IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.250 of 2025
and
Crl.M.P.No.2055 of 2025

P.Raju
S/o.M.K.Prabhakaran ... Petitioner

..vs..

Srinivasan
S/o.Parthasarathy ... Respondent

Criminal Revision Case filed under Section 438 read with 442 of BNSS, praying to call for the records relating to the impugned order dated 27.12.2024 made in Crl.M.P.No.73570 of 2024 in S.T.C.No.4870 of 2022 by the learned Metropolitan Magistrate - Fast Track Court No.1, Allikulam, Egmore, Chennai and set aside the same.

For Petitioner : Mr.M.Pandiappan

O R D E R

Since no adverse orders have been passed by this Court, this revision petition is taken up today for final disposal at the admission stage itself, without issuing any notice to the respondent.

2. This Criminal Revision Case is filed to set aside the impugned order dated 27.12.2024 made in Crl.M.P.No.73570 of 2024 in S.T.C.No.4870 of 2022 by the learned Metropolitan Magistrate - Fast Track Court No.1, Allikulam, Egmore, Chennai.

3. The complaints under Section 138 of the Negotiable Instruments Act [hereinafter referred to as 'N.I.Act'] were instituted before the learned Metropolitan Magistrate - Fast Track Court No.1, Allikulam, Egmore, Chennai, by the respondent-complainant alleging that the petitioner-accused issued cheque bearing No.000127 for Rs.50,00,000/-, dated 18.12.2021, drawn on Karur Vysya Bank, Mugappair Branch, to partly discharge his liability, as per the Memorandum of Understanding entered into between the parties.

4. The case of the respondent-complainant is that, in the course of business, he tendered hand loans to the petitioner-accused for the purpose of purchasing properties and the same accumulated to a sum of Rs.6 Crores. While that being so, a sale agreement dated 21.11.2012 was entered into between the petitioner-accused and respondent-complainant with respect to the properties situated at S.Nos.127/10D, 127/16 Part and 127/15B part, in all, an extent of 1 acre 49 ½ cents situated at Maduravoyal Village, Thiruvallur District and by virtue of the agreement dated 18.03.2020, the petitioner handed over the possession of the said properties to the respondent and after repayment of aforesaid loan amount of Rs.6 Crores, it was agreed that the respondent has to hand over the possession of the properties back to the petitioner. Further, the petitioner-accused also agreed to pay the said amount within a period of 11 months from the date of execution of agreement and also agreed to pay a sum of Rs.1 Crore as interest/damages for the said loan amount. In lieu of the said undertaking, the petitioner-accused issued cheque bearing No.000127 for Rs.50,00,000/-, dated 18.12.2021 drawn on Karur Vysya Bank, Mugappair Branch to partly discharge his liability. When the

respondent-complainant presented the cheque for collection, it was returned with an endorsement "Funds Insufficient" on 20.12.2021. Thereafter, the complainant issued statutory notice dated 08.02.2022 to the petitioner and the petitioner sent a reply notice dated 20.02.2022, but did not come forward to settle the amount and therefore, a complaint was filed under Sections 138 and 141 of N.I.Act against the petitioner in S.T.C.No.4870 of 2022, before the learned Metropolitan Magistrate - Fast Track Court No.1, Allikulam, Egmore, Chennai.

5. Learned counsel for the petitioner submitted that the petitioner never received the alleged huge amount of Rs.6 Crores from the respondent and the petitioner also never executed any agreement with the respondent. He further submitted that the respondent-complainant agreed to purchase the aforesaid properties and paid a sum of Rs.1,20,00,000/- as advance, but he failed to pay the balance consideration and got the transaction concluded and the petitioner had repaid a sum of Rs.80,00,000/- by cash as well as by cheques on different dates to the respondent and also the petitioner issued cheques for the

remaining sum of Rs.40,00,000/-. Subsequently, the petitioner settled the entire balance amount to the respondent, but he evaded return of the cheques and other documents and filed a false case against the petitioner. He further submitted that the petitioner never issued any cheques for any legally enforceable debt and he has issued the cheques only for security purpose.

6. Learned counsel for the petitioner further submitted that, since the respondent filed the complaint against the petitioner only based on the agreements dated 21.11.2012(Ex.P1) and 18.03.2020 (Ex.P2) and claiming that the petitioner is liable to pay Rs.7 Crores, but the said agreements are forged and fabricated documents. As the said documents i.e., Ex.P1 and Ex.P2 are vital documents, the petitioner filed a petition under Section 45 of the Indian Evidence Act in Crl.M.P.No.73570 of 2024 in S.T.C.No.4870 of 2022, praying to send the said documents for comparing the signatures found on those documents, with that of the signature found in the cheque (Ex.P.3) in order to get expert opinion, but the trial Court dismissed the said petition by the impugned dated

27.12.2024. Hence the present revision petition has been filed.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. On a reading the entire materials available on record, it is seen that the petitioner-accused had not denied the signature in the cheque in question and also the execution of the cheque. However, the main contention of the learned counsel for the petitioner is that the petitioner issued the cheque only for security purpose and there is no legally enforceable debt. His further contention is that the petitioner never executed the alleged agreements dated 21.11.2012 (Ex.P1) and 18.03.2020 (Ex.P2) and hence, the said documents are vital documents and it requires expert opinion.

9. It is settled proposition of law that when once the execution of cheques is admitted, Section 139 of N.I.Act mandates presumption that the cheques were issued for discharge of the legally enforceable debt or other liability. No doubt, the presumption under Section 139 of N.I.Act is a rebuttable presumption and the onus is on the accused to raise the

probable defence, wherein, existence of a legally enforceable debt or liability can be contested. The standard of proof for rebutting the presumption is not as that of the complainant.

10. In the present case, the petitioner admitted that he executed the cheque in question to the complainant towards security purpose and not to discharge his liabilities. Since the petitioner admitted the execution of the cheque in question, it is for him to rebut the presumption that the cheque has not been issued for legally enforceable debt.

11. Further, the case in S.T.C.No.4870 of 2022 is pending for more than two years and both sides' oral evidence was adduced and documentary evidence was also marked. Even after sufficient opportunities having been given, the petitioner ought to have taken steps to disprove the cheque in question, instead of that, after two years, he has filed the petition under Section 45 of the Indian Evidence Act to send the vital documents for comparison of signatures. The trial Court rightly came to conclusion that the documents which are disputed by the

petitioner, are not vital documents to decide the complaint under Section 138 of N.I.Act and dismissed the petition.

12. In cases under Section 138 of N.I.Act, soon after receipt of notice, the accused has to repay the amount or send a suitable reply. In the present case, despite the fact that the petitioner had not taken any steps soon after receipt of summons, the petitioner was well aware of the facts in the notice stage itself. Hence, this Court finds that the petitioner has not approached this Court with clean hands.

13. In view of the above, there are no merits in this revision and the same is liable to be dismissed. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

06.02.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
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To

The Metropolitan Magistrate,
Fast Track Court No.1,
Allikulam, Egmore,
Chennai.

P.VELMURUGAN, J.

ms

Crl.R.C.No.250 of 2025

06.02.2025