



Crl.R.C.No.342 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2025

CORAM:

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

Crl.R.C.No.342 of 2023

S.Shanthi

..... Petitioner

Vs.

S.Premkumar

..... Respondent

PRAYER:

Criminal Revision Case filed under Sections 397(1) r/w 401 of Cr.P.C., praying to set aside the judgment made in Crl.A.No.15 of 2021 dated 15.12.2022 by the learned XXII Additional City Civil Court, Chennai confirming the judgment passed in CC.No.65 of 2017 dated 14.12.2020 by the learned FTC-1 Metropolitan Magistrate, Egmore, Chennai, convicting the petitioner herein for an offence under Section 138 of Cr.P.C. and sentencing her to undergo three months simple imprisonment and to pay a compensation of Rs.14,00,000/- to the respondent within 60 days under Section 357(3) of Cr.P.C. and in default of payment of compensation, the accused shall undergo a further period of six weeks imprisonment.



WEB COPY



Crl.R.C.No.342 of 2023

For Petitioner : Mr.D.Alexis Sudhakar

For Respondent : Mr.S.P.Sathish Kumar

ORDER

This criminal revision case has been filed against the judgment passed in Crl.A.No.15 of 2021 dated 15.12.2022 by the learned XXII Additional City Civil Court, Chennai thereby confirming the judgment passed in CC.No.65 of 2017 dated 14.12.2020 by the learned FTC-1 Metropolitan Magistrate, Egmore, Chennai for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner borrowed a sum of Rs.10,00,000/- as loan on 29.06.2015 through cheque and she agreed to pay interest at the rate of 12 % per annum. On the said date, she executed pronote. As promised by her , she did not repay the loan amount. However, in order to repay the said amount, the petitioner issued cheque dated 10.11.2017 for a sum of Rs.10,00,000/-, which was presented for collection and the same was returned for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged the aforementioned complaint,



Crl.R.C.No.342 of 2023

which was taken cognizance by the trial court.

WEB COPY

3. On the side of the complainant, PW1 & PW2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the petitioner, though no one was examined, Ex.D1 was marked. On perusal of oral and documentary evidences, the trial court found the appellant guilty for the offence punishable under Section 138 of NI Act and sentenced her to undergo three months simple imprisonment. She was also ordered to pay compensation of Rs.14,00,000/-. Aggrieved by the same, the petitioner filed appeal and the same was also dismissed confirming the judgment of conviction and sentence passed by the trial court. Therefore, 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. Though the respondent supported the debt by way of pronote executed by the petitioner, it was not marked before the trial court. Therefore, the respondent failed to prove that the cheque was issued for any legally enforceable debt. He further submitted that mere issuance of cheque would not amount to legally enforceable debt. The cheque was issued only for the purpose of security. However, the same was misused by the respondent. In support of his contention, he relied upon the



Crl.R.C.No.342 of 2023

judgment of this Court rendered in Crl.A.No.996 of 2011 by order dated 30.6.2011, thereby this Court held that there is no allegation or proof of the fact that the cheque was 'drawn' or 'executed' by accused. The only fact alleged in complaint and stated in the evidence by the sole witness, PW1, is that the accused 'gave' a cheque to the complainant. From such evidence alone, it cannot be concluded that the cheque was 'drawn' by the accused.

4.1 He further submitted that the cheque was not issued for any legally enforceable debt and in this respect, he relied on the judgment of this Court rendered in Crl.A.No.439 of 2024 by order dated 03.06.2024 in the case of ***R.Prakash Vs. T.Sivakumar & Anr.***, thereby this Court held that presumption available under Section 139 of NI Act has to be rebutted by the accused, whereinafter, a duty is cast on the complainant to establish that the cheque, which stood dishonoured, was issued for the purpose of discharging a legally enforceable debt. Therefore, the conviction and sentence imposed by the trial court, which has been confirmed by the appellate court, cannot be sustained and the same are liable to be set aside.

4.2 He further submitted that the petitioner was the tenant under the respondent and after receipt of the entire advance money by way of cheque from

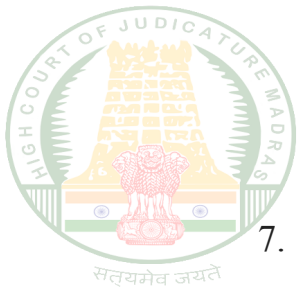


Crl.R.C.No.342 of 2023

the respondent, by abundant caution, the respondent received cheque and pronote from the petitioner. However, even after vacating the premises, the respondent failed to return the same.

5. Per contra, the learned counsel for the respondent would submit that the respondent had initially discharged his initial burden as contemplated under Section 138 of NI Act. Though the learned counsel for the petitioner had taken a specific stand that the cheque was not issued for any legally enforceable debt, he did not whisper in the cross examination of PW1 about the same. Further, it is not the case of the petitioner that the cheque was stolen or it was misused by the respondent. He further submitted that the petitioner is admittedly the tenant under the respondent. He was inducted as tenant even in the year 2005 itself. He had only paid Rs.12,000/- finally as monthly rent. Therefore, absolutely there is no question of advance to the tune of Rs.10,00,000/- That apart, the said amount was borrowed by the petitioner on 29.06.2015, that too through cheque. Therefore, the petitioner issued the cheque only on 10.11.2016. As such, the trial court and the appellate court rightly convicted the petitioner and the said conviction does not warrant any interference by this Court.

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



7. The specific case of the respondent was that the petitioner

WEB COPY borrowed a sum of Rs.10,00,000/- through cheque on 29.06.2015. It is not disputed by the petitioner. On the date of the borrowal, the petitioner had executed pronote in favour of the respondent. Though it was not marked before the trial court, while examination of PW1, he had produced the original pronote before the trial court. In the said pronote, the petitioner's husband stood as a witness. It was not marked before the trial court for the reason that the respondent had intended to file a suit for recovery of money on the said pronote. Therefore, the respondent did not want to mark the pronote. At the same time, the petitioner never denied the signature on the cheque and the issuance of the cheque. Though the learned counsel for the petitioner vehemently contended that it was issued for the purpose of security, the petitioner failed to substantiate the said contention by any evidence. The respondent had been examined as PW1. On perusal of the cross examination of PW1, it is revealed that the petitioner neither whispered to the respondent that the cheque was issued for security purpose nor that it was misused by the respondent.

8. The only contention raised was that the cheque was not issued for any legally enforceable debt. Mere putting a suggestion as if the cheque was not issued for any legally enforceable debt, would not amount to rebutting the presumption. The said contention should have been substantiated by any piece



Crl.R.C.No.342 of 2023

of evidence. After receipt of statutory notice, the petitioner did not reply to rebut

the initial presumption. Therefore, the judgments relied on by the learned counsel for the petitioner are not helpful to the case on hand. When the petitioner raised the specific ground that the cheque was not issued for any legally enforceable debt, it should have been substantiated by any piece of evidence or by cross examination. The petitioner marked a CSR issued by the Inspector of Police, Esplanade Police Station, Chennai. On perusal of the same, it is revealed that a complaint was lodged alleging that the respondent demanded repayment of loan amount which was allegedly borrowed by the petitioner and even after repaying the said loan amount by instalments, the respondent insisted for further payment. Therefore, it shows that there was borrowal from the respondent either by the petitioner or by her husband. Further, the cheque was issued for a legally enforceable debt since there is a proof to show that a sum of Rs.10,00,000/- was paid to the petitioner through cheque. As such, the trial court and the appellate court rightly convicted the petitioner for the offence punishable under Section 138 of NI Act and this Court finds no perversity in the judgments of the courts below.

9. In view of the above observations, this criminal revision case is dismissed.



Crl.R.C.No.342 of 2023

WEB COPY

07.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
lok

To

- 1.The learned XXII Additional City Civil Court, Chennai
- 2.The learned FTC-1 Metropolitan Magistrate, Egmore, Chennai,



WEB COPY



Crl.R.C.No.342 of 2023

G.K.ILANTHIRAIYAN, J.

lok



WEB COPY



Crl.R.C.No.342 of 2023

Crl.R.C.No.342 of 2023

07.07.2025