IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No. 399 of 2025
and
Crl.M.P.No.4402 of 2025

C.Pushparaj ... Petitioner

..vs..

S.Pandi ... Respondent

Criminal Revision Case filed under Sections 397 read with 401 Cr.P.C. to set aside the order of conviction dated 19.11.2024 passed in C.A.No.388 of 2024 by the IV Additional City Civil Court, Chennai by confirming the order of conviction dated 23.04.2024 passed in C.C.No.7163 of 2018 by the learned Metropolitan Magistrate, Fast Track Court-II, Egmore at Allikulam, Chennai – 600 003 and acquit the petitioner by allowing the Criminal Revision Petition.

For Petitioner : Mr.A.Balasingh Ramanujam

ORDER

This Criminal Revision Case has been filed to set aside the judgment dated 19.11.2024 passed in Crl.A.No.388 of 2024 on the file of the IV Additional City Civil Court, Chennai, confirming the order of conviction and sentence dated 23.04.2024 passed in C.C.No.7163 of 2018 by the learned Metropolitan Magistrate, Fast Track Court-II, Egmore at Allikulam, Chennai – 600 003 and acquit the petitioner by allowing the Criminal Revision Petition.

2. The case of the respondent-complainant is that the petitioner-accused borrowed a hand loan of Rs.3,00,000/- from the respondent-complainant on 29.11.2015 and on the same day, the petitioner executed a Demand Promissory Note in favour of the respondent-complainant. Though the petitioner failed to repay the said amount, inspite of several reminders, the petitioner issued a cheque bearing No.000001, dated 20.04.2017 for Rs.4,53,000/-, which is drawn on Karur Vysya Bank,Kothamangalam Branch, in favour of the respondent. When the respondent presented the cheque for collection, the same was returned as "Funds Insufficient". Hence, the respondent had issued a legal notice dated 26.07.2017 to the accused to pay Rs.4,53,000/- being the principal and interest amount of the loan. However, the petitioner neither sent any reply nor made any payment to the complainant. Hence, the complainant

filed the complaint against the petitioner-accused under Sections 138 read with 142 Negotiable Instruments Act, 1881 (herein after referred to as 'N.I.Act') before the learned Metropolitan Magistrate, Fast Track Court-II, Egmore at Allikulam, Chennai – 600 003 and the same was taken on file in C.C.No.7163 of 2018.

3. The trial Court, after due enquiry, found the accused guilty under Section 138 of the N.I.Act and convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay the compensation of Rs.4,53,000/-, in default, to undergo simple imprisonment for a period of two months. Aggrieved by the said judgment of conviction and sentence, the petitioner/accused preferred an appeal in Crl.A.No.388 of 2024 before the IV Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court *vide* order dated 19.11.2024, dismissed the appeal and confirmed the judgment passed 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 respondent-complainant is not a man of means to lend huge amount Rs.3,00,000/- to

the petitioner-accused. He further submitted that the petitioner borrowed only a sum of Rs.60,000/- from the respondent during the year 2014 and he executed the cheque only for security purpose. Thereafter, the petitioner repaid the entire principal amount with interest in the year 2015 itself. Since the petitioner has made demand for return of the original title deeds, a false case has been foisted against the petitioner. The trial Court failed to appreciate the entire evidence and convicted and sentenced the petitioner, which was confirmed by the lower appellate Court, which warrants interference by this Court.

5. Learned counsel for the petitioner submitted that the petitioner-accused had already deposited 20% of the compensation amount before the lower appellate Court and now he is ready to deposit 20% of the compensation amount before this Court.

6. Admittedly, the respondent-complainant filed the private complaint invoking Section 200 Cr.P.C., in respect of the offence under Section 138 of N.I.Act against the petitioner-accused. Before filing the complaint, the respondent sent statutory notice to the petitioner. Despite

receipt of statutory notice, the petitioner neither repaid the amount, nor sent any reply and hence, the present complaint.

7. The main contention of the petitioner-accused is that the respondent is not a man of means to lend huge amount of Rs.3,00,000/- to the petitioner and he has not proved his financial capacity before the Court below. The petitioner has received only a sum of Rs.60,000/- from the respondent in the year 2014 and he had repaid the said amount with interest in the year 2015 itself. The petitioner had issued the disputed cheques only for security purpose and not for discharge of his liability.

8. On a reading of the entire materials, it is seen that the petitioner-accused who was examined as D.W.1 before the trial Court, has deposed that he borrowed a sum of Rs.60,000/- in the year 2014 from the respondent, but he has not deposed about the exact date of such borrowal and also repayment of the amount to the respondent. Further, it is seen that in the Promissory Note and the Cheque there was no acknowledgment from the respondent to prove the date and amount of repayment. Therefore, the petitioner has not proved that he has taken

steps to get back the discharged cheque and Promissory Note. When the first opportunity was given to the petitioner by sending statutory notice, the petitioner neither sent any reply, nor had taken any steps against the respondent for not returning the discharged cheque and Promissory Note.

9. It is further seen that the petitioner has not denied the execution of the cheque and also the signature found in the cheque. Since the petitioner admitted the execution of the cheque, he has to prove that there is no legally enforceable debt.

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

11. 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 findings 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.

12. This Court, while exercising the revisional jurisdiction, cannot re-appreciate the evidence and take another view on the findings of facts. However, this Court has to see as to whether there is any perversity 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, there is no perversity or infirmity in the judgments of the both the Courts below. As there is no merit in the revision petition, the same is liable to be dismissed.

13. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

10.03.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Case Citation : Yes / No
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To

1. The IV Additional Session Judge,
   IV Additional City Civil Court, Chennai.

2. The Metropolitan Magistrate,
   Fast Track Court-II,
   Egmore at Allikulam, Chennai – 600 003.

P.VELMURUGAN, J.

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Crl.R.C.No.399 of 2025

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