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Crl.RC.No.327 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.327 of 2025

and

Crl.M.P.Nos.3074 and 3076 of 2025

M.Sathish @ A.M.Krishnamurthy

... Petitioner

Vs.

K.Rajeshkumar

... Respondent

Prayer: Criminal Revision Case filed under Section 438 read with 442 of B.N.S.S. to set aside the conviction imposed in judgment dated 22.10.2024 made in Crl.A.No.143 of 2019 on the file of the Principal Sessions Judge, Erode, confirming the conviction imposed in judgement dated 07.05.2019 made in S.T.C. No.3730 of 2011 on the file of the District Munsif Cum Judicial Magistrate, Perundurai.



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For Petitioner : M/s.C.B.Geeth Sanchitha

For Respondent : Mr.K.Sasindran

ORDER

This Criminal Revision petition has been filed by the petitioner/accused to set aside the conviction imposed by judgment dated 22.10.2024 made in CrlA.No.143 of 2019 on the file of the Principal Sessions Judge, Erode, confirming the conviction imposed in judgement dated 07.05.2019 made in S.T.C. No.3730 of 2011 on the file of the District Munsif Cum Judicial Magistrate, Perundurai.

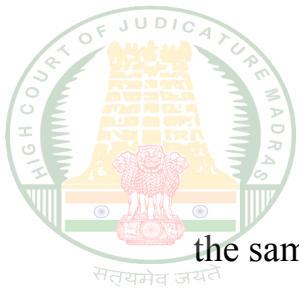
2. The case of the petitioner is that, originally the respondent-complainant had filed a complaint before the District Munsif Cum Judicial Magistrate, Perundurai in S.T.C. No.3730 of 2011 against the petitioner under



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Section 138 of Negotiable Instruments Act, alleging that the petitioner/accused

had borrowed a sum of Rs.2,92,500/- from the respondent and for re-payment, he issued a post-dated cheque bearing No.510892 (Bank of Baroda, Perundurai Branch) and thereafter on 31.03.2011, when the cheque was presented for collection in Indian Bank, Sennimalai Branch, the same was returned on 07.04.2011 for the reason "funds insufficient". The trial Court, after enquiry, found that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act and thereby, the trial Court convicted and sentenced him to undergo one year simple imprisonment and to pay compensation of Rs.2,92,500/- to the respondent, which is equivalent to the cheque amount, and in default of payment of compensation, to undergo simple imprisonment for three months. Feeling aggrieved by the judgment of conviction, the petitioner filed an appeal before the Principal Sessions Judge, Erode, in Crl.A.No.143 of 2019 and the learned Sessions Judge, after hearing the appeal, dismissed the same by judgment dated 22.10.2024. Aggrieved by



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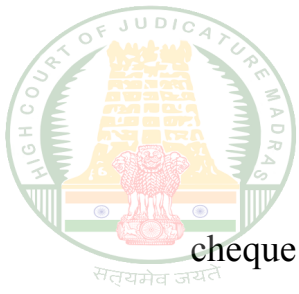
the same, the present revision has been filed by the petitioner/accused.

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3. When the revision petition came up for hearing before this Court on 05.03.2025, this Court had directed the petitioner/accused to deposit 50% of the cheque amount to the credit of STC on or before 21.03.2025.

4. Today, when the matter is taken up for hearing, the learned counsel for the petitioner submitted that the order of this Court dated 05.03.2025 has not been complied with, however, she is ready for arguments in this revision.

5. The learned counsel for the petitioner submitted that the petitioner had not borrowed money as stated in the complaint. There was a long transaction between the father of the petitioner and the respondent. The petitioner had borrowed Rs.1 lakh from the respondent and he already re-paid the said amount with interest to the respondent and since there was a long relationship between the petitioner's family and the respondent's family, believing his words, he did not get back the cheque which was already discharged. But the respondent, by making use of the possession of discharged cheque, filled the



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cheque later and presented the same for collection and subsequently, filed the

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present case. Even during cross-examination, the respondent/complainant admitted that there were transactions between the father of the petitioner and the respondent. Except the cheque, the respondent has not produced any other document to show that he lent the amount to the petitioner. It is for the respondent to prove the foundational fact that the petitioner is liable to pay legally enforceable debt. The respondent has also not proved his financial capacity to lend such a huge amount and not discharged the initial burden. Except the respondent, no other witness was examined to establish the liability of the petitioner. However, both the Courts below failed to properly appreciate and re-appreciate the oral and documentary evidence. Therefore, the impugned judgment of conviction and sentence passed by the learned Magistrate and confirmed by the appellate Court, are liable to be set aside and the revision petition may be allowed.

6. The learned counsel for the respondent/complainant submitted that the



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petitioner himself admitted during cross examination that he did not obtain any

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receipt for re-payment and also had not taken any steps to get back the cheque alleged to have been discharged and that he has not preferred any complaint to get back his cheque. He has not even sent any reply to the statutory notice issued by the complainant. Further, the petitioner admitted the signature and execution of the cheque. Therefore, both the Courts below drew the statutory presumption and rightly convicted the petitioner. Therefore, there are no merits in this revision petition.

7. Heard both sides and perused the materials available on record.

8. Admittedly, the respondent filed a complaint against the petitioner in S.T.C. No.3730 of 2011 before the District Munsif Cum Judicial Magistrate, Perundurai. Subsequently, the respondent was examined as P.W.1 and marked four documents, i.e. Exs.P.1 to P.4. Ex.P.1 is the cheque dated 31.03.2011, said to have been issued by the petitioner in favour of the respondent, the return memo sent by the Bank was marked as Ex.P.2, the legal notice sent by



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the respondent to the petitioner through Advocate was marked as Ex.P.3 and

the said notice was received by the petitioner and that the acknowledgement card was marked as Ex.P.4.

9. On a reading of the complaint given by the respondent, the deposition of the respondent, the documents marked by the respondent and also the suggestion put by the respondent's counsel to the petitioner during cross examination, go to show that the petitioner has not denied the signature and execution of the cheque. The only defence taken by the petitioner is that he already re-paid the amount to the respondent with interest and despite the same, the respondent did not return the cheque. But during cross-examination, the petitioner admitted that he did not receive any receipt or acknowledgement from the respondent for re-payment of the cheque amount and he has also admitted that he has not taken any steps to get back the discharged cheque and that he did not send reply for the statutory notice.

10. When once the respondent filed a complaint and marked the cheque



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and also produced the oral and documentary evidence for statutory compliance

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as contemplated under Sections 138 and 141 of the Negotiable Instruments Act, then there is a legal presumption under Sections 118 and 139 of the Negotiable Instruments Act that the cheque was only issued for legally enforceable debt. It is for the accused to rebut the presumption in the manner known to law. No doubt, the rebuttal of the presumption is not as heavy as that of the complainant in a criminal trial to prove the offence. The accused can very well establish his defence and rebut the presumption through the preponderance of probability, even otherwise, by way of cross examination of the witnesses.

11. As stated above, during cross-examination, the petitioner admitted that he did not receive any receipt or acknowledgement from the respondent/complainant for re-payment of the cheque amount and he has also admitted that he has not taken any steps to get back the discharged cheque. Further, he did not send reply for the statutory notice, which itself shows that



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the petitioner has not rebutted the statutory presumption in the manner known to law.

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12. Though sending of reply to the statutory notice is not mandatory, if at all the petitioner had already re-paid the amount and still the respondent misused his discharged cheque, as a prudent man, he ought to have utilized the first opportunity and sent a reply to the statutory notice denying the respondent's claim, but the petitioner did not send any reply.

13. Though the accused need not come into a witness box, still he can establish his case by oral and documentary evidence and he can rebut the presumption by way of cross examination, whereas, on a deep reading of the cross-examination of both the witnesses viz., P.W.1 and R.W.1, it is clear that the petitioner has not established his defence and this Court does not find any material regarding rebuttal of presumption.

14. This Court as a revisional Court, has got a very limited jurisdiction to interfere with the concurrent findings of the Courts below. Unless the



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revisional Court finds perversity or illegality or infirmity in the judgment or

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order passed by the Courts below, the revisional Court will not interfere.

15. In this case, this Court finds that the petitioner has not established any legal as well as factual grounds to interfere with the findings of the Courts below. Therefore, this Court finds no merits in this revision.

16. Hence, this Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

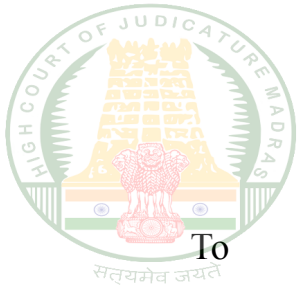
24.03.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

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1. The Principal Sessions Judge,
Erode,
2. The District Munsif Cum Judicial Magistrate,
Perundurai.



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P.VELMURUGAN. J.

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