IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.No.584 of 2023

M. Gnanesekaran ... Petitioner

Versus

J. Rajesh ... Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code, 1973, to set aside the conviction in the judgment dated 06.02.2023 made in C.A.No.06 of 2022 on the file of the learned Principal Sessions Judge, Dharmapuri confirming the judgment dated 01.12.2021 made in S.T.C.No.52 of 2020 on the file of the Judicial Magistrate, Fast Track Court (ML), Dharmapuri by allowing this Criminal Revision Petition.

For Petitioner : Mr. N. Ponraj
For Respondent : Mr. R. Prabakar

O R D E R

This revision has been filed against the judgment passed in C.A.No.06 of 2022 dated 06.02.2023 by the learned Principal District and Sessions Judge, Dharmapuri, thereby confirming the conviction and sentence imposed on the petitioner in STC.No.52 of 2020 dated 01.12.2021 on the file of the Judicial Magistrate, Fast Track Court (ML), Dharmapuri, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (the "N.I. Act)".

2. The petitioner is an accused on the complaint lodged by the respondent for the offence under Section 138 of the N.I. Act, alleging that the respondent is running a Mobile shop in Palacode. The petitioner is a teacher at Government Higher Secondary School at Begarahalli. While so, the petitioner borrowed a sum of Rs.7 Lakhs in cash on 12.02.2020 from the respondent, to buy building materials for construction of his house and he was asked to present a cheque for the said amount on the same day to collect the money on the next day i.e., 13.02.2020. On instructions, the respondent presented the said cheque for collection, which was returned as dishonored as "funds insufficient". After causing statutory notice, the respondent lodged a complaint as against the petitioner and the same was taken congnizance by the Trial Court.

3. In order to prove the complaint, the respondent examined himself as P.W.1 and marked Exs.P1 to P4 documents. On the side of the petitioner/accused, the petitioner examined himself as D.W.1, and another individual, namely the Assistant Manager of the Indian Bank, Dharmapuri was examined as D.W.2. However, no documents were marked on his side.

4. After perusing the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence under Section 138 of the N.I. Act and

sentenced him to undergo six months simple imprisonment and also ordered him to pay the cheque amount as compensation to the respondent within two months, in default to undergo simple imprisonment for a further period of one month.

5. Against which, the petitioner preferred an appeal in C.A.No.06 of 2022 and the same was dismissed on 06.02.2023 by confirming the order passed by the Trial Court. Aggrieved by the concurrent findings of the Courts below, the petitioner has filed the present revision before this Court.

6. The learned counsel for the petitioner submitted that the petitioner rebutted the presumption. The petitioner was examined as D.W.1 and one individual bank witness was examined as D.W.2. D.W.2 deposed that at the time of the alleged borrowing on 12.02.2020, the respondent had only a sum of Rs.500/- in his account. It would clearly show that the respondent had no source to lend such a huge amount of Rs.7 Lakhs to the petitioner, and that too without any security. During the cross examination of the respondent/P.W.1, and during the cross examination of D.W.2, they admitted that the cheque issued was a "blank one". But he stated in the statutory notice as well as in the reply notice, that the cheque issued was a "filled one". Further, he submitted

that the petitioner had lent the money by way of cash within the denomination of Rs.500/- in 700 numbers, which comes to the tune of Rs.3.5 Lakhs. Therefore, the petitioner had categorically rebutted the presumption, but both the Courts below mechanically convicted the petitioner. Though the petitioner rebutted the presumption, the respondent has failed to prove that the cheque was issued for any legal enforceable debt.

7. Per contra, the learned counsel appearing for the respondent would submit that when the loan amount to the tune of Rs.7 Lakhs was borrowed from the respondent, by the petitioner, and on the same date, the petitioner had issued a cheque for the said loan. He further submits that the defence taken by the petitioner is that he had borrowed a sum of Rs.50,000/- from one Mr.Janarthanan and thereby, the petitioner issued a cheque to him for security purpose, and it was misused by the respondent and initiated proceedings under Section 138 of N.I. Act. However, the petitioner failed to examine the said Janarthanan as defence witness in order to disprove the case of the respondent. Furthermore, he submitted that the petitioner did not deny the signature and the issuance of cheque. Therefore, the respondent categorically discharged his initial burden for the offence under Section 138 of N.I. Act, and both the Courts below rightly concurrently convicted the petitioner, and it is liable to be

sustained under Section 138 of the N.I Act. Hence, it does not warrant any interference of this Court.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Upon perusal of the records, it shows that in order to prove the rebutted presumption, the petitioner examined himself as D.W.1 and cross examined the D.W.2, and the respondent examined himself as P.W.1. D.W.1/the petitioner deposed that he had borrowed a sum of Rs.50,000/- from one Janarthanan and issued a cheque as security, which was misused by the respondent and proceedings were initiated for the offence under Section 138 of Negotiable Instruments Act.

10. The petitioner had also cross-examined the D.W.2, who is a Bank Manager of the respondent. He deposed that at the time of alleged borrowal of Rs.7 Lakhs on 12.02.2020, there was only a sum of Rs.500/- available in the account of the respondent. Therefore, the petitioner disputed the source of income and capability of lending such a huge amount of loan. In these circumstances, the respondent also deposed that he lent a loan by way of cash

on 12.02.2020 with deniomination of Rs.500/- in 700 in numbers, which amounts to only Rs.3.5 Lakhs. Further, in the statutory notice which was marked as Ex.P3 and the cheque was marked as Ex.P1, the respondent stated that on the date of alleged borrowing, i.e., 12.02.2020, the petitioner issued a cheque for sum of Rs.7 Lakhs. In the cross examination of P.W.1, for the question that signature and other letters are different one, in which, he deposed that one filled cheque was issued on the date of alleged borrowing and subsequently, it was filled up and presented for collection. Therefore, the petitioner rebutted presumption as contemplated under Sections 118 and 139 of the N.I. Act. The respondent failed to prove that the cheque was issued for any legally enforceable debt. Further, no prudent person would lend such a huge amount as a hand loan without any security document.

11. Both the Courts below failed to consider that except for the acquaintance through the purchase of cell phone, there is no other relationship between the petitioner and the respondent. There is no proof for any legally enforceable debt. Though the petitioner failed to reply to the statutory notice, during the cross examination, and examining of P.W.1, the petitioner rebutted the presumption. It is true that when the accused fails to rebut the presumption, the complainant need not prove his source of income to lend a loan. In the case

on hand, the petitioner as stated supra, categorically rebutted the presumption by examining of D.W.2 and by way of cross examination of P.W.1. Therefore, the burden shifts on the shoulder of the respondent to prove that the cheque/Ex.P1 was issued for legally enforceable debt. The respondent failed to prove the same, and as such, this Court finds perversity in the findings of the both the Trial Court and the Appellate Court. Therefore, it would be sustained, and accordingly, this Court is inclined to allow the revision.

12. In the result, this Criminal Revision Case is allowed by setting aside the judgment dated 06.02.2023 passed in C.A.No.06 of 2022 by the learned Principal Sessions Judge, Dharmapuri, confirming the judgment dated 01.12.2021 made in S.T.C.No.52 of 2020 by the learned Judicial Magistrate, Fast Track Court (ML), Dharmapuri.

23.07.2025

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

klt

G.K.ILANTHIRAIYAN, J.

klt

To

1.The Judicial Magistrate, Fast Track Court (ML), Dharmapuri.

2.The Principal Sessions Judge, Dharmapuri.

Crl.R.C.No.584 of 2023

23.07.2025