



Crl.RC.No.416 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2025

CORAM:

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

Crl.RC.No.416 of 2023

K.Saminathan

... Petitioner

Vs.

Chinnasamy

... Respondent

PRAYER: Criminal Revision filed under Sections 397 r.w 401 of Cr.P.C., praying to call for the records in the judgment of the I Additional District and Sessions Judge, Salem passed in Crl.A.No.155 of 2019 dated 17.12.2020 confirming the conviction and sentence imposed in STC.No.922 of 2017 passed by the Judicial Magistrate-I, Salem dated 18.06.2019 and to set aside the same and order for acquittal of accused.

For Petitioner : Mr.J.Prithivi

For Respondent : Mr.Swamisubramanian

JUDGMENT

This criminal revision case has been filed against the judgment of the I Additional District and Sessions Judge, Salem passed in Crl.A.No.155 of 2019 dated 17.12.2020 confirming the conviction and sentence imposed in STC.No.922 of 2017 passed by the Judicial



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Magistrate-I, Salem dated 18.06.2019, thereby the petitioner was convicted for the offences 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 two occasions i.e. 05.09.2012 and 04.10.2012 and he agreed to repay the same with interest at the rate of 18%. He had executed two pronotes on 01.07.2013 for a sum of Rs.10,00,000/-. Thereafter, towards repayment of the loan amount, the petitioner issued cheque for a sum of Rs.10,00,000/- on 26.07.2013 and the same was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged the complaint.

3. On the side of the respondent, he had examined himself as PW1 and marked Ex.P1 to Ex.P7. On the side of the petitioner, he had examined DW1 to DW3 and marked Ex.D1 to Ex.D9. On perusal of the oral and documentary evidences, the trial court found the petitioner guilty for the offences punishable under Section 138 of NI Act and sentenced him to undergo two years simple imprisonment and also



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ordered to pay compensation to the tune of Rs.5,00,000/- to the respondent. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and the order of conviction and sentence imposed by the trial court was upheld.

4. The learned counsel for the petitioner would submit that the petitioner borrowed only a sum of Rs.5,00,000/- from the respondent. Thereafter, the petitioner sustained huge loss in his business and as such, he filed petition for declaration as insolvent. In fact, in the said petition, the petitioner also mentioned the respondent as one of the creditors to the tune of Rs.5,00,000/-. Therefore, the petitioner borrowed only a sum of Rs.5,00,000/-, for which also he paid amount to the tune of Rs.4,37,000/-. Therefore, the trial court ordered to pay compensation of Rs.5,00,000/-. Further, the learned counsel for the petitioner submitted that the petitioner is ready and willing to settle Rs.5,00,000/- and requested for further time to settle the same.

5. In fact, this Court specifically directed the petitioner on 11.06.2025 to produce DD for Rs.5,00,000/- before this Court. However, the petitioner is not present today and also the learned counsel for the



petitioner has no instruction with regard to settlement of Rs.5,00,000/-.

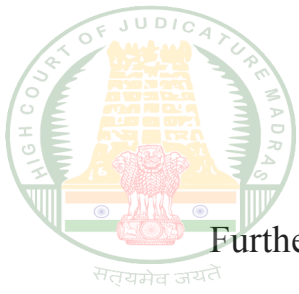
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However, the learned counsel for the petitioner prayed for further time to settle the said amount by the petitioner.

6. The learned counsel for the respondent would submit that the petitioner borrowed a sum of Rs.10,00,000/- and issued cheque for the said sum towards repayment. However, he repaid a sum of Rs.4,37,000/- and as such, the trial court ordered to pay compensation only to the tune of Rs.5,00,000/-. After borrowal of Rs.10,00,000/-, the petitioner filed insolvency petition for adjudicating himself as insolvent. He further submitted that mere filing of a petition to declare him insolvent will not make him not liable to be punished for the offence under Section 138 of NI Act.

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

8. The petitioner admitted the borrowal of Rs.5,00,000/-. Even according to the petitioner, he filed insolvency petition, in which the respondent is shown as one of the creditors to the tune of Rs.5,00,000/-.



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Further, the petitioner repaid a sum of Rs.4,37,000/- on various dates.

Therefore, the trial court ordered him to pay compensation to the tune of Rs.5,00,000/-. Though the petitioner had examined DW1 to DW3 and marked Ex.D1 to Ex.D9, the petitioner failed to rebut the presumption. Therefore, the trial court and the appellate court rightly convicted the petitioner and this Court finds no infirmity or illegality in the impugned judgments.

9. However, considering the facts and circumstances, this Court is inclined to set aside the impugned judgments on a condition. Accordingly, the judgment of the I Additional District and Sessions Judge, Salem passed in Crl.A.No.155 of 2019 dated 17.12.2020 and the judgment passed in STC.No.922 of 2017 by the Judicial Magistrate-I, Salem dated 18.06.2019 are set aside on condition that the petitioner shall pay the remaining cheque amount of Rs.5,00,000/- to the respondent on or before 21.07.2025, failing which thereafter order passed by this Court shall stand automatically cancelled and the respondent is at liberty to take appropriate steps to secure the petitioner to undergo the remaining period of sentence as imposed by the trial court and the appellate court.



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10. With the above direction, this criminal revision case is disposed of.

12.06.2025

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

- 1.The I Additional District and Sessions Judge, Salem
- 2.The Judicial Magistrate-I, Salem



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G.K.ILANTHIRAIYAN, J.

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