred in convicting the petitioner without appreciating the facts. Therefore, he has approached this Court by way of this criminal revision case.

4. The learned counsel for the respondent submitted that the petitioner admitted the execution of cheque and also the signature in the cheque. Therefore, the trial Court and the appellate Court drew the statutory presumption. Once the execution is admitted, it is for the accused to rebut the presumption in the manner known to law that the cheque was not issued to discharge any legally enforceable debt, whereas, the petitioner has not rebutted the presumption. Therefore, there is no merits in the revision and the same is



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liable to be dismissed.

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5. It is seen that according to the respondent/complainant, the petitioner approached the respondent on 04.08.2019 and borrowed a sum of Rs.95,000/- as hand loan for urgent family expenses and promised to repay the amount within a period of three months. Thereafter, when the respondent approached the petitioner in the month of December 2019, the petitioner evaded the petitioner and after repeated demand and request, the petitioner issued a cheque bearing No.861528 dated 21.01.2020 drawn at Indian Bank, Kattumannar Koil towards discharge of credit liability and informed the petitioner to present the cheque on 30.01.2020. Thereafter, when the cheque was presented on 30.01.2020, the same was returned as "funds insufficient" along with a return memo dated 31.01.2020. Hence, the petitioner sent legal notice through his Advocate on 09.02.2020 and the legal notice sent to the working place of the petitioner was received by the petitioner, but the legal notice sent to the residential address of the petitioner was returned as refused. Despite the receipt



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of legal notice, the petitioner neither repaid the cheque amount nor sent any reply. Therefore, the respondent was constrained to file a criminal complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act.

6. Before the trial Court, in order to substantiate his complaint, the respondent/complainant was examined as P.W.1 and marked 5 documents as Ex.P.1 to Ex.P.5. On the side of the petitioner/accused, two witnesses were examined as D.W.1 and D.W.2, however, no documents was marked.

7. A reading of the materials shows that the respondent/complainant examined himself as P.W.1 and in his deposition in chief examination, he has reiterated the averments made in the complaint and he has marked 5 documents as Ex.P.1 to Ex.P.5.

8. Ex.P1 is the cheque issued by the petitioner, Ex.P.2 is the original return memo issued by the Bank, Ex.P3 is the statutory notice, Ex.P.4 is acknowledgement card and Ex.P.5 is the legal notice sent to the residential



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address of the petitioner returned without receiving. However, the petitioner has not denied the address mentioned in the return cover. Once the notice was addressed to the proper address of the petitioner and the same has been refused to receive, then it is deemed service. However, the petitioner has not denied the same.

9. Though the petitioner put a suggestion that the cheque has been issued towards security for the benefit of the complainant, in the cross examination of P.W.1 and also evidence of D.W.1 and D.W.2 shows that the petitioner has not denied the signature found in the cheque and the execution of the cheque.

10. Once the accused admitted the execution and signature, there is a statutory presumption under Section 139 of the Negotiable Instruments Act, that the cheque was issued to discharge legally enforceable debt. No doubt that the said presumption is a rebuttable presumption and it is for the accused to rebut the presumption in the manner law. The rebutting of presumption is not heavy as that of the prosecution/complainant in the criminal case. The accused



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can always rebut the presumption by preponderance of probability.

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11. Once the complainant has established the foundational fact that the cheque was issued by the accused for discharge of legally enforceable debt and when the accused not denied the execution, it is for the accused to rebut the presumption in the manner known to law.

12. A reading of the judgment of the trial Court, this Court finds that the petitioner has not rebutted the presumption in the manner known to law and therefore, the learned Magistrate, drew the inference that the cheque was issued to discharge legally enforceable debt.

13. It is seen that when the petitioner approached the appellate Court, the appellate Court after giving opportunity and hearing the appellant/accused, dismissed the appeal that the petitioner has not canvassed the appellate Court and rebutted the presumption. The appellate Court, as a final Court of fact finding, re-appreciated the entire evidence and held that the appellant/accused had not established his defence and eventually dismissed the appeal. Therefore,

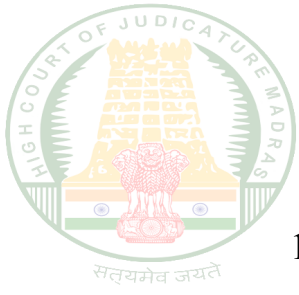


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the petitioner has filed the present revision challenging the concurrent findings of the both the Courts below.

14. The scope of revision is very limited. The revisional Court cannot sit in the arm chair of the appellate Court and exercise the powers of the appellate Court and revisit or re-appreciate the entire materials. The revisional Court, while exercising its revisional jurisdiction, has to see as to whether there is any perversity or illegality or infirmity in the judgment passed by the Courts below.

15. A reading of entire materials, this Court does not find any perversity to interfere with the orders of the Courts below. More so over, the petitioner admitted the execution of cheque and hence once execution of cheque is admitted, it is the duty of the accused to rebut the presumption in the manner known to law. In the present case, the materials does not show that the petitioner rebutted the presumption in the manner known to law. Therefore, this Court finds no merits in this revision.



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16. Accordingly, this Criminal Revision is dismissed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

1. The II Additional District and Sessions Judge,
Chidambaram

2. The Judicial Magistrate No.II, Chidambaram



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P.VELMURUGAN. J.

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