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Crl.RC.No.499 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.499 of 2025 and
Crl.M.P.Nos.6334 and 6336 of 2025

Maruthaimani

... Petitioner

Vs.

Ramakrishnan

... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 of Cr.P.C./442 of B.N.S.S. 2023, to call for the records and set aside the judgment of the lower appellate Court made in C.A.No.12 of 2024 dated 03.03.2025 on the file of Principal District and Sessions Judge whereby upheld the conviction and sentence passed by the learned Fast Track Judicial Magistrate, Thiruthuraipoondi, Thiruvarur District made in S.T.C. No.60 of 2021 judgment dated 25.11.2023 in convicting the petitioner herein for the offence under Section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.S.Arivazhagan



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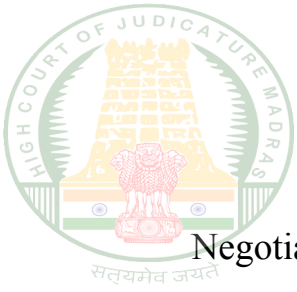
ORDER

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This Criminal Revision Petition has been filed by the petitioner challenging the judgement of the lower appellate Court passed in Crl.A.No.12 of 2024 dated 03.03.2025 on the file of the Principal District and Sessions Judge, Thiruvarur, whereby upheld the conviction and sentence passed by the Judicial Magistrate, Fast Track Court, Thiruthuraipoondi in S.T. C. No.60 of 2021 dated 25.11.2023.

2. It is seen that there are no arguable grounds or any legal grounds canvassed by the petitioner. Therefore, this Court is inclined to dispose of this revision petition at the admission stage itself.

3. The brief facts of the case are that the respondent filed a complaint against the petitioner under Section 200 Cr.P.C. and also under Section 138 of Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court, Thiruthuraipoondi in S.T. C. No.60 of 2021. The learned Magistrate, after trial found that the petitioner has committed the offence under Section 138 of



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Negotiable Instruments Act and thereby, convicted and sentenced him to

undergo two years simple imprisonment and to pay the cheque amount of Rs.5

lakhs to the respondent as compensation within a period of one month from the

date of judgment and in default of payment of compensation, to undergo

simple imprisonment for a further period of six months. Aggrieved by the

judgment of conviction and sentence, the petitioner, filed an appeal before the

Principal District and Sessions Judge, Thiruvavarur and the same was taken on

file in Crl.A.No.12 of 2025. The learned Principal District and Sessions Judge,

after hearing the appeal, dismissed the same by judgment dated 03.03.2025 and

confirmed the judgment of conviction and sentence passed by the trial Court.

Hence, challenging the same, the present revision is filed by the accused.

4. The learned counsel for the petitioner submitted that the cheque was not issued to the respondent for discharge of any legally enforceable debt. The fact is that the petitioner and his friend one Dhananjeyan were doing Car business and the petitioner had handed over signed blank cheques to the said



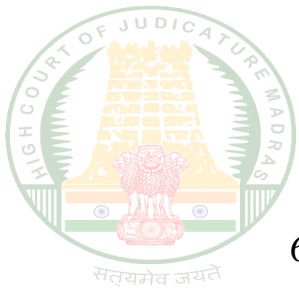
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Dhananjeyan. While so, the said Dhananjeyan died. The respondent/

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complainant while attending the death ceremony of the Dhananjeyan, has taken his cheque, filled the same and filed a complaint before the police, as if, the petitioner borrowed money from the respondent and failed to repay the same. Hence, the petitioner appeared before the police for enquiry and given in writing that he had not borrowed any money from the respondent and also not issued any cheque. The said complaint has also been marked as Exs.D1 and D2. The trial Court failed to see that there was no legally dischargeable debt on the part of the revision petitioner. Further the complainant has not proved the passing of money to the accused. Both the Courts below failed to consider the same and convicted the petitioner. Therefore, the conviction and sentence passed by the Courts below are liable to be set aside.

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

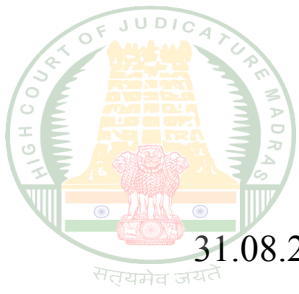


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6. The present revision petition is filed against the concurrent findings of both the appellate Court and Magistrate Court for the offence under Section 138 of Negotiable Instruments Act.

7. A perusal of the records shows that the petitioner admitted the signature and also execution of the cheque. The only defence taken by the petitioner is that the cheque was not executed to discharge any legally enforceable debt or liability. The respondent/complainant unlawfully taken the cheque which was handed over to his friend one Dhanenjeyan after his death and filled the amount in the cheque and filed the complaint.

8. According to the respondent, the petitioner borrowed a sum of Rs.5 lakhs from him on 28.08.2020 and thereafter, he evaded to repay the amount and hence, the respondent lodged a complaint before the Thiruthuraipoondi Police Station on 22.08.2021 and when the petitioner was called for enquiry, the petitioner agreed to repay the borrowal amount fully and towards repayment of the same, he issued a cheque bearing No.047996 dated 5/12



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31.08.2021. Thereafter, as per the instructions of the petitioner/accused, when

the cheque was presented before the Lakshmi Vilas Bank, Thiruthuraipoondi Branch for collection, the same was returned for the reason "funds insufficient" with a Return Memo dated 27.09.2021. Therefore, the respondent issued a statutory notice dated 22.10.2021 and the same was received and acknowledged by the petitioner and subsequently, the petitioner sent a reply dated 27.10.2021 with false averments. Hence, the respondent filed the complaint against the petitioner.

9. Before the trial Court, in order to substantiate his case, the respondent/complainant examined himself as P.W.1 and marked 5 documents as Ex.P.1 to Ex.P.5 in which, Ex.P.1 is the original cheque issued by the petitioner/accused, Ex.P.2 is the Return Memo issued by the Bank, Ex.P.3 is the demand notice sent by the respondent through his counsel to the petitioner, Ex.P.4 is the acknowledgement for the receipt of demand notice by the petitioner and Ex.P.5 is the reply sent by the petitioner for the demand notice

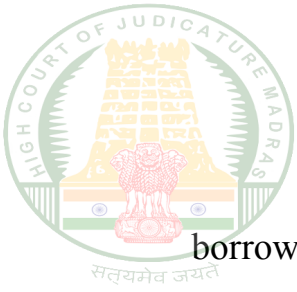


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issued by the respondent.

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10. A perusal of Ex.P.5/reply notice shows that the petitioner/accused admitted the signature and the execution of the cheque, however he has stated that the petitioner and one Dhananjeyan were doing Car business and when the petitioner had gone to Chennai to purchase Car, he had handed over signed blank cheques to the said Dhananjeyan. Whenever, the petitioner needed money in Chennai, the said Dhananjeyan used to get money by using the said cheques and sent the same to the petitioner. While so, the said Dhananjeyan died. The respondent/complainant approached the petitioner stating that Dhananjeyan had borrowed money from him and requested the petitioner to arrange to get back his money for which, the petitioner informed that he would tell after some time. While so, the petitioner received information that a complaint had been lodged against the petitioner as if, the petitioner borrowed money from the respondent and failed to repay the same. Hence, the petitioner appeared before the police for enquiry and given in writing that he had not



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borrowed any money from the respondent and also not issued any cheque. The

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respondent has taken the cheque given to the Dhananjeyn unlawfully, while the respondent had gone to attend the death ceremony of the Dhananjeyan and filled the cheque and that the cheque was not issued to discharge any legally enforceable debt.

11. It is settled proposition of law that when once the execution is admitted, there is a statutory presumption under Section 118 of Negotiable Instruments Act that the cheque was issued for discharge of legally enforceable debt. No doubt, the said presumption is a rebuttable presumption under Section 139 of Negotiable Instruments Act. The accused can always rebut the presumption in the manner known to law. Though rebutting of presumption is not heavy as that of the prosecution in the criminal cases, however the accused can rebut the presumption by preponderance of probability in the manner known to law.

12. In this case, before the trial Court, the petitioner/accused was



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examined as D.W.1 and two documents were marked as Ex.D.1 and Ex.D2

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which are nothing but the original and xerox copy of compliant given by the respondent to the Police and except the complaint, no other document was filed by the petitioner and no other witness was examined to prove his defence that the cheque was issued to his friend Dhananjeyan. Therefore, the petitioner/accused has not rebutted the presumption in the manner known to law whereas, the respondent/complainant has established the foundational fact that the petitioner executed the cheque for discharging legally enforceable debt. Hence, the onus has been shifted to the petitioner/accused and it is for the accused to discharge the onus that the cheque was not issued to the respondent to discharge any legally enforceable debt.

13. On a perusal of the records, it shows that the petitioner/accused has not rebutted the presumption in the manner known to law. Mere denial that the cheque was not issued to discharge any legally enforceable debt, is not acceptable and mere bald denial would not take away the liability of the



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petitioner/accused.

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14. The scope of the revisional Court is very limited. As a revisional Court, this Court cannot sit in the arm chair of the appellate Court and re-appreciate the evidence or re-visit the entire materials. The revisional Court cannot interfere with the findings of the Courts below, unless the revisional Court finds that the appreciation of evidence by the Courts below are perverse or finds any illegality of infirmity in the findings of the Courts below.

15. A perusal of the entire records, this Courts finds no reason to interfere with the findings of the Courts below. Therefore, there are no merits in this revision. Accordingly, this Criminal Revision Petition is dismissed at the admission stage itself. Consequently, connected Miscellaneous Petitions are closed.

01.04.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

1. The Principal District and Sessions Judge,
Thiruvarur

2. The Judicial Magistrate, Fast Track Court,
Thiruthuraipoondi



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P.VELMURUGAN. J.

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