



Crl.R.C.No.165 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.165 of 2022

P.Vellingiri,
S/o.Palani,
Proprietor, M/s.P.V.Traders,
No.2, Ellappa Naicker Thottam,
P.N.Pudur, Coimbatore 641041.

... Petitioner

Vs.

N.Mahalingam

... Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure, to set aside the order passed by the I Additional District and Sessions Judge, Coimbatore by judgment in C.A.No.161 of 2020 dated 15.12.2021 as confirmed the order passed by the Judicial Magistrate FTC No.I @ ML, Coimbatore in C.C.No.268 of 2017 dated 23.07.2020 sentencing the accused to undergo simple imprisonment for 6 months and to pay a compensation of Rs.11,00,000/- to the complainant within 2 months and in default to undergo imprisonment for the period of 2 months under Section 357(3) Cr.P.C and acquit the accused.



Crl.R.C.No.165 of 2022

For Petitioner : Mr.T.Gnana Banu
For Respondent : Ms.T.Kalpana Devi for
Mr.V.Sivakumar

ORDER

The petitioner was convicted by judgment dated 23.07.2020 in C.C.No.268 of 2017 by the learned Judicial Magistrate, Fast Track Court-I @ ML, Coimbatore (trial Court) and sentenced to undergo Simple Imprisonment for six months and to pay compensation of Rs.11,00,000/- to the respondent within two months in default to undergo two months imprisonment. Challenging the same, the petitioner preferred an appeal in Crl.A.No.161 of 2020 before the learned I Additional District and Sessions Judge, Coimbatore (lower appellate Court) and the same was dismissed by judgment dated 15.12.2021 confirming the judgment of the trial Court. Aggrieved over the same, the present Criminal Revision Case is filed.

2.Gist of the case is that the respondent is the Proprietor of Flour Mill situated at Ganapathy, Coimbatore. The petitioner and his friends Sivakumar and Elangovan got introduced with the respondent ten years ago in their Auditor R.V.Ramaiya's office and projected that they were dealing and selling



building materials. The respondent became friendly with the petitioner. On that acquittance, the petitioner requested the respondent to lend a loan of Rs.11,00,000/- for his urgent expenses on 25.04.2015 to rebuild his business and to come out of the entanglement and agreed to repay the loan by disposing one of his properties. The wife of the petitioner pleaded to help her husband and sought for loan. Since the respondent was having only Rs.3,00,000/- on his hand, on that day another Rs.8,00,000/- mobilized from his friend Nagarajan and gave a sum of Rs.11,00,000/- on 25.04.2015 to the petitioner. On that day, the petitioner executed a promissory note (Ex.P1) agreeing to repay the loan amount @12% p.a. In discharge of liability, the petitioner issued a cheque (Ex.P2) dated 28.07.2016 bearing No.740898 for Rs.11,00,000/- drawn on Corporation Bank, GKNM Branch in favour of the respondent. Since the petitioner failed to repay the loan amount, the respondent gave a complaint to the Police. On 11.07.2016, enquiry conducted, at that time, the petitioner made an endorsement that it is purely a cheque dispute, he is ready to face the case in the Court, thereafter, the complaint closed. When the cheque (Ex.P2) presented for encashment on 28.07.2016 in Corporation Bank, GKNM Branch, Coimbatore, the same returned unpaid for the reason "Account Closed" by return memo dated 30.07.2016. Thereafter, the respondent issued statutory notice (Ex.P4) dated 01.08.2016 to the



petitioner which was received by him on 03.08.2016. But the petitioner neither sent any reply nor repaid the cheque amount. Following the procedure, the complaint filed before the trial Court.

3.During trial, on the side of the complainant, three witnesses examined as PW1 to PW3 and seven documents marked as Exs.P1 to P7. On the side of the defence, the petitioner examined himself as DW1 and marked chit fund passbook as Ex.D1. On conclusion of trial, the trial Court convicted the petitioner which was confirmed by the lower appellate Court as stated above.

4.Learned counsel for the petitioner submitted that the respondent admits in his complaint in paragraph No.6 that the cheque (Ex.P2) issued was a security cheque and further the respondent received a promissory note (Ex.P1). That being so, the respondent ought to have filed a civil suit to recover the loan amount with interest, but not taken any steps to file a civil suit and the promissory note marked in this case as Ex.P1. The respondent projecting a civil dispute into criminal case, lodged a Police complaint and the Police called him for enquiry on 11.07.2014, which is admitted in the complaint at paragraph No.8. This shows that the respondent is using force by all means to fleece the petitioner. He further submitted that the respondent



admits that he was running an indigenous chit and the petitioner was a Subscriber to the chit. For the chit transaction, the petitioner gave blank signed cheque (Ex.P2) and promissory note (Ex.P1). Despite completion of chit transaction, the respondent not returned Exs.P1 & P2, filled up the same and projected a case as though the petitioner issued cheque (Ex.P2) for discharging his liability of Rs.11,00,000/-. The respondent admits that there were variations in the writings and to the signature in the cheque (Ex.P2), which confirms that the respondent misused the blank signed cheque. Further, the petitioner examined himself as DW1 and marked the chit fund passbook (Ex.D1) and probablized his defence. The respondent failed to prove that he had such huge amount of Rs.11,00,000/- with him to extend loan to the petitioner which the trial Court failed to consider. The burden of proof required only a preponderance of probability, which the petitioner had discharged. Both the trial Court as well as lower appellate Court not considered the evidence and materials in proper and mechanically dismissed the complaint. Hence, he prays for setting aside the conviction.

5.Learned counsel for the respondent strongly opposed the petitioner's submissions and submitted that the petitioner has suffered two concurrent convictions of the Courts below. At this stage, the petitioner cannot make



factual submissions except for pointing out legal infirmities or perversity. In this case, the judgment of both trial Court as well as lower appellate Court are detailed and well-reasoned, considering the oral and documentary evidence of the complainant and accused. The points raised by the petitioner now were earlier raised during trial and before the lower appellate Court. He further submitted that the respondent, even in the complaint, disclosed the true facts stating that on 25.04.2015, the respondent had only Rs.3,00,000/- with him, he mobilized another Rs.8,00,000/- from his friend Nagarajan/PW3, thereafter, extended the loan of Rs.11,00,000/- to the petitioner. At the time of receiving the loan, the petitioner issued promissory note (Ex.P1) for Rs.11,00,000/- and cheque (Ex.P2). The petitioner had not denied his signature either in Ex.P1 or in Ex.P2. Despite receipt of statutory notice (Ex.P4), the petitioner neither repaid the cheque amount nor sent any reply denying the contention of the respondent. In this case, the witness, who attested the promissory note (Ex.P1), examined as PW2. Thus, the respondent by examining himself as PW1, Attester to Ex.P1 as PW2 and his friend who gave Rs.8,00,000/- as PW3 and producing both oral and documentary evidence, had confirmed the receipt of Rs.11,00,000/- by the petitioner and proved the petitioner issuing the cheque in discharge of the liability. The primary contention of the petitioner is that the respondent had no source of income to extend such huge amount as loan. To



disprove the same, the respondent examined his friend PW3 who gave Rs.8,00,000/-.

6.He further submitted that the respondent runs a Flour Mill and, is a regular tax payer. In fact the petitioner came in contact with the respondent in his Auditor's office, a decade back, thereafter, they developed good relationship. The other ground raised by the petitioner is that the respondent ought to have filed civil suit based on the promissory note (Ex.P1). It is the prerogative of the respondent to choose either civil forum or criminal forum. In this case, the respondent had chosen to file a complaint under Section 138 of Negotiable Instruments Act, 1881 and filed the above complaint.

7.He further submitted that the petitioner deposited 20% of the cheque amount *i.e.*, Rs.2,20,000/- at the time of preferring appeal before the lower appellate Court and also deposited Rs.1,76,000/- at the time of filing revision before this Court. In total, the petitioner deposited Rs.3,96,000/- to the credit of C.C.No.268 of 2017 on the file of the trial Court. This amount along with accrued interest can be returned to the respondent/complainant. He lastly submitted that the trial Court on proper analysis of both oral and documentary evidence, rightly convicted the petitioner which was confirmed by the lower



appellate Court.

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8.Considering the submissions and on perusal of the materials, it is seen that in this case, the respondent examined himself as PW1 and marked seven documents as Exs.P1 to P7. To prove execution of promissory note (Ex.P1), the Attester PW2 examined. To confirm mobilization of Rs.8,00,000/- through his friend Nagarajan, the said Nagarajan examined as PW3. The petitioner approaching the respondent for loan; the respondent mobilizing another Rs.8,00,000/- from his friend Nagarajan/PW3; the petitioner executing promissory note (Ex.P1) and issuing cheque (Ex.P2) in discharge of liability, all recorded in the complaint as well as in evidence of PW1.

9.It is prerogative of the respondent to proceed by filing civil suit using promissory note (Ex.P1) or filing a criminal case under the Negotiable Instruments Act, 1881. The respondent now proceeded against the petitioner under Section 138 of Negotiable Instruments Act, 1881 and proved that the cheque (Ex.P2) issued in discharge of liability and the statutory conditions all complied with. Though the petitioner examined himself as DW1 and marked chit fund passbook (Ex.D1), he could make no dent in the evidence of the respondent. Added to it, except Ex.D1, no other evidence or material produced



to prove that the respondent was running a chit and the petitioner was a Subscriber to the chit.

10.In view of the above, the trial Court as well as the lower appellate Court on proper analysis of both oral and documentary evidence, had rightly come to the conclusion that the cheque (Ex.P2) and promissory note (Ex.P1) were issued by the petitioner in discharge of liability and the petitioner failed to prove his case beyond all reasonable. Finding of both the Courts below is well reasoned, needs no interference.

11.In the result, this Criminal Revision Case stands dismissed confirming the judgment dated 23.07.2020 in C.C.No.268 of 2017 passed by the learned Judicial Magistrate, Fast Track Court-I @ ML, Coimbatore and the judgment dated 15.12.2021 in Crl.A.No.161 of 2020 passed by the learned I Additional District and Sessions Judge, Coimbatore.

12.The trial Court is directed to issue conviction warrant and secure the petitioner to undergo the jail sentence. It is made clear that if the petitioner comes forward for settlement at the time of execution of conviction warrant, the same can be considered by the trial Court.



Crl.R.C.No.165 of 2022

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13.The respondent/complainant to file appropriate petition/memo before the trial Court to receive the amount deposited by the petitioner so far in C.C.No.268 of 2017. On such petition/memo is filed, the trial Court shall permit the respondent to get the amount deposited by the petitioner in C.C.No.268 of 2017 with accrued interest if any, dispensing notice to the petitioner.

25.11.2025

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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Crl.R.C.No.165 of 2022

To

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- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court No.I @ ML,
Coimbatore.



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Crl.R.C.No.165 of 2022

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.165 of 2022

25.11.2025