



CrI.R.C.No.528 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No. 528 of 2019

M. Kalaiaarasi

.. Petitioner

Versus

N. Gopalakrishnan

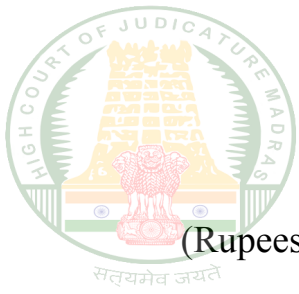
.. Respondent

Criminal Revision is filed under Section 397 and 401 of Cr.P.C to set aside the Judgment of conviction and sentence dated 07.02.2019 passed in Criminal Appeal No. 3 of 2017 on the file of Fast Track Mahila Court, Ariyalur confirming the Judgment dated 24.01.2017 passed in S.T.C. No. 40 of 2016 on the file of the learned Judicial Magistrate-I, Ariyalur.

For Petitioner	:	Mr. C. Vijayakumar
For Respondent	:	Mr. P. Tamilavel

ORDER

The Revision Petitioner is the Accused in S.T.C. No. 40 of 2016. The said case in S.T.C. No. 40 of 2016 was filed by the Respondent under Section 138 of The Negotiable Instruments Act before the learned Judicial Magistrate-I, Ariyalur. By Judgment dated 24.01.2017, the learned Trial Judge allowed the complaint and convicted the Petitioner/Accused to undergo simple imprisonment for a period of one year together with fine of Rs.13,25,000/-



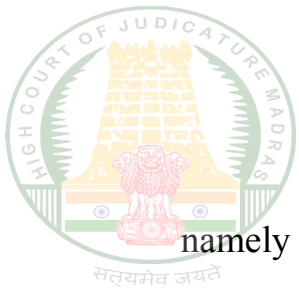
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(Rupees Thirteen Lakhs and twenty five thousand) as compensation payable to the Complainant. Such judgment of conviction passed by the Trial Court was confirmed by the Appellate Court on 07.02.2019 in Criminal Appeal No. 3 of 2017 on the file of the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur. Aggrieved by the aforesaid judgment dated 07.02.2019 in Criminal Appeal No. 3 of 2017, this Criminal Revision Case had been filed by the Petitioner/Accused.

2. The brief facts, which are necessary for the disposal of this Criminal Revision Case, are as follows:-

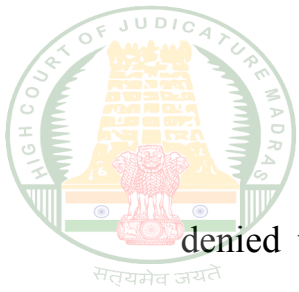
2.1. In the complaint in S.T.C. No. 40 of 2016 filed by the Respondent herein, he had contended that the Revision Petitioner/Accused had borrowed Rs.13,00,000/- (Rupees Thirteen Lakhs) from him on 01.09.2015 to promote her groundnut business. It was also stated that the Revision Petitioner/Accused agreed to return the said amount on 10.10.2015, but failed to repay the amount. When the Respondent/Complainant demanded the loan amount, the Revision Petitioner/Accused issued the cheque bearing No. 129890 drawn on Syndicate Bank, Cuddalore new Town Branch, Cuddalore dated 17.10.2015 for Rs.13,00,000/- (Rupees Thirteen Lakhs). Upon presentation of the cheque with the banker of the Respondent/Complainant



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namely State Bank of India, Ariyalur Branch on 16.11.2015, the cheque was returned unpaid with an endorsement “funds insufficient”. As the cheque was returned unpaid, the Respondent/Complainant issued a lawyer notice dated 07.12.2015 calling upon the Revision Petitioner/Accused to repay the cheque amount. The notice was returned by the postal authorities with an endorsement “unclaimed”. Therefore, the Complainant had filed the complaint praying to prosecute the Revision Petitioner/Accused for having committed the offence punishable under Section 138 to 142 of The Negotiable Instruments Act, 1881 and further prayed that the compensation of Rs.13,00,000/- (Rupees Thirteen Lakhs), being the cheque amount together with Advocate fee and litigation expenses of Rs.25,000/- may be awarded to him as contemplated under Section 357 (1) (b) of the Code of Criminal Procedure by imposing fine amount to be converted as compensation under Section 357 (1) (b) of the Code.

2.2. The complaint filed by the Complainant was taken on file and having been satisfied that a *prima facie* case is made out, notice was issued to the Accused. On receipt of the notice, the Accused appeared before the learned Judicial Magistrate No.1, Ariyalur and she was furnished with all the copies of the documents. When the Accused was questioned about the charge as contemplated under Section 251 of the Code of Criminal Procedure, she



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denied the charge as false. Therefore, trial was ordered. During trial, the

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Complainant examined himself as P.W-1 and two other witnesses as P.W-2 and P.W-3 and marked five documents as Ex. P-1 to P-5. When the incriminating materials made against the Revision Petitioner/Accused were questioned under Section 313 (1) of the Code of Criminal Procedure, it was replied that a false case had been foisted against her. Thereafter, on behalf of the Accused, one Senthil was examined as D.W-1 and the Accused was examined as D.W-2, but no document was marked.

2.3. The learned Judicial Magistrate No.1, Ariyalur, by Judgment dated 24.01.2017, found the Revision Petitioner/Accused guilty of the offence under Section 138 of The Negotiable Instruments Act and convicted and sentenced her to undergo simple imprisonment for a period of one year and to pay a sum of Rs.13,25,000/- (Rupees Thirteen Lakhs and Twenty Five Thousand) within a period of two months.

2.4. Challenging the Judgment of conviction and order of sentence dated 24.01.2017 passed in S.T.C. No. 40 of 2016, by the learned Judicial Magistrate No.I, Ariyalur, the Revision Petitioner/Accused had filed Criminal Appeal No. 3 of 2017 before the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur. The Appellate Court, by the Judgment dated 07.02.2019, confirmed the judgment of conviction and sentence imposed



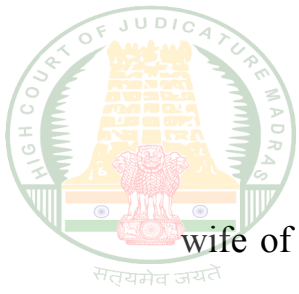
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on the Revision Petitioner/Accused and dismissed the Appeal preferred by the

Revision Petitioner/Accused.

2.5. Aggrieved by the Judgment dated 07.02.2019 passed in Crl.A. No. 3 of 2017 by the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur, the present Criminal Revision Case had been filed by the Revision petitioner/Accused.

3. The learned Counsel for the Revision Petitioner, at the outset, submitted that both the Courts have failed to appreciate the evidence in the proper perspective. According to the learned Counsel for the Revision Petitioner, the Complainant/Respondent alleged to have extended a loan of Rs.13,00,000/- (Rupees Thirteen Lakhs) to the Revision Petitioner/Accused. When the Revision Petitioner/Accused had not repaid the same, it is alleged that on the insistence of the Complainant, a cheque was issued and it was dishonoured on presentation. The defense of the Revision Petitioner/Accused was that she is a vendor of groundnuts in Ulavar Santhai. She sells groundnuts on the road margin in the Ulavar Sandhai and she does not have the necessity to borrow such a huge amount of Rs.13,00,000/- (Rupees Thirteen Lakhs). According to the Revision Petitioner/Accused, she borrowed only Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand only) from the



wife of the Complainant, which she repaid without any interest and a sum of Rs.60,000/- towards interest alone is repayable to the Complainant. The Complainant, for non-payment of the balance amount, abused her in filthy language and unable to bear the conduct of the Complainant, she had given a duly signed blank cheque which was filled up by the Complainant and presented for Rs.13,00,000/- (Rupees Thirteen Lakhs).

4. It is the Contention of the learned Counsel for the Revision Petitioner that she did not have the necessity to borrow such a huge amount and the Complainant is also not having the wherewithal to pay such amount. The Complainant also hails from an ordinary family. There is no record made available to show that the Complainant had paid Rs.13,00,000/- (Rupees Thirteen Lakhs) to the Accused. Further, it is not known as to whether the sum of Rs.13,00,000/- (Rupees Thirteen Lakhs) was paid in one lump sum in cash or cheque or it was paid in instalments. The complaint in S.T.C. No. 40 of 2016 is silent as to the mode in which the amount of Rs.13,00,000/- (Rupees Thirteen Lakhs) was paid to the Revision Petitioner/Accused. The documents filed by the Complainant are cheque, bank return memo, lawyer notice and the returned postal cover. The Complainant has not even produced his bank statement to show that he is having the wherewithal to pay such a



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huge amount. A person cannot extend such a huge amount without any security and this was not taken note of by the Courts below. Therefore, the findings of the Courts below are perverse.

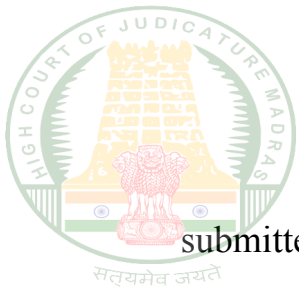
5. It is the contention of the learned Counsel for the Revision Petitioner that the Revision Petitioner/Accused was convicted merely based on presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881. In the case of **Krishna Janardhan Bhat v. Dattatraya G.Hegde** reported in **[2008] 1 S.C.R 605** it was held that if a sum of Rs.20,000/- or more is paid, it must be paid either by way of cheque or demand draft, else it will attract the bar under Section 269SS of The Income Tax Act. In this case, there is nothing to show as to how the Respondent/Complainant had extended the sum of Rs.13,00,000/- (Rupees Thirteen Lakhs) to the Revision Petitioner/Accused and his wherewithal to mobilise such a huge amount. The Respondent/Complainant also did not submit any Income Tax return or his bank statement to substantiate his claim of lending Rs.13,00,000/- (Rupees Thirteen Lakhs) to the Revision Petitioner/Accused. Therefore, the learned Counsel for the Revision Petitioner/Accused would contend that the Respondent/Complainant had not proved that he had extended Rs.13,00,000/- (Rupees Thirteen Lakhs) as loan to the Revision Petitioner/Accused. The



burden is on the Respondent/Complainant to prove that he had paid Rs.13,00,000/- (Rupees Thirteen Lakhs) to the Revision Petitioner/Accused as loan, which he failed to prove. While so, the Courts below ought not to have convicted the Revision Petitioner/Accused for the offence under Section 138 of The Negotiable Instruments Act, 1881. Accordingly, he seeks to set aside the judgment of conviction recorded by the learned Judicial Magistrate-I, Ariyalur which was confirmed by the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur based only on the presumption under Sections 118 and 139 of the Negotiable Instrument Act, 1881.

6. On the other hand, the learned Counsel for the Respondent/Complainant submitted that both the Courts below on appreciation of the evidence made available, had independently concluded that the Revision Petitioner/Accused is guilty of the offence punishable under Section 138 of The Negotiable Instruments Act, 1881. The revisional Court cannot sit as an Appellate Court to reverse or interfere with such concurrent findings rendered by the Courts below. The Revision lacks merit and is to be dismissed.

7. The learned Counsel for the Respondent/Complainant also



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submitted that a statutory notice was issued to the Revision Petitioner/Accused and it was returned as “unclaimed-intimation delivered”. However, the Revision Petitioner/Accused had not taken any steps to send a reply denying the averments in the statutory notice. It was the earliest opportunity available to the Revision Petitioner/Accused to rebut the presumption raised by the Complainant in a proceeding under Section 138 of The Negotiable Instruments Act, 1881 which the Revision Petitioner/Accused failed. While so, the Revision Petitioner/Accused is estopped from raising any further defence. Taking note of the above, the Courts below had rightly convicted and sentenced the Revision Petitioner/Accused which does not call for any interference by this Court. Accordingly, the learned Counsel for the Respondent/Complainant prayed for dismissal of this Criminal Revision Case.

Point for consideration:

Whether the judgment of conviction dated 24.01.2017 in S.T.C.No.40 of 2016 recorded by the learned Judicial Magistrate-I, Ariyalur and confirmed by the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur, by judgment dated 07.02.2019 in Crl.A.No.3 of 2017 are to be set aside as perverse?

8. Heard the learned Counsel for the Revision Petitioner and the

<https://www.mhc.trinidad.org/> learned Counsel for the Respondent. Perused the judgment of the learned



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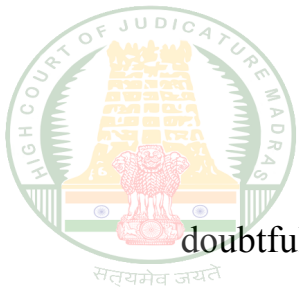
Judicial Magistrate-I, Ariyalur in S.T.C.No.40 of 2016, dated 24.01.2017 as

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well as the judgment of the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur in Criminal Appeal No. 3 of 2017, dated 07.02.2019.

9. In Criminal Revision under Section 397 read with 401 of Cr.P.C, the Revision Court cannot re-consider the facts or re-appreciate the evidence to substitute the conclusion reached by the Courts below. Unless the conclusion reached by the Courts below are perverse or suffers from legal infirmity, the Revision Court cannot interfere with the Judgment delivered by the Courts below, on facts.

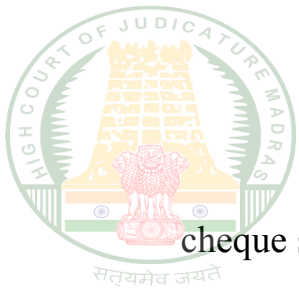
10. On perusal of the judgment of the learned Judicial Magistrate-I, it is found that the Accused had pleaded that the Complainant is a stranger to her. However, in the cross examination she admitted that they were having acquaintance with each other. It is also seen that the defense of the Accused was not consistent at every stage. First, it was claimed that there is no necessity for her to borrow such a huge amount. Then it was claimed that the Complainant does not have the wherewithal to pay such a huge amount. Again, it was claimed that the cheque was signed in different inks and it is



doubtful. Later, it was claimed that she does not have the capacity or necessity to borrow such huge amount. In the evidence of D.W-1, Senthil, he had admitted that the Revision Petitioner/Accused is having a TATA Ace vehicle on her own. It was also stated that D.W-1 Senthil was the driver engaged by the Accused.

11. In the reported ruling in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde*** reported in **[2008] 1 S.C.R 605** it was held that if cash exceeding Rs.20,000/- is to be paid or received, it must be through cheque or demand draft, else such transaction would be hit by Section 269SS of The Income Tax Act. This decision was relied on by the Counsel for the Revision Petitioner to contend that the Respondent/Complainant had not proved the mode in which the whopping sum of Rs.13,00,000/- (Rupees Thirteen Lakhs) was paid to the Revision Petitioner/Accused. It must be stated that the decision in ***Krishna Janarthan Bhat*** was overruled by the subsequent judgment in ***Rangappa vs. Sri Mohan*** reported in **(2010) 11 SCC 441**.

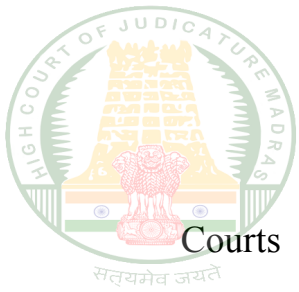
12. It is the defense of the Accused that she is an illiterate woman. When she was abused by the Complainant for not paying balance amount out of Rs.1,35,000/- which was originally borrowed by her, she had given a blank



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cheque signed by her which was exploited by P.W-1 Complainant and filled it up with an exaggerated and fancy amount of Rs.13,00,000/- (Rupees Thirteen Lakhs). Further, in the averments in the complaint it was stated that she borrowed Rs.13,00,000/- (Rupees Thirteen Lakhs) for developing her retail groundnut business into a wholesale business. It was also alleged that the Revision Petitioner/Accused undertaken to repay the amount without interest in a period of two or three months but she had not done so. Above all, the notice sent by the Complainant was returned *unclaimed*. As far as the non-receipt of the notice is concerned, it is stated that the Revision Petitioner will be in Uzhavar sandhai from morning till evening and therefore, the notice was returned unclaimed and consequently, she could not reply to the statutory notice. If that be so, the Postman could have informed the neighbours that a registered letter is addressed to the Revision Petitioner/Accused and she ought to have contacted the Post office about the registered letter in her name. However, no such steps have been taken by the Revision Petitioner/Accused to collect the postal cover. Thus, the reasons assigned by the Revision Petitioner/Accused for not sending reply to the statutory notice cannot be accepted.

13. The defense of the Accused was found to be frivolous by the



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Courts below. The Courts below had the chance of appreciating the demeanour of the witnesses. The learned Judicial Magistrate had discussed in detail the conduct of the Accused on appreciation of her demeanour. First, the Accused claimed that the Complainant is a stranger whereas in her cross examination she admitted that she had acquaintances with the Complainant and they knew each other. If the Respondent/Complainant is a stranger, how come she borrows even the sum of Rs.1,35,000/-. If really the cheque was misused, what prevented her to lodge a complaint against the Complainant. The Revision Petitioner/Accused claims that the Complainant does not have the wherewithal to pay Rs.13,00,000/- (Rupees Thirteen Lakhs). However, the wife of the Complainant, as P.W-3 had stated that her elder sister, P.W-2 had given Rs.10,00,000/- (Rupees Ten Lakhs) to the Complainant to purchase a housing plot in and around Cuddalore. She also deposed that her husband is working as Manager in a Cargo Company in Saudi Arabia. Thus, the wherewithal of the Complainant is also substantiated by P.W-2 and P.W-3.

14. Also, it is the defense of the Accused that the Complainant's relatives are working as Police Officers and as Advocates. Therefore, to target the Accused, a false complaint had been filed in Ariyalur. It is true that the sister-in-law of Complainant is serving as Woman Sub Inspector and her



husband is an Advocate as elicited from the deposition of P.W-3. It has got nothing to do with the claim of the Complainant based on dishonour of the cheque issued by the Accused. When the signature in the cheque is not disputed, the presumption under Section 139 is against the drawer of the cheque. The Court has to draw presumption under Section 139 of Negotiable Instruments Act. The relevant portion of the Negotiable Instruments Act, 1881 are extracted hereunder.

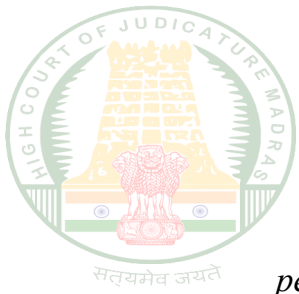
“118. Presumptions as to negotiable instruments. -

Until the contrary is proved, the following presumptions shall be made:

(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

138. Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-



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(a) *the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.*

(b) *the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

(c) *the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

Explanation. - For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.

139. Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt, or other liability."

15. In this case, the Revision Petitioner/Accused had adduced evidence. In her evidence as D.W-2, she admitted that she had borrowed money from wife of the Complainant. This Court as Revision Court cannot re-appreciate the evidence. The learned Judicial Magistrate-I, Ariyalur had properly assessed the evidence and arrived at a just conclusion that the cheque was issued by the Accused to the Complainant for repayment of debt of Rs.13,00,000/- (Rupees Thirteen Lakhs) and not Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand) or for Rs.60,000/- (Rupees Sixty Thousand)

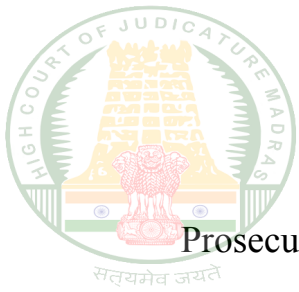


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as claimed by the Accused. The defense of the Accused was, therefore,

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16. On re-appreciation of evidence by the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur, the learned Judge had rejected the Appeal and confirmed the finding of the learned Judicial Magistrate-I, Ariyalur. The main ground of attack in the Appeal was that, the learned Judge had convicted the Accused based only on the presumption under Section 139 of the Negotiable Instruments Act, 1881. The learned Judge had not considered the educational status of the Accused and the status of the Complainant to advance such a huge amount. The evidence of P.W-1 to P.W-3 had cogently stated about the huge amount. How it was given from whom it was received by the Complainant has also been explained. Therefore, the claim of the Accused that her illiteracy status was exploited by the Complainant to fill up the cheque issued by her had not been proved. She has her own vehicle. That shows she is capable of developing her business for which she required money. As per the reported decision in the case of **Krishna Janardhan Bhat v. Dattatraya G. Hegde** reported in **[2008] 1 S.C.R 605** as well as **Rangappa vs. Sri Mohan** reported in **(2010) 11 SCC 441**, the Accused need not enter the witness box in all the cases. The Accused does not have the duty as that of the



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Prosecution. It is enough if the Accused is able to raise a doubt in the case of the prosecution by the probability to doubt the Case of the Complainant from the materials available in the cross examination of the prosecution witnesses or the materials filed by the prosecution.

17. It is true that as per the guidelines issued by the Reserve Bank of India, for the amount beyond Rs.25,000/- it shall be through cheque only. If at all penalty to be imposed, it is to be imposed on the Complainant as per the Income tax Act. But that cannot be a ground to dismiss the complaint and acquit the Accused. It is sufficient that the Accused is able to record the preponderance of probabilities. Here, the Accused had made different defenses and all of them are not found to inspire confidence of the trial Judge, the learned Judicial Magistrate-I, Ariyalur.

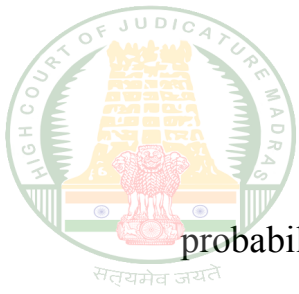
18. As per the reported ruling in *(2019) 4 SCC 194* in the case of *Bir Singh vs. Mukesh Kumar*, it is settled that in exercise of revisional jurisdiction, the high Court does not, in the absence of perversity, upset the concurrent factual findings. It is not for the revisional Court to re-analyse and re-interpret the evidence. If the defence of the Accused that different inks were used for filling up cheques by the Complainant, the Bank where the Accused



operates her account could have returned the cheque suspecting “different inks being used on the cheque” instead of returning the cheque, for “insufficient funds”. Under those circumstances, the rejection of the defence of the Accused by the learned Judicial Magistrate-I, is found proper.

19. The learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur on the same set of evidence, on re-appreciation independently arrived at the same conclusion thereby confirmed the judgment of the learned Judicial Magistrate-I, Ariyalur. This Court as Revision Court cannot re-appreciate the evidence and upset the concurrent factual finding. It is not for the revisional Court to re-analyse and re-interpret the evidence on record. Therefore, the reliance placed by the learned Counsel for the Revision Petitioner in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde*** reported in ***[2008] 1 S.C.R. 605*** will not help the case of the Revision Petitioner.

20. As per the reported ruling in ***Rangappa vs Sri Mohan, 2010(11) SCC 441***, it was held that the Accused need not enter the witness box and it is only for the Accused is able to create the doubt in the mind of the Court on the claim of the Complainant regarding the presumption available under Sections 139 and 118 of the Negotiable Instruments Act, 1881 by preponderance of



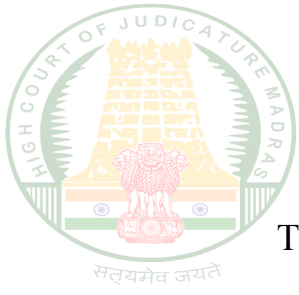
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probabilities. Here, the Accused had adduced evidence as D.W-2 but she could not succeed. Therefore, this Revision lacks merit and is to be dismissed.

21. In the light of the above discussion, the point for consideration is answered against the Revision Petitioner and in favour of the Respondent. However, considering the entire facts and circumstances of the case and that the Revision Petitioner/Accused is a woman, this Court is inclined to modify the sentence alone while affirming the conviction of the Accused.

In the result, **this Criminal Revision is accordingly dismissed** by modifying only the sentence alone. The Judgment of conviction and sentence dated 07.02.2019 passed in Crl. Appeal No. 3 of 2017 on the file of the learned Principal District and Sessions Judge, Fast Track Mahila Court, Ariyalur, confirming the Judgment dated 24.01.2017 passed in S.T.C. No. 40 of 2016 on the file of the learned Judicial Magistrate-I, Ariyalur, is modified. The sentence imposed by the learned Judicial Magistrate-I is reduced from one year to six months.

The Revision Petitioner/Accused is directed to surrender before the learned Judicial Magistrate-I, Ariyalur, within a period of two weeks from the date of uploading of this order on the website of this Court.



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The learned Judicial Magistrate-I, Ariyalur, is directed to issue warrant to secure the Accused in continuation of the judgment recorded in S.T.C.No.40 of 2016, dated 24.01.2017 and detain her in prison to undergo the period of sentence as modified by this Court.

26.03.2025

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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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To

- 1.The Principal District and Sessions Judge,
Fast Track Mahila Court,
Ariyalur.
- 2.The Judicial Magistrate No.I,
Ariyalur.
- 3.The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Order in
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