



Crl.R.C.No.512 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2025

PRONOUNCED ON : 14.07.2025

CORAM :

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

Crl.R.C.No.512 of 2023

G.Palanivel

... Petitioner

Vs.

K.P.Radhakrishnan

... Respondent

Prayer : Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., pleaded to set aside the judgment passed in C.C.No.275 of 2016 dated 16.06.2022 on the file of Judicial Magistrate, Fast Track Court, Kallakurichi and confirmed in C.A.No.22 of 2022 dated 03.01.2023 on the file of the III Additional District and Session Court, Kallakurichi, Villupuram District.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.A.Prakash
for Mr.V.Gunasekar

ORDER

This Criminal Revision Case has been preferred against the judgment dated 03.01.2023 passed in C.A.No.22 of 2022 by the learned III Additional District and Sessions Court, Kallakurichi, Villupuram,



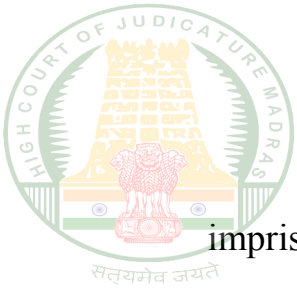
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thereby confirming the judgment dated 16.06.2022 passed in C.C.No.275

of 2016 by the learned Judicial Magistrate, Fast Track Court, Kallakurichi.

2. The petitioner is the accused in the complaint lodged by the respondent/complainant for the offence punishable under Section 138 of Negotiable Instruments Act (in short 'the NI Act') alleging that the petitioner borrowed a sum of Rs.27,00,000/- on 12.08.2015 as a hand loan for his business and family expenses and on the same day, assured to repay the amount within 15 days and to discharge the said liability, he issued a post dated cheque bearing No.099505 dated 12.08.2015 drawn on Indian Bank, Kallakurichi for a sum of Rs.27,00,000/- in favour of the respondent. When the said cheque was presented on 31.08.2015 for collection, the same was returned on 15.09.2015 with an endorsement "Funds Insufficient". Therefore, after causing statutory notice, the respondent has filed a complaint u/s 138 of NI Act on the file of Judicial Magistrate, Fast Track Court, Kallakurichi in C.C.No.275 of 2019.

3. After elaborate discussions, the trial court convicted the petitioner u/s 138 of NI Act and sentenced him to undergo rigorous



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imprisonment for one year and to pay the cheque amount of Rs.27,00,000/- within three (3) months to the respondent, in default to pay the said amount, sentenced to undergo simple imprisonment for a further period of two (2) months. Challenging the same, the petitioner has filed an appeal in C.A.No.22 of 2022 before the III Additional District and Sessions Court, Kallakurichi, Villupuram and the learned Sessions Judge, vide judgment dated 03.01.2023, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court, Kallakurichi. Aggrieved by the same, the present revision is filed.

4. The learned counsel for the petitioner submits that the petitioner had categorically rebutted the presumption by marking Ex.D.1 to Ex.D.3. Though the petitioner did not examine any witnesses, he rebutted the presumption u/s 118 and 139 of NI Act. Even then, the Trial Court and the Appellate Court mechanically convicted the petitioner. Further, petitioner was not served with a notice as contemplated u/s 138(b) of NI Act. The respondent has not proved that he had lent a sum of Rs.27 lakhs to the petitioner, that too, without any security. Therefore, the respondent failed to prove his case that he had source of income to



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lend such a huge amount. He also did not disclose his income tax returns to show that the amount, which was lent in favour of the petitioner was accounted with his income tax returns. Further, on the date of borrowal, the respondent did not receive any documents for security. Therefore, the respondent failed to prove that the cheque was issued for legally enforceable debt. In support of his contentions, he relied upon the order of this Court in Crl.R.C.No.599 of 2013 dated 11.03.2021 in the case of **C.Ponnusamy Vs. M.Anbu**, and submitted that this Court had held that when the accused rebutted the presumption satisfactorily by probablising valid defence, the burden shifted to the complainant. However, the complainant failed to prove that the cheque was issued for legally enforceable debt. Accordingly, he prays for allowing the revision.

5. Per contra, learned counsel for the respondent would submit that on receipt of the statutory notice, the petitioner did not even issue any reply notice to rebut the initial presumption arise u/s 139 of NI Act. The respondent had categorically deposed that he had sold out his immovable property for a sum of Rs.40 lakhs. At that juncture, the petitioner approached the respondent seeking loan for a sum of Rs.27 lakhs and he assured that he will return the loan amount within a period



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of 15 days. On the date of borrowal, the petitioner issued a cheque and instructed the respondent to encash the same after 15 days. Accordingly, the respondent presented the cheque on 31.08.2015 for collection, but it was returned for the reason "funds insufficient". Therefore, the respondent discharged his initial burden as contemplated u/s 138 of NI Act. In order to rebut the presumption, the petitioner failed to examine any witnesses and also nothing has been illicitated from the cross-examination. Further, he submitted that the respondent need not produce any documentary evidence to show the source of funds and need not record the transactions in the form of receipt when the complainant draws presumption as contemplated u/s 118 and 139 of NI Act. Therefore, the Trial Court and the Appellate Court rightly convicted the petitioner, which does not require any interference by this Court. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Tedhi Singh Vs. Narayan Dass Mahant* reported in (2022) 6 SCC 735.

6. Heard the learned counsel appearing for the parties and also perused the materials available on record.



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7. The crux of the complaint filed by the respondent is that on 12.08.2015, the petitioner approached the respondent to avail loan to the tune of Rs.27 lakhs. The respondent had sold out his immovable property and he had Rs.40 lakhs. Considering the request made by the petitioner, the respondent lend a sum of Rs.27 lakhs as hand loan on receipt of post dated cheque dated 31.08.2015 and the petitioner assured that the cheque will be honoured after 15 days from the date of borrowal. The respondent was examined as P.W.1, who deposed in his cross-examination that he had sold out his immovable property to an extent of 3 ³/₄ acres of land in favour of one Rajendran on 04.09.2014. The certified copy of the sale deed was marked as Ex.D.1. Thereafter, he had purchased another property on 08.09.2014 and the certified copy of the sale deed for that purchase was also marked as Ex.D.2. After purchase, the said property was mortgaged in favour of one Kolanji on 24.04.2015 and the certified copy of the mortgaged deed was marked as Ex.D.3. Therefore, the specific defence of the petitioner was that the respondent had no source of income to lend such a huge amount of Rs.27 lakhs as loan to the petitioner. Though the respondent further deposed that the said property was subsequently sold out, the respondent failed to produce any document to show that the said property was sold out. Thus, it is clear



that after selling the immovable property, he purchased another property from the sale consideration. Further, subsequently the said property was also mortgaged to settle the private loans. Therefore, the petitioner rebutted the presumption u/s 118 and 139 of NI Act. However, the respondent failed to prove that he had source of income to lend such a huge amount. The onus is not on the complainant at the threshold to prove his financial capacity, but when the accused questions the financial position of the complainant, the complainant would have to bring before the trial court cogent material to indicate that he had financial capacity and had actually advanced the amount in question by way of loan, in order to lend credibility to the transaction for which the cheque is alleged to have been issued in his favour. The Hon'ble Supreme Court in *Tedhi Singh's* case relied upon by the learned counsel for the respondent, has held as follows :-

“10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be



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expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”

Thus, it is clear that the accused has a right to demonstrate that the complainant in a particular case, did not have the capacity and therefore, the case of the accused would become acceptable when he can produce independent materials i.e., by examining his witness and producing documents in pursuance of proving his case. It is also upon the accused to establish the very same aspect by pointing to the materials produced



by the complainant himself. He can further achieve this result through the cross-examination of the witnesses of the complainant.

8. As discussed above, the petitioner categorically cross-examined the respondent and elicited that he had no capacity to lend such a huge amount as loan. Moreover, the respondent had lent a sum of Rs.27 lakhs by cash only on receipt of post dated cheque. Except for the post dated cheque, no other documents were executed in favour of the respondent as security. Therefore, when the petitioner rebutted the presumption, the burden shifts on the shoulder of the respondent to prove his case. However, in this case, the respondent failed to prove that the cheque was issued for legally enforceable debt. Though the respondent is known to the petitioner, no prudent man would give such a huge amount by way of cash without any security. Further, the petitioner has not proved his capacity to advance such a huge amount to the respondent by producing documents before the trial court. Without considering the above aspects, the Trial Court as well as the Appellate Court mechanically convicted the petitioner. Therefore, the findings of both the Courts below are perverse, illegal and arbitrary, which cannot be sustained and the same are liable to be set aside.



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9. Accordingly, the Criminal Revision Case is allowed and the conviction and sentence imposed on the petitioner/accused by the Trial Court in C.C.No.275 of 2016 and confirmed by the Appellate Court in C.A.No.22 of 2022 are set aside. The revision petitioner/accused is acquitted from all the charges levelled against him. Fine amount, if any paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand discharged.

14.07.2025

Index : Yes / No

Speaking order / Non-speaking order

NCC : Yes / No

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To

1.The III Additional District and Session Court, Kallakurichi, Villupuram District.

2.The Judicial Magistrate, Fast Track Court, Kallakurichi.



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G.K.ILANTHIRAIYAN, J.

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Pre-delivery order in
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