



Crl.R.C.No.700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2025

CORAM:

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

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V.K.P.Sakthivel

..... Petitioner

Vs.

Ravindran

..... Respondent

PRAYER:

Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C., praying to set aside the order judgment passed in Crl.A.No.46 of 2020 dated 04.11.2022 on the file of I Additional Sessions Judge at Salem in confirming the order of conviction dated 13.07.2020 passed in STC.No.94 of 2017 on the file of the Judicial Magistrate No.I at Salem.

For Petitioner : M/s.R.Renukadevi

For Respondent : Mr.K.Sureshkumar

ORDER

This criminal revision case has been filed against the judgment passed in Crl.A.No.46 of 2020 dated 04.11.2020 on the file of the I Additional



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Sessions Judge at Salem confirming the order of conviction and sentence

imposed by the trial court in STC.No.94 of 2017 dated 13.07.2020 on the file of the learned Judicial Magistrate-I, Salem.

2. The respondent filed complaint for the offence punishable under Section 138 of NI Act against the petitioner alleging that the petitioner borrowed a sum of Rs.8,90,000/- on 03.05.2016 and Rs.14,00,000/- on 03.06.2016. In order to repay the said amount, the petitioner issued two cheques. Both were presented for collection, but the same were returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the complaint was filed.

3. On the side of the respondent, he had examined himself as PW1 and marked Ex.P1 to Ex.P15. On the side of the petitioner, he had examined himself as DW1 and marked Ex.D1 to Ex.D10. On perusal of the oral and documentary evidences, the trial court found the petitioner guilty for the offences punishable under Section 138 of NI Act and sentenced him to undergo two years rigorous imprisonment and also ordered to pay compensation to the respondent to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed by confirming the



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judgment of the trial court.

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4. The learned counsel for the petitioner would submit that on receipt of the statutory notice, the petitioner issued reply notice and the same was marked as Ex.P7. The specific defence of the petitioner was that the cheques were not issued for any legally enforceable debt and as such, the respondent failed to discharge his initial burden to attract the offences under Section 138 of NI Act. Admittedly, there were transactions between the petitioner and the respondent with regards to purchase of construction materials to the tune of Rs.18,05,708/-, for which the petitioner had paid a sum of Rs.12,47,486/-. Subsequently, for the balance amount, the petitioner had issued two cheques for the purpose of security. Subsequently, the said amount was paid and however, the respondent failed to return the same. The respondent also misused both the cheques by presenting for collection and filed the complaint. The petitioner also produced tax invoices, which were marked as Ex.D1 to Ex.D7, to prove that the petitioner had purchased constructions materials from the respondent. He further submitted that the respondent had no income to lend a huge sum of Rs.22,90,000/-, that too without any security. The petitioner had purchased construction materials even during the year 2013-2014. Thereafter, according to the respondent, the petitioner borrowed a sum of Rs.22,90,000/- during the year 2016. During that period, the respondent had no income to lend such a huge



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amount and in support of the said contention, the petitioner also filed statement of accounts, which were marked as Ex.D8 and Ex.D10. Therefore, the petitioner categorically rebutted the presumption arising under Sections 118 and 139 of NI Act. Even then, the trial court and the appellate court mechanically convicted the petitioner.

5. Per contra, the learned counsel for the respondent would submit that the petitioner did not deny the signature and the issuance of the cheques. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of NI Act. In fact, the petitioner had taken a specific stand that the cheques, which were marked as Ex.P1 and Ex.P2, were issued for the purpose of security, that too in the year 2011. In the reply notice, which was marked as Ex.P7, the petitioner categorically replied that Ex.P1 and Ex.P2 were issued in the year 2011 as security purpose. However, as per the Ex.P9, Ex.P1 and Ex.P2 were issued only on 14.12.2012 by his banker. Therefore, there could not be any possibility for the petitioner to issue Ex.P1 and Ex.P2 as security purpose, that too in the year 2011. Further, the purchase of construction materials was between the petitioner's wife and M/s.Sri Sakthi Agencies. Those contradictions are nothing to do with the borrowal of the amount by the petitioner from the respondent. Therefore, both the court below rightly



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convicted the petitioner and it does not warrant any interference by this Court.

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

7. The case of the respondent was that the petitioner borrowed loan from the respondent to the tune of Rs.8,90,000/- on 03.05.2016 and a sum of Rs.14,00,000/- on 03.06.2016. In order to repay the said loan amount, the petitioner issued Ex.P1 and Ex.P2. But the specific defence taken by the petitioner is that Ex.P1 and Ex.P2 were issued for security purpose at the time of purchase of construction materials. After receipt of the statutory notice, which was marked as Ex.P5, the petitioner issued reply notice, which was marked as Ex.P7 stating that the petitioner never borrowed any loan as alleged in the complaint. There was no need for him to borrow any amount. Further, both the cheques were not issued for any legally enforceable debt and both the cheques were issued as security for the purchase of construction materials from the respondent. The petitioner marked the invoices under which he purchased the construction materials. The petitioner maintained the purchase account in the name of his wife. On perusal of Ex.B8, it is revealed that there were money transactions while purchasing construction materials between the petitioner's wife and the respondent. Further, Ex.B1 to Ex.B7 revealed that Sri Sakthi



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Agencies issued invoices for the purchase of constructions materials. The said

Sri Sakthi Agencies is owned by the respondent. The invoices were issued in

the name of the petitioner's wife. Further, they show that there was a huge

purchase of construction materials on credit basis. Therefore, those purchases

were made from the year 2013. As such, both Ex.P1 and Ex.P2 were issued as

security purpose for purchasing construction materials by the petitioner. But

the petitioner wrongly stated in his reply notice as Ex.P1 and Ex.P2 were issued

for security purpose in the year 2012. The business transaction itself started

from the month of May 2013 and the cheque book itself was issued to the

petitioner in the year 2012. Therefore, there was typographical error in the reply

notice. The petitioner also marked the returns of the respondent's income for the

year 2016-2017, which were marked as Ex.D8 and Ex.D9. It shows that the

respondent had gross income to the tune of Rs.3,92,065/- for which he had paid

tax to the tune of Rs.14,120/- Therefore, on perusal of the income tax returns

for the year 2017-2018, it is revealed that the respondent had gross income to

the tune of Rs.6,45,011/-, for which he paid tax for a sum of Rs.34,945/-.

Therefore, the respondent had absolutely no income for the years 2016-2017

and 2017-2018 to lend such a huge amount to the petitioner. Therefore, the

petitioner categorically rebutted the presumption arising under Sections 118

and 139 of NI Act by preponderance of probabilities. It is relevant to extract the



provisions under Sections 118 and 139 of NI Act hereunder:

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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, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;

(f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.



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.

8. In this regard, it is relevant to rely on the judgment rendered by the Hon'ble Supreme Court of India in the case of ***M/s.Kumar Exports Vs. M/s.Sharma Carpets*** reported in **2009 (2) SCC 513**, wherein it is held as follows:

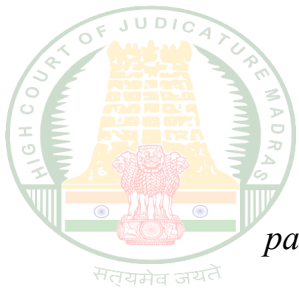
“10. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability. Applying the definition of the word 'proved' in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive



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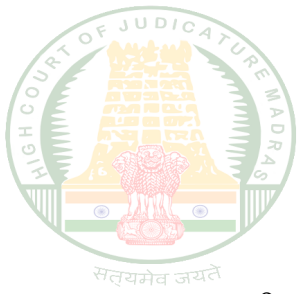
and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

11. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the



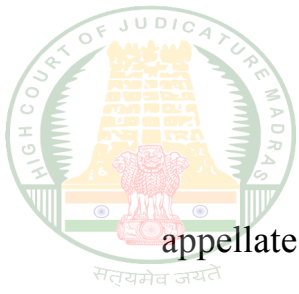
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passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in [Section 114](#) of the Evidence Act to rebut the presumptions arising under [Sections 118](#) and [139](#) of the Act. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under [Sections 118](#) and [139](#) of the Act will not again come to the complainant's rescue.”



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9. Hence, the burden once again shifts on the shoulder of the respondent to prove his case. However, the respondent failed to prove that the Ex.P1 and Ex.P2 were issued for legally enforceable debt. Unfortunately, the trial court and appellate court on the basis of the reply notice issued by the petitioner that Ex.P1 and Ex.P2 were issued in the year 2011 as security purpose, mechanically convicted the petitioner. The petitioner also deposed as if Ex.P1 and Ex.P2 were issued in the year 2011. However, as stated supra, the cheque books were issued in the year 2012 and as such, there is absolutely no possibility for the petitioner to issue cheques in the year 2011, whereas both the cheques were issued as security purpose in the year 2013 at the time of starting purchase of construction materials from the respondent's proprietorship concern M/s.Sri Sakthi Agencies. Further, no prudent person would lend such a huge amount, that too without any document such as pronote etc. Further, the petitioner was purchasing construction materials on credit basis. That being so, the respondent, being the proprietor of M/s.Sri Sakthi Agencies, could not have lent money to the petitioner who was purchasing materials on credit basis. Therefore, the respondent failed to prove his case to punish the petitioner for the offence punishable under Section 138 of NI Act. As such, the judgment of conviction and sentence imposed by the trial court which was confirmed by the



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appellate court cannot be sustained and the same is liable to be set aside.

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10. Accordingly, this criminal revision case is allowed and the judgment passed in Crl.A.No.46 of 2020 dated 04.11.2020 on the file of the I Additional Sessions Judge at Salem and the judgment passed in STC.No.94 of 2017 dated 13.07.2020 on the file of the learned Judicial Magistrate-I, Salem are set aside. The petitioner is acquitted of all the charges for the offences punishable under Section 138 of NI Act. The bail bond, if any executed by the petitioner, shall stand cancelled.

30.06.2025

Index : Yes/No
Neutral citation : Yes/No
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To

- 1.The learned I Additional Sessions Judge at Salem
- 2.The Judicial Magistrate No.I at Salem.



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G.K.ILANTHIRAIYAN, J.

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