



Crl.R.C.No.471 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.471 of 2025

and

Crl.M.P.No.5770 of 2025

D.Rajan

... Petitioner

..VS..

S.Vasanthakumar

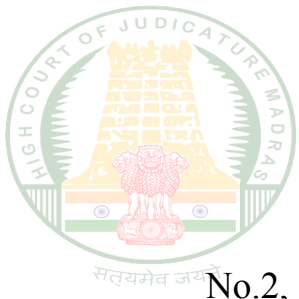
... Respondent

Criminal Revision Case filed under Sections 438 read with Section 442 of BNSS, 2023, to set aside the judgment dated 27.09.2024 made in Crl.A.No.128 of 2018 on the file of the learned II Additional District Judge, Salem and the judgment dated 04.08.2018 made in S.T.C.No.944 of 2009 on the file of the learned Judicial Magistrate No.2, Salem.

For Petitioner : Mr.K.Raja

ORDER

This Criminal Revision Petition has been filed against the judgment dated 27.09.2024 passed in Crl.A.No.128 of 2018 by the II Additional District Judge, Salem, confirming the judgment dated 04.08.2018 passed in S.T.C.No.944 of 2009 by the Judicial Magistrate

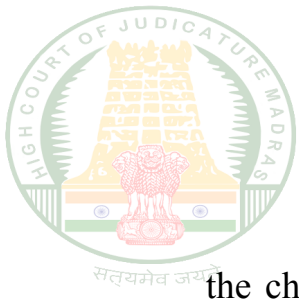


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No.2, Salem.

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2. The case of the respondent-complainant is that the petitioner-accused had borrowed a sum of Rs.5,00,000/- from the complainant as a loan for his business purpose and agreed to repay the same within three months. Since the petitioner-accused failed to repay the said amount within the stipulated time and in order to discharge the said liability, the petitioner had issued post-dated cheque dated 23.10.2008 bearing No.072139 drawn on UTI Bank Limited, in favour of the respondent-complainant. Subsequently, when the cheque was presented for collection, the same was returned with endorsement "Funds Insufficient" on 24.10.2008. Therefore, the respondent-complainant issued a legal notice dated 30.10.2008 to the petitioner-accused, but the petitioner-accused neither sent any reply, nor made any payment to the complainant. Hence, the complainant filed the complaint against the petitioner-accused under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as 'N.I.Act') before the learned Judicial Magistrate No.II, Salem and the same was taken on file in S.T.C.No.944 of 2009. Subsequently, the learned Magistrate questioned the accused for



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the charged offences, which was denied by the accused and he pleaded not guilty and to be tried. During trial, the complainant examined himself as P.W.1 and also marked Ex.P1 to Ex.P5. However, no oral or documentary evidence is adduced on the side of the petitioner-accused.

3. The trial Court, after due enquiry, found the accused guilty of the offence under Section 138 of the N.I.Act, and *vide* order dated 04.08.2018, convicted and sentenced the accused to undergo simple imprisonment for a period of six months and also directed to pay the cheque amount of Rs.5,00,000/- to the complainant as compensation, within a period of two months from the date of the judgment. Aggrieved by the said judgment of conviction and sentence, the petitioner-accused preferred an appeal in Crl.A.No.128 of 2018 before the II Additional District Judge, Salem. The appellate Court, *vide* order dated 27.09.2024, dismissed the appeal and confirmed the judgment passed by the trial Court. Assailing the said judgment, the present revision petition is filed by the petitioner-accused.

4. Learned counsel for the petitioner submitted that the petitioner-



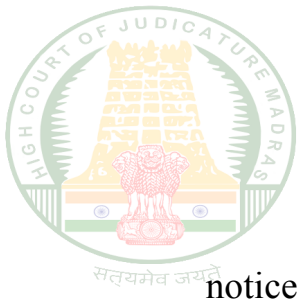
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accused has not borrowed any loan from the respondent-complainant and there is no legally enforceable debt existing between them. He further submitted that the complainant neither in the notice, complaint, and sworn affidavit, nor in his evidence, has stated as to on which date he has given money to the petitioner. Further, the complainant has not let in any evidence that the cheque was issued to the petitioner towards the legally dischargeable debt. However, the trial Court failed to appreciate the entire facts and only based on the evidence of the sole witness P.W.1-complainant, the Court had convicted and sentenced the petitioner-accused, which warrants interference by this Court.

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

6. On a perusal of the entire materials, it is seen that to substantiate the averments made in the complaint, the complainant was examined as P.W.1 and also marked the documents as Ex.P1 to Ex.P5. The cheque dated 23.10.2008 said to have been issued by the petitioner, was marked as Ex.P1, the return memo issued by Bank, was marked as Ex.P2, legal



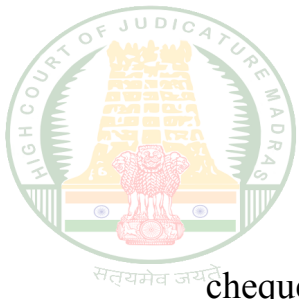
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notice sent to the petitioner-accused was marked as Ex.P3, Acknowledgment received by the petitioner-accused was marked as Ex.P4, legal notice sent to the petitioner's Company was marked as Ex.P5 and Bank Statement of the complainant was marked as Ex.P6.

7. From the above exhibits, particularly Ex.P4, clearly shows that the petitioner has duly acknowledged the statutory notice issued by the respondent-complainant. However, after receipt of the statutory notice, the complainant neither sent reply, nor repaid the amount. When the complainant was examined as P.W.1, he has clearly narrated the averments made in the complaint and also the execution of the cheque-Ex.P1. During cross examination, P.W.1 had not denied the execution of the cheque and also the signature found in cheque-Ex.P1. Even though he has not put any suggestion in the evidence that the signature found in the cheque is forged and he has not executed any cheque., when once the petitioner-accused did not deny the execution of cheque and signature in Ex.P.1, he has to prove that there is no legally enforceable debt.

8. It is settled proposition of law that when once the execution of



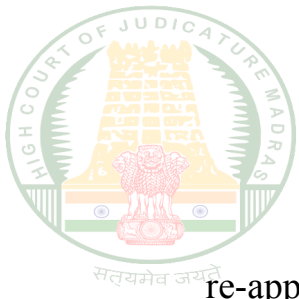
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cheque is admitted, Section 139 of the N.I.Act mandates a presumption that the cheque was issued for discharge of legally enforceable debt or other liability. No doubt, the presumption under Section 139 of the N.I.Act is a rebuttable presumption and the onus is on the accused to raise the probable defence, wherein, the existence of a legally enforceable debt or liability can be contested. The standard of proof for rebutting the presumption is not with same rigor as prosecution is required to prove its case beyond reasonable doubt.

9. In the present case, the petitioner has not rebutted the presumption in the manner known to law. This revision petition arises out of the concurrent findings of the both the trial Court and the lower appellate Court. Both the Courts below had already appreciated and re-appreciated the entire evidence and had also rendered finding that the respondent-complainant proved his case beyond reasonable doubt and the petitioner-accused has not rebutted the presumption in the manner known to law.

10. This Court, while exercising the revisional jurisdiction, cannot



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re-appreciate the evidence and take another view on the findings of facts.

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However, this Court has to see as to whether there is any perversity, illegality or infirmity in appreciation of evidence by the Courts below.

On a perusal of the entire materials, this Court finds that the petitioner has not rebutted the statutory presumption and in the absence of the same, it is to be held that the cheque is issued by the accused only to discharge the legally enforceable debt. Hence, this Court does not find any perversity, illegality or infirmity in the judgments of both the Courts below. As there is no merit in the revision petition, the same is liable to be dismissed.

11. Accordingly, this Criminal Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

24.03.2025

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation Case : Yes/No

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To

1. The II Additional District Judge,
Salem.
2. The Judicial Magistrate No.2,
Salem.



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P.VELMURUGAN, J.

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