



CrI.R.C.No.313 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.313 of 2025

and

CrI.M.P.No.2887 of 2025

... Petitioner

S.Santhakumar

Vs

G.Karthikeyan

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C., read with Sections 438 and 442 of BNSS, to call for the records pursuant to judgment in CrI.A.No.216 of 2024 and to set aside the judgement dated 28.01.2025 passed in CrI.A.No.216 of 2024 on the file of the XXI Additional Sessions Judge, XXI Additional City Civil Court, Allikulam, Chennai, confirming the judgment dated 19.02.2024 passed in STC.No.10211 of 2022 on the file of the XXV Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.S.Vedhavel

ORDER

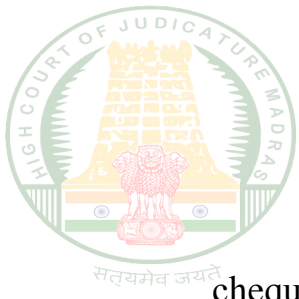


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WEB COPY This Criminal Revision Petition has been filed to call for the records pursuant to judgment made in Crl.A.No.216 of 2024 and to set aside the judgement dated 28.01.2025 passed in Crl.A.No.216 of 2024 on the file of the XXI Additional Sessions Judge, XXI Additional City Civil Court, Allikulam, Chennai, confirming the judgment dated 19.02.2024 passed in STC.No.10211 of 2022 on the file of the XXV Metropolitan Magistrate, Egmore, Chennai.

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

3. The respondent/complainant filed a complaint as against the petitioner/accused for the alleged offence under Section 138 of the Negotiable Instruments Act in STC.No.10211 of 2022 on the file of the XXV Metropolitan Magistrate, Egmore, Chennai. After completion of enquiry, the learned Magistrate found the petitioner/accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay

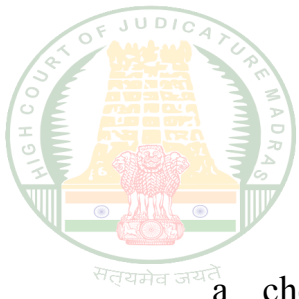


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cheque amount of Rs.38,47,179/- as compensation under Section 357(3) Cr.P.C., to the respondent/complainant, in default, to undergo simple imprisonment for one month. Challenging the same, the petitioner herein/accused has filed appeal in CrI.A.No.216 of 2024 on the file of the XXI Additional City Civil Court, Allikulam. The learned Appellate Judge, after hearing the arguments, dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate. Aggrieved by the same, the petitioner/accused has filed this criminal revision petition.

4. The petitioner/accused was running a Gym by name “Fitness Zone”, in which, the respondent is a regular customer. The petitioner used to borrow money as hand loan from the respondent. Likewise, the petitioner borrowed a sum of Rs.38,47,179/- from the respondent during the period from 25.12.2013 to 22.01.2018. The petitioner agreed to repay the amount with interest at the rate of 12% per annum. When the respondent made a demand, the petitioner evading to repay the said borrowed amount. In order to discharge the amount, the petitioner issued

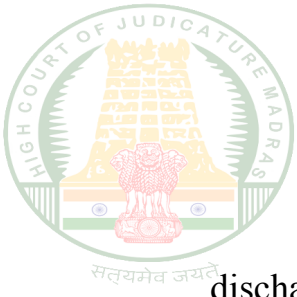


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a cheque bearing No.101657 dated 20.09.2019 for a sum of Rs.38,47,179/- drawn on IndusInd Bank, Nelson Manickam Road Branch, Chennai. The respondent presented the cheque with his banker, namely Indian Overseas Bank, MMDA Colony Branch, Chennai on 20.09.2019 and the same was dishonoured and returned with an endorsement “insufficient funds”. Immediately, the respondent sent a statutory notice to the petitioner herein on 09.12.2019 and the same was received by the petitioner on 10.12.2019. The petitioner sent a reply notice on 11.12.2019. Since the petitioner did not make payment within the stipulated time as mentioned in the statutory notice, the respondent was constrained to file a private complaint before the jurisdictional Magistrate. Accordingly he filed the complaint.

5. The defence taken by the petitioner as per his reply statement is that he borrowed Rs.8,00,000/- on various dates. Further, he issued a blank cheque only for security purpose. He repaid the entire amount. Hence, there is no legally enforceable debt or liability. Even after payment of the said amount, the respondent did not return back the

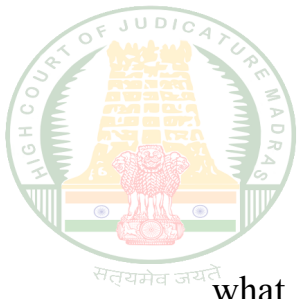


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discharged cheque. Further, during the evidence, the petitioner has taken another defence that he borrowed only Rs.8,00,000/- on various dates and repaid the said amount through his bank account, whereas, the respondent filed a false complaint as against the petitioner. Further, he has also stated that he has not made any endorsement on the reverse side of the cheque towards part payment. Hence, the complaint is hit by Section 56 of the Negotiable Instruments Act.

6. Learned counsel for the revision petitioner further submitted that though the respondent/complainant is the regular customer to his Gym, he borrowed small amounts on various occasions and the same were repaid by him. At the time of borrowal of small amounts, he issued the cheque only for the security purpose and borrowed amount has also been repaid to the respondent. After repayment of the amount, the respondent did not return the cheque. He misused the cheque and filed a false complaint as against the petitioner. Further, he submitted that the respondent has not stated the date, time and the amount. It is for the respondent/complainant to prove the case regarding the details as to on



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what time and how much amount he lent the money to the petitioner/accused. The respondent has not mentioned any details regarding date, time and amount in his statutory notice. The statutory notice was very vague. Further, he submitted that the respondent/complainant admitted the portion of amount which was repaid by the petitioner. However, he did not make any endorsement on the reverse side of the cheque, which is hit by Section 56 of the Negotiable Instruments Act.

7. Further, he submitted that there is no legally enforceable debt. The respondent misused the cheque and filled the cheque in later point of time on own whims and fancies. The respondent himself stated that he lent money to the tune of Rs.38,47,179/-on various occasions ie., from 25.12.2013 to 22.01.2018, whereas the alleged cheque said to have been issued on 20.09.2019. Therefore, portion of the amount lent by the respondent is barred by limitation. Hence, the time barred debts cannot be recovered. The respondent has also admitted the receipt of the amount. Hence, the complaint filed by the respondent is vitiated. Both



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the Courts below failed to appreciate the evidence and also the defence taken by the petitioner.

8. The respondent admitted the receipt of part payment from the petitioner. The respondent has also received the amount and filed the complaint for entire amount, which is not sustainable in law. Further, the respondent has no means or capacity to lend a huge sum of Rs.38,47,179/-. The respondent has not produced Income Tax Return or any bank statement to prove that he had financial capacity to lend such huge amount. Therefore, appreciation of evidence by both the Courts below are perverse. Hence, the impugned order passed by both the Courts below are liable to be interfered and revision may be allowed.

9. Since this is a revision petition, this Court heard the learned counsel for the petitioner and finds that there is no prima facie material available to admit the revision. Hence, this Court is disposing of the revision petition at the admission stage itself.

10. The specific case of the respondent is that the



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petitioner/accused is a known person to him. The petitioner was in the habit of borrowing money from the respondent for maintaining his business. The petitioner is the owner of Gym, namely “Fitness Zone”. The petitioner borrowed money from the respondent on various occasions from 25.12.2013 and 22.01.2018. When the petitioner did not repay the amount on demand, the petitioner issued a cheque for a sum of Rs.38,47,179/- bearing No.101657, dated 20.09.2019. When the cheque was presented for collection, the same was returned with an endorsement as “insufficient funds”. Hence, the respondent issued a statutory notice Ex.P.1. On receipt of the same, the petitioner issued reply notice- Ex.P5. On a reading of Ex.P5 reply, it is seen that the petitioner has admitted the relationship between him and the respondent and also admitted the borrowal of money from the respondent. The respondent received signed promissory note and blank signed cheque as security.

11. The petitioner has already repaid entire amount to him and did

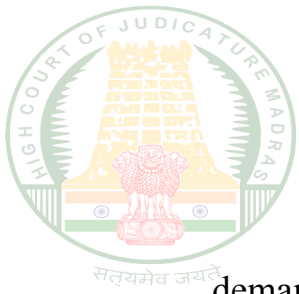


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not have any legally enforceable debt or liability towards the respondent.

The respondent did not return the blank signed cheque and promissory note. Subsequently, the respondent misused the cheque and filed the complaint. In the reply notice, the petitioner admitted the relationship and the borrowal of money. Borrowed money is not small amount. When the petitioner repaid the money, he has not stated and proved as to why he has not taken any steps to get back the discharged cheque and promissory note. The petitioner himself admitted that he borrowed small amount on various occasions. The respondent admitted the payment of small amount of money. The respondent has stated that he lent money on various occasions from 25.12.2023 to 22.01.2018. The petitioner repaid some amount. But the case of the respondent is that when he made demand, the petitioner issued a cheque dated 20.09.2019 for a sum of Rs.38,47,179/-. Mere admission of the respondent that he received some amount, does not mean that the petitioner paid the cheque amount. Because the petitioner has not stated in his reply as to on what date he borrowed money and on what date he returned the money, and on what date he issued the cheque and promissory note and on what date he

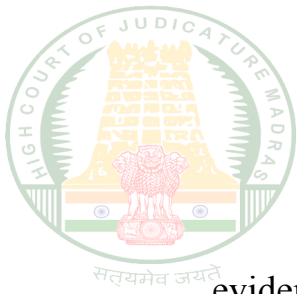


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demanded to return of discharged cheque and promissory note. If the petitioner repaid the amount for the disputed cheque, he should have stated in his reply itself, as to exactly the borrowed amount and for what amount he issued the cheque and what amount he repaid it and on what date he demanded to return the cheque.

12. When once the signature and execution are admitted, statutory presumption is that the cheque was issued only for discharging the legally enforceable debt. The respondent has established the foundational fact that the petitioner borrowed a sum of Rs.38,47,179/- on various occasions on demand and he issued cheque and when it was presented for collection, the same was returned with an endorsement “insufficient funds”. Statutory notice was also issued. The complaint has also been filed in time. Therefore, when once the foundational fact had been established, the respondent is entitled for the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Then, it is for the petitioner has to rebut the presumption. On a reading of the entire materials, especially, the reply given by the petitioner and also the entire



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evidence, it is found that the petitioner has not rebutted the statutory presumption.

13. This Court finds that both the Courts below appreciated and re-appreciated the entire materials and the trial court rightly took the complaint on file and found that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act. When the petitioner filed an appeal, the appellate court as a fact finding Court re-appreciated the entire evidence and dismissed the appeal. This Court, on hearing revision at the admission stage itself, does not find any prima facie material to admit the revision. There is no legal ground available to admit this revision petition. Considering the settled proposition and materials on record, this Court finds that this is not a fit case to admit and heard the parties.



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14. It is settled proposition of law that this Court being a Revisional Court, cannot interfere with the judgment of the Courts below, unless there exists perversity or illegality. The jurisdiction of the Revisional Court under Section 397 is very limited and it can only examine the legality, propriety and correctness of the order passed by the Courts below. It is useful to refer the decisions of the Hon'ble *Supreme Court reported in (2012)9 SCC 460* in the case of *Amit Kapoor vs. Ramesh Chander and another* and the relevant portion of the decision is extracted hereunder:

“12. Section 397 of the Code vests the court with the power to call for an examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the fact of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments



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of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under Challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. There are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.”

15. From a reading of the above materials and also the decision, this Court finds that there is no perversity in the impugned judgment passed by the Sessions Judge. Therefore, the Revision Petition is dismissed at the admission stage itself. Consequently, connected miscellaneous petition is closed.

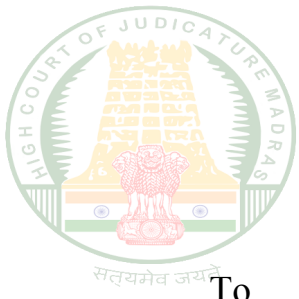
06.03.2025

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To
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1. The XXI Additional Sessions Judge, XXI Additional City Civil Court, Allikulam, Chennai,
2. The XXV Metropolitan Magistrate, Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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