



Crl.R.C.No.427 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.08.2025

CORAM:

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

Crl.R.C.No.427 of 2025
and Crl.M.P.No.4948 of 2025

S.Annakodi

... Petitioner

Vs.

K.Palanisamy

... Respondent

PRAYER: Criminal Revision has been filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the conviction imposed in the judgment dated 06.11.2024 made in C.A.No.374 of 2023 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, confirming the judgment dated 21.09.2023 made in S.T.C.No.1148 of 2017 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.A.Selvan Sounder

ORDER

This Criminal Revision has been preferred as against the order dated 06.11.2024, passed by the learned III Additional District and Sessions Judge, Gobichettipalayam, in C.A.No.374 of 2023, confirming the order passed by the learned Judicial Magistrate No.I, Gobichettipalayam, in S.T.C.No.1148



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of 2017 dated 21.09.2023, 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 for the offence punishable under Section 138 of the NI Act, alleging that the petitioner borrowed a sum of Rs.6,11,000/- on 02.07.2016 for construction of her house and also assured that it will be re-paid within a period of twelve months. In order to repay the said amount, she issued a cheque dated 20.06.2017. On instructions, it was presented for collection on 23.06.2017. However, it was returned dishonoured for the reason “funds insufficient” on 27.06.2017. When the respondent questioned the same, the petitioner assured that the amount will be available within a month. Accordingly, on instructions of the petitioner, once again the cheque was presented on 09.08.2017. But the cheque was again returned dishonoured for the second time for the reason “funds insufficient”. Therefore, after causing statutory notice, the respondent lodged complaint and the same was taken cognizance by the trial Court in S.T.C.no.1148 of 2017.

3. In order to prove the complaint, the respondent had examined



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himself as P.W.1 and also marked documents in Ex.P.1 to Ex.P.9. On the side petitioner, she examined D.W.1 to D.W.4 and also marked one document as Ex.D.1. The Court marked one document as Ex.X.1. 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 her to undergo one year simple imprisonment. The trial Court also awarded compensation to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the order passed by the Trial Court. Hence, the petitioner filed the present revision.

4. The learned counsel appearing for the petitioner submitted that the cheque was presented for the second time, though it was returned for the reason “insufficient funds” during the first time. The respondent failed to issue statutory notice within a time stipulated under Section 138 of the NI Act. Therefore, the respondent once again deposited the cheque in order to save limitation and for fresh cause of action. Therefore, the complaint itself is not maintainable. The petitioner cannot be liable to be punished for the offence punishable under Section 138 of the NI Act. He further submitted that the alleged cheque was misused by the respondent without any borrowal. The

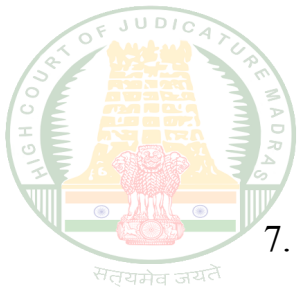


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respondent and one Sundrkrishnan are close friends and the petitioner's husband used to get loan from the said Sundrkrishnan. The petitioner's husband is drunkard and under the influence of alcohol, the cheque was received from the petitioner's husband and it was misused by initiation the proceeding under Section 138 of the NI Act. Therefore, the conviction and sentence imposed the Trial Court cannot be sustained and are liable to be set aside.

5. Per contra, the learned counsel appearing for the respondent submitted that the respondent categorical proved the complaint by examining himself as P.W.1 and marking documents in Ex.P.1 to Ex.P.9. The petitioner admitted her signature found in the cheque and also issuance of cheque. The petitioner failed to rebut the presumption as against the respondent. Therefore, the Trial Court found the petitioner guilty and the same was also confirmed by the Appellate Court.

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



7. The first ground raised by the petitioner is that the cheque was presented for collection for the second time in order to save limitation. The second ground is that the cheque was obtained from the petitioner's husband and the same was misused.

8. It is settled law that the cheque can be presented any number of time till the expiry of its validity. The cheque was issued on 20.06.2017 and for first time it was presented for collection on 23.06.2017. It was returned dishonoured for the reason funds insufficient. Once again, on instructions, it was re-presented on 09.08.2017. It was again returned dishonoured for the second time for the reason “funds insufficient”. Therefore, immediately, on 21.08.2017, the respondent caused statutory notice. Therefore, the first ground raised by the petitioner cannot be considered.

9. Insofar as the second ground is concerned, the petitioner took a stand that the cheque was misused by the respondent and the same was obtained from the petitioner's husband when he was under the influence of alcohol, through one Sundrkrishnan. The respondent was examined as P.W.1. On perusal of the cross-examination of P.W.1, it is revealed that the petitioner did not even whisper about the allegation as against her husband during the

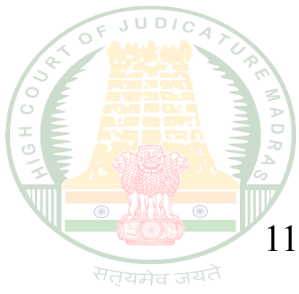


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cross-examination. It is not even the defence of the petitioner before the Trial

WEB COPY Court that the alleged cheque was misused by the respondent. If at all the alleged cheque was taken from the petitioner's husband, the petitioner would have lodged complaint even before the presentation of the cheque. Further, the respondent categorically proved the complaint by discharging initial burden as contemplated under Section 138 of the NI Act. Though the petitioner had examined D.W.1 to D.W.4, there is absolutely no evidence to rebut the presumption as contemplated under Sections 118 & 139 of the NI Act. Mere denial of borrowal cannot be construed as rebuttal of presumption by preponderance of probability. Therefore, both the Courts below rightly convicted and sentenced the petitioner for the offence punishable under Section 138 of the NI Act. This Court finds no infirmity or illegality in the order passed by the Courts below.

10. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner is ready and willing to settle the entire cheque amount. The learned counsel appearing for the respondent agreed to receive the entire cheque amount within a period of four weeks.



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11. In view of the above submissions, if the petitioner settled the entire cheque amount to the respondent within a period of four weeks from the date of receipt of a copy of this Order, the order of conviction and sentence imposed in the order dated 06.11.2024, passed by the learned III Additional District and Sessions Judge, Gobichettipalayam, in C.A.No.374 of 2023, and the order passed by the learned Judicial Magistrate No.I, Gobichettipalayam, in S.T.C.No.1148 of 2017 dated 21.09.2023, are hereby set aside. If the petitioner fails to pay the entire cheque amount within the stipulated time, the respondent is at liberty to take appropriate steps to secure the petitioner to comply the order of conviction and sentence in accordance with law.

12. Accordingly, the Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

26.08.2025

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

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The III Additional District and Sessions Judge,
Gobichettipalayam,
2. The Judicial Magistrate No.I,
Gobichettipalayam.

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and Crl.M.P.No.4948 of 2025

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