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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2025

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL RC No.922 of 2023

Nagarajan
S/o.Venkatachalam
Residing at 20/3, Muthial Reddy Street,
Alandur, Chennai – 600 016.

Petitioner(s)

Vs

Gopalkrishnan Nair
Prop.Pioneer Inc, represented by his Power Of Attorney
Agent G.Sundaresan, Accounts Manager,
No.25,VGP Murphy Square, 2nd Cross Street,
St. Thomas Mount, Chennai - 600 016

Respondent(s)

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the judgment dated 18.02.2023 passed in C.A.No.7 of 2017 on the file of the Additional District and Sessions Court, Kancheepuram District at

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Chengalpattu, confirming the order dated 28.12.2016 passed in C.C.No.159 of 2015 on the file of the Judicial Magistrate Court (Fast Track Court), Alandur.

For Petitioner(s): Mr.K.V.Muthu Visakan

For Respondent(s): Mr.Siddharth Bahety

ORDER

This criminal revision petition is arising out of the judgment 18.02.2023 passed in C.A.No.7 of 2017 on the file of the Additional District and Sessions Court, Kancheepuram District at Chengalpattu, confirming the order dated 28.12.2016 passed in C.C.No.159 of 2015 on the file of the Judicial Magistrate Court (Fast Track Court), Alandur.

2. The petitioner is an accused in the complaint lodged by the respondent/complainant for the offence punishable under Section 138 of the NI Act alleging that the respondent was a tenant under the petitioner for the premises situated in Door No.20/3, Muthia Reddy Street, ground, first and second floors, Alandur, Chennai. While the respondent was inducted as a

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tenant, the petitioner received an advance of Rs.26,12,500/-, which was to be returned on vacating the premises. Accordingly, they entered into an agreement for lease dated 02.04.2007. subsequently, it was periodically extended by the third agreement dated 01.10.2012. As per the agreement, it warrants six months notice prior to vacating the premises. Accordingly, the respondent by communication dated 16.01.2014, informed the petitioner that he would be vacating the premises and asked for return of rental advance. Even after expiry of six months, the petitioner failed to return the rental advance and the petitioner kept on postponing and evading return of rental advance. After some adjustments *i.e.* after adjusting TDS, rental arrears for the month of July and 10 days in August 2014 and adding the amount towards retaining the interiors, CCTV cameras and air conditioners, the petitioner issued a post dated cheque to the tune of Rs.24,25,000/-. It was presented for collection, but, the same was returned for the reason "funds insufficient" on 09.01.2025. On the same day, the respondent informed the petitioner about the dishonor of cheque. However, on receipt of the same, the petitioner did not reply. Therefore, the respondent caused statutory notice on 24.01.2025 and filed a complaint.

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3. On the side of the petitioner, three witnesses were examined and six documents and one material object were marked. On the side of the respondent, two witnesses were examined and ten documents were marked.

4. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

5. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the order of conviction and sentenced imposed by the trial Court. Hence, the present revision petition.

6. The learned counsel for the petitioner would submit that there was no cause of action to lodge a complaint for the offence punishable under Section 138 of the NI Act, since admittedly the respondent issued the first notice on 09.01.2015 and thereafter, the second notice was issued by

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the respondent on 24.01.2015 and the complaint was lodged only on 04.03.2015 and therefore, the complaint itself barred by limitation and the respondent ought to have filed the complaint within fifteen days from the date of the receipt of the notice dated 09.01.2015, but, the respondent calculated fifteen days from the second notice dated 24.01.2015 and filed the complaint. He would further submit that the alleged cheque was issued for security purpose and it was not issued for any legally enforceable debt and therefore, the respondent failed to discharge the presumption as contemplated under Section 139 of the NI Act. He would also submit that the respondent caused statutory notice, in which, the respondent failed to mention the alleged cheque bearing no.000160 so as to make demand on the dishonor of cheque.

7. *Per contra*, the learned counsel appearing for the respondent would submit that the letter dated 09.01.2015 was issued informing about the dishonour of cheque to the petitioner and the same was not issued as a statutory notice. He would further submit that the said letter was issued on the very same day on receipt of the return memo of dishonour of cheque and

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therefore, it would not amount to statutory notice and in fact, after receipt of the said letter, there was no reply from the petitioner. Further, he would submit that dishonour of cheque was informed to the petitioner in order to know that if there is any chance for re-presentation of the cheque for collection, since the respondent, on receipt of the cheque, vacated the premises believing that the cheque would be honoured. He would also submit that however, there was no reply from the petitioner and as such, through the counsel, the respondent caused legal statutory notice as contemplated under Section 138 of the NI Act to the petitioner and the same was issued very much well within time *i.e.* 30 days from the date of dishonour of cheque and the statutory notice was also duly received by the petitioner and after receipt of the same, the petitioner also replied through reply notice dated 19.02.2015 and therefore, the respondent has filed the complaint with cause of action. He would further submit that insofar as the cheque, which was allegedly stated to be issued for security purpose, is concerned, the respondent being the tenant under the petitioner in order to vacate the respondent returned the rental advance through a cheque after deducting the arrears of rent, TDS and adding costs for retaining the

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interiors, CCTV cameras and air conditioners to the tune of Rs.24,25,000/- and on receipt of the same, the respondent also vacated the premises. Further, he would submit that the landlord need not issue any cheque to the tenant for security purpose and therefore, the respondent has proved the case beyond any doubt and the trial Court has rightly convicted the petitioner and confirmed by the appellate Court.

8. Heard Mr.K.V.Muthu Visakan, learned counsel for the petitioner and Mr.Siddharth Bahety, learned counsel for the respondent.

9. Admittedly, the respondent was a tenant under the petitioner for the premises situated in Door No.20/3, Muthia Reddy Street, ground, first and second floors, Alandur, Chennai, under the rental agreements Exs.D1 to D3 and P2 (P2 and D3 are one and the same). A perusal of the rental agreement (Ex.P2) revealed that the petitioner received rental advance/security deposit to the tune of Rs.26,12,500/- and also monthly rent fixed at Rs.2,62,500/-. As per the rental agreement, to vacate the premises, it requires six months advance notice. After the issuance of notice by the

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respondent to vacate the premises and asked for return of rental advance/security deposit. However, the petitioner dragged the issue without returning the security deposit and finally agreed to return the same after mutually agreeing for some adjustment in the rental advance by adjusting rental arrears for the month of July and ten days in the month of August 2014, TDS and adding amount towards retaining the interiors, CCTV cameras and air conditioners. After the said adjustments, the petitioner issued the post dated cheque dated 15.10.2014 for a sum of Rs.24,25,000/-. On instructions, it was presented for collection on 08.01.2015 and the same was returned unpaid on 09.01.2015 for the reason "funds insufficient". On the same day, by letter dated 09.01.2015, the respondent informed the petitioner about the dishonour of cheque and the same was marked as Ex.P6.

10. On a perusal of the letter (Ex.P6), it reveals that the petitioner was informed about the dishonour of cheque and request to give the said amount immediately or the respondent will have no option taking legal action against him. On receipt the same, there was no reply from the

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petitioner. Therefore, the respondent intended to initiate the proceedings under Section 138 of the NI Act as against the petitioner and caused statutory notice as contemplated under Section 138 of the NI Act on 24.01.2015 and the same was duly received by the petitioner on 27.01.2015, who, in turn caused reply notice on 19.02.2015 and thereafter, the respondent lodged the complaint on 04.03.2015.

11. The learned counsel for the petitioner raised a ground for the first time before this Court that the letter (Ex.P6) has to be construed as a demand, as contemplated under Section 138(b) of the NI Act. As stated *supra*, the letter (Ex.P6) was issued by the respondent informing about the return of cheque. Further, the respondent also requested the petitioner to honour the cheque or he will initiate legal action. Therefore, it cannot be construed as a demand notice as contemplated under Section 138(b), *ibid*. As informed *vide* communication dated 09.01.2015, the respondent caused legal notice on 24.01.2015 and in fact, on receipt of the same, the petitioner also issued reply notice dated 19.02.2015, which was marked as Ex.P9. On a perusal of the reply notice (Ex.P9), it reveals that it did not even whisper about the letter (Ex.P6) dated 09.01.2025.

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12. Therefore, after having been suffered conviction by the trial Court as well as the appellate Court, the petitioner raised the aforesaid ground before this Court. Insofar as the contention of the petitioner in respect of the cheque, which was issued for security purpose, is concerned, admittedly, the respondent was a tenant under the petitioner and the petitioner received the sum of Rs.26,12,500/- as advance. As per the agreement, at the time of vacating the premises, the petitioner ought to have returned the security deposit after adjusting any damage caused to the premises. After the request made by the respondent to vacate the premises both agreed to deduct and add some amount, pursuant to which, the petitioner issued the post dated cheque for a sum of Rs.24,25,000/-. That apart, the petitioner being the landlord need not give any cheque for security purpose and there was absolutely no necessity for the petitioner to issue cheque that to for security purpose. The respondent, who was being the tenant, ought to have paid the monthly rent and advance amount. Therefore, in order to deny the claim of the respondent, the petitioner simple stated in his reply that the cheque was issued for security purpose. However, the petitioner failed to substantiate the same by any evidence.

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13. In view of the foregoing discussions, this Court is of the view that the trial Court as well the appellate Court have rightly convicted the petitioner and this Court finds no ground to interfere with the order of conviction.

In the result, this criminal revision petition stands dismissed.

10-06-2025

nsd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1.The Additional District and Sessions Judge,
Kancheepuram District at Chengalpattu.

2.The Judicial Magistrate,
(Fast Track Court), Alandur.

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G.K.ILANTHIRAIYAN J.

nsd

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