IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2025

CORAM:

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

Crl.R.C.No.385 of 2025
and Crl.M.P.No.3979 of 2025

M.P.Sakthikumar ... Petitioner

Vs.

Sivamani ... Respondent

PRAYER: Criminal Revision has been filed under Section 438 & 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the conviction imposed in the judgment dated 29.11.2024 pronounced in Crl.A.No.130 of 2024 on the file of the learned II-Additional District and Sessions Judge, Tiruchengode, confirming the conviction imposed in judgment dated 15.06.2024 made in S.T.C.No.49 of 2022 on the file of the learned Judicial Magistrate, Kumarapalayam by allowing this criminal revision petition.

For Petitioner : Mr.N.Chinnaraj

For Respondent : Mr.R.Nalliyappan

ORDER

This Criminal Revision has been preferred as against the judgment dated 29.11.2024, passed by the learned II-Additional District and

Sessions Judge, Tiruchengode, in Crl.A.No.130 of 2024, confirming the order dated 15.06.2024, passed by the learned Judicial Magistrate, Kumarapalayam, in S.T.C.No.49 of 2022, thereby convicting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, (hereinafter referred to as "the NI Act").

2. The petitioner is an accused in the complaint lodged by the respondent alleging that the petitioner owed her a sum of Rs.22,97,468/-, during the course of their textile business. In order to discharge the said liability, the petitioner issued four cheques for a sum of Rs.5,74,366/- each, in the name of Rasha Tex. All the cheques were presented for collection and the same were returned dishonoured for the reason "payment stopped by drawer". After issuance of statutory notice, the respondent lodged complaint and the same was taken cognizance by the trial Court in S.T.C.No.49 of 2022.

3. In order to prove the complaint, the respondent had examined P.W.1 & P.W.2 and also marked documents in Ex.P.1 to Ex.14. On the side petitioner, he himself was examined as D.W.1 and no documents were marked. On perusal of the oral and documentary evidences, the trial Court found the petitioner guilty for the offence punishable under Section 138 of the NI Act

and sentenced him to undergo two years simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the appellate Court dismissed the appeal by confirming the sentence imposed by the trial Court. Challenging the said order, the petitioner filed the present revision.

4. The learned counsel appearing for the petitioner submitted that though the petitioner rebutted the presumption by duly cross examining the respondent, the trial Court mechanically convicted the petitioner only on the ground that the petitioner had admitted the issuance of the cheques and the signature found in the cheques. There was absolutely no liability at the hands of the respondent. The cheques were issued for security purpose for the transactions between the petitioner's husband and two others who are the respondents in the insolvency petition filed by the petitioner in I.P.No.12 of 2021 and it is pending for adjudication. The respondent also failed to produce any invoice or delivery note or any other documents to show that the petitioner had business transactions with the respondent and had purchased textile. Therefore, the trial Court ought not to have convicted the petitioner for the offence punishable under Section 138 of the NI Act.

5. Per contra, the learned counsel appearing for the respondent submitted that the petitioner never denied the signature found in the cheques and also issuance of the cheques. The respondent had discharged initial presumption as contemplated under Section 139 of the NI Act. Further the respondent received reply notice with false allegations and therefore, she did not send any rejoinder to the reply notice. Therefore, the trial Court rightly convicted the petitioner and the same same confirmed by the appellate Court.

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

7. Though both the Courts below concurrently held that the petitioner is found guilty for the offence punishable under Section 138 of the NI Act, it is necessary to see whether the findings of both the Courts are perverse or not, to interfere by way of this revision.

8. The case of the respondent was that the petitioner procured materials to the tune of Rs.22,97,468/- for the purpose of his textile business from the respondent. In order to repay the same, the petitioner issued four cheques. All the cheques were presented for collection and the same were

returned dishonoured for the reason payment stopped by the drawer. On receipt of the statutory notice, the petitioner issued reply notice as follows :-

> *"5. Our client states that, he never meets your client and never had any business transaction with your client at any point of time. Further our client states that he is not liable to pay any amount to your client and never issued any cheque to your client and never instructed your client to present the said cheqque for collection at any point of time. Our client is in shock and surprise in receiving a notice on instruction of a stranger.*
>
> *Hence our client requests you to send xerox copy of the alleged invoice bills, way bills and Cheque to us or our client for verification so as he can send a detailed further reply. Our client reserves, a right to detailed reply notice after receipt of the xerox copy of the aforesaid documents.*
>
> *Further we hereby request you to kindly advice your client not to resort any vexatious litigations against our client. If your client continues the vexatious litigation even after this reply, it will be suitably defended by our client at your client's costs."*

Thus, the main defence of the petitioner was that he had never purchased any textiles from the respondent and the cheques were not issued for any due. Further, the respondent was called upon to submit xerox copy of the invoice bills, way bills etc., for verification. However, on receipt of the reply notice, the respondent did not send any rejoinder. Hence, the petitioner rebutted the initial presumption by way of reply notice with proper defence.

9. Further the respondent was examined as P.W.1 and she was cross-examined by the petitioner in which, the respondent admitted that the petitioner already filed insolvency petition to declare himself as insolvent in which the respondent's husband and two others are the respondents 5 to 7. Admittedly, the petitioner was involved in various business transactions with the respondent's husband and two others since they are the partners of Rasha Tex and they obtained the cheques for the security purpose. The insolvency petition is still pending for adjudication. The cheques, which were issued in favour of the respondents 5 to 7 in the insolvency petition viz., the respondent's husband and two others, have been misused by the respondent herein.

10. The respondent is the proprietress of Rasha Tex. Though the petitioner issued reply notice calling upon the respondent to produce invoice bills and way bills which were allegedly purchased by the petitioner, the respondent failed to produce the copies of the same. In fact, the respondent failed to mark any of the invoice bills or way bills, in order to prove that the

respondent supplied the textile goods to the petitioner. The specific defence of the petitioner was that he had purchased the goods from the respondent's husband and two others who are the partners of the Rasha Tex. Though the respondent is the proprietress of Rasha Tex, the petitioner never purchased any textiles materials from the respondent. Therefore, the petitioner categorically rebutted the presumption as contemplated under Sections 118 & 139 of the NI Act. Therefore, the entire burden shifted to the shoulders of the respondent to prove that the cheques were issued for a legally enforceable debt.

11. That apart, the petitioner issued stop payment letter to his banker and requested not to honour the cheques. It shows that the cheques were not issued for any legally enforceable debt. There is no piece of material produced by the respondent to prove that the respondent supplied materials to the petitioner. In the absence of any material to rebut the presumption, the allegations cannot be taken into account and the entire burden shifted on the shoulders of the respondent to prove that the cheques were issued for the goods purchased by the petitioner.

12. In view of the above discussions, the findings of both the Courts below are perverse and cannot be sustained. Accordingly, the judgment dated

29.11.2024, passed by the learned II-Additional District and Sessions Judge, Tiruchengode, in Crl.A.No.130 of 2024, and the order passed by the learned Judicial Magistrate, Kumarapalayam, in S.T.C.No.49 of 2022 dated 15.06.2024, are hereby set aside. The petitioner is acquitted of all charges in S.T.C.No.49 of 2022 on the file of the learned Judicial Magistrate, Kumarapalayam, for the offence punishable under Section 138 of the NI Act. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

13. Accordingly, the Criminal Revision Case stands allowed. Consequently, connected miscellaneous petition is closed.

18.08.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

rts

To

1. The II-Additional District
and Sessions Judge,
Tiruchengode.

2. The Judicial Magistrate,
Kumarapalayam.

G.K.ILANTHIRAIYAN. J,

rts

Crl.R.C.No.385 of 2025
and Crl.M.P.No.3979 of 2025

18.08.2025