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Crl.RC.No.470 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.470 of 2025

and

Crl.M.P.Nos.5623 and 5624 of 2025

Mrs.Latha

... Petitioner

Vs.

Mrs.E.Sathya

... Respondent

Prayer: Criminal Revision Case filed under Section 438 read with 442 B.N.S.S. to set aside the order dated 24.01.2025 in Criminal Appeal No.349 of 2022 on the file of the XVth Additional District and Sessions Court, Chennai, confirming the judgment of the trial Court in C.C.No.9276 of 2019 dated 15.11.2022 on the file of the Metropolitan Magistrate, FTC-II, Egmore at Allikulam, Chennai, convicting the petitioner for an offence under Section 138 of N.I. Act sentencing her to six months simple imprisonment and directing the accused to pay the cheque amount of Rs.15,00,000 (Rupees Fifteen Lakhs Only) as compensation to the complainant.



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For Petitioner : Mr.R.S.Mangala Kumar

ORDER

This Criminal Revision petition has been filed by the petitioner to set aside the order dated 24.01.2025 in Criminal Appeal No.349 of 2022 on the file of the XVth Additional District and Sessions Court, Chennai, confirming the judgment of conviction and sentence imposed by the trial Court in C.C.No.9276 of 2019 dated 15.11.2022 on the file of the Metropolitan Magistrate, FTC-II, Egmore at Allikulam, Chennai.

2. The case of the petitioner is that the respondent filed a private complaint under Section 200 Cr.P.C. against the petitioner for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.9276 of 2019 before the Metropolitan Magistrate, FTC-II, Egmore at Allikulam, Chennai, alleging that the respondent lent a sum of Rs.18 lakhs to the petitioner by cash on various dates by pledging her jewels and borrowing from her friends and



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other relatives with the fond hope that the petitioner would return the money

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within the stipulated period as agreed by her, but when the respondent requested the petitioner to re-pay the loan after the stipulated period, she gave vague reply and finally, towards part payment, she issued a cheque for Rs.10 lakhs, vide Cheque No.618718 dated 30.12.2014, drawn on State Bank of India, Saligramam Branch, Chennai, towards discharge of her legally enforceable liability and when the same was presented on 25.03.2015 for collection, it was returned as "funds insufficient" and hence, the respondent issued a legal notice on 06.04.2015 calling upon the petitioner to pay the cheque amount of Rs.10 lakhs and though the petitioner received the legal notice on 08.04.2015, but failed to make payment, instead, the petitioner through her counsel gave evasive reply dated 09.04.2015 with an intent to cheat the respondent and hence, the respondent filed the private complaint after the statutory period. The learned Magistrate, after enquiry, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and



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sentenced to undergo six months simple imprisonment and further directed the petitioner to pay compensation of Rs.15 lakhs to the respondent/complainant and failing to pay the compensation within a period of 30 days from the date of judgment, to undergo 2 months simple imprisonment. Challenging the judgment of conviction and sentence, the petitioner approached the XVth Additional District and Sessions Court, Chennai, by way of filing appeal in Crl.A.No.349 of 2022. The learned Additional Sessions Judge, after hearing the appeal, dismissed the same by judgment dated 24.01.2025 and confirmed the conviction and sentence passed by the Magistrate. Aggrieved by the same, the petitioner/accused has filed the present revision petition.

3. The learned counsel for the petitioner submitted that the respondent has not proved that the petitioner issued the said cheque for legally enforceable debt or liability. The fact is that the cheque was originally given to one Kavitha and the said Kavitha has misused the cheque and that there is no debtor and creditor relationship between the petitioner and the respondent. Though the



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petitioner had mentioned the said facts in the reply notice dated 09.04.2015,

the respondent suppressed the said facts in his complaint. Further, the respondent has not stated any specific date as to when she lent the money to the petitioner. In one place, she has stated that she pledged her jewels and lent the money to the petitioner and in another place, she has stated that she borrowed money from her friends and well wishers and lent to the petitioner. However, the respondent had not examined any of the witnesses or produced any document to show that she has means to lend such a huge amount to the petitioner. Further, the respondent has not established the foundational fact that the cheque was issued towards discharge of legally enforceable debt. The learned Magistrate failed to consider the fact that the respondent had not proved that she had means to lend such a huge amount to the petitioner and convicted and sentenced the petitioner to undergo imprisonment and also directed to pay compensation of Rs.15 lakhs. Thereafter, when the petitioner approached the appellate Court, the appellate Court also failed to re-appreciate



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the evidence and simply endorsed the views of the Magistrate. Hence, the

present revision petition is filed by the accused.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. Though this petition is at the admission stage, since no adverse order is being passed against the respondent, notice to the respondent is dispensed with.

6. The contention of the petitioner is that though the petitioner sent a reply to the statutory notice on 09.04.2015, the respondent had not produced and marked the same before the Magistrate. However, the petitioner also had not marked the said reply notice either before the trial Court or before the appellate Court as an additional evidence. The said reply notice was not at all brought under the judicial scrutiny. Though the petitioner had put certain suggestions that the said cheque was issued to one Kavitha and the said Kavitha has issued the cheque to the respondent, no other material was



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produced to show that the said cheque was originally issued to the said Kavitha

and not to the respondent. Even after receipt of the statutory notice, the petitioner has not taken any action either against the respondent or against the said Kavitha and she has also not taken any steps to get back the cheque either from the said Kavitha or from the respondent. Even the petitioner has not come to the witness box to establish her case by preponderance of probability.

7. Though the accused need not come into the witness box and the accused presumed to be innocent and only the complainant has to establish the commission of offence, however, in order to prove the case, the respondent examined herself as P.W.1 and marked 4 documents as Ex.P.1 to Ex.P.4. The respondent has established that the cheque was issued for legally enforceable debt. The petitioner has not denied the signature except the suggestion that the cheque was issued to one Kavitha and not to the respondent.

8. Once the cheque is admitted and the complainant established that the accused had executed the cheque, then there is a legal presumption under



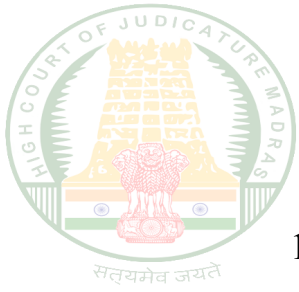
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Sections 118 and 139 of the Negotiable Instruments Act that the cheque was

issued for discharging the legally enforceable debt/liability. No doubt, the said presumption is a rebuttable presumption and the accused has to rebut the presumption in the manner known to law.

9. It is settled proposition of law that the scope of the revision is very limited. The revisional Court cannot sit in the arm chair of the appellate Court and re-visit the entire materials. The revisional Court has to only see whether there is any perversity or illegality or infirmity in the findings of the trial Court and the appellate Court.

10. In this case, on a reading of the entire materials, this Court does not find that the petitioner has established her defence or rebutted the presumption in the manner known to law. Therefore, this Court does not find any perversity either in the factual or legal position. Therefore, there is no reason to interfere with the judgment of conviction and sentence passed by the Courts below and there is no merit in this revision.



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11. Accordingly, this Criminal Revision petition is dismissed at the

admission stage itself. Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

1. The XVth Additional District and Sessions Court,

Chennai,

2. The Metropolitan Magistrate, FTC-II,

Egmore at Allikulam, Chennai,



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P.VELMURUGAN. J.

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