



Crl.R.C.No.878 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2025

CORAM:

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

Crl.R.C.No.878 of 2023 and
Crl.MP.No.7008 of 2023

S.M.Kulzar

..... Petitioner

Vs

Sammandam

..... Respondent

PRAYER:

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records and set aside the judgment in Crl.A.No.49 of 2022 dated 25.04.2023 passed by the learned II Additional District and Sessions Judge, Chidambaram and confirming the judgment made in CC.No.1 of 2020 dated 10.10.2022 passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil and set the petitioner at liberty.

For Petitioner : Mr.G.Pugazhenth

For Respondent : Mr.B.Ramprabu

ORDER

This criminal revision case has been filed against the judgment passed in Crl.A.No.49 of 2022 dated 25.04.2023 by the learned II Additional District and Sessions Judge, Chidambaram, thereby confirming the order of conviction and sentence imposed by the trial court in CC.No.1 of 2020 dated



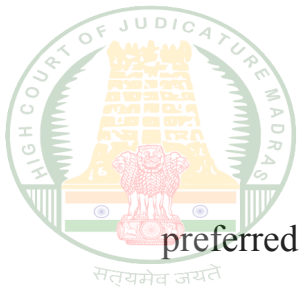
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10.10.2022 on the file of the learned District Munsif cum Judicial Magistrate,

WEB COPY Kattumannarkoil for the offence punishable under Sections 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner borrowed a sum of Rs.10,00,000/- as hand loan for her family expenses. Towards repayment of the said loan, she issued a cheque for a sum of Rs.10,00,000/- on 19.11.2019. It was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent filed complaint and the same was taken cognizance by the trial court.

3. In order to prove the complaint, the respondent had examined PW1 to PW3 and marked Ex.P1 to Ex.P6. The court marked a document as Ex.X1. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidences, the petitioner was found guilty for the offence punishable under Section 138 of NI Act and he was sentenced to undergo six months simple imprisonment. He was also ordered to pay compensation of Rs.10,50,000/- to the respondent, in default, to undergo one month simple imprisonment. Aggrieved by the same, the petitioner



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preferred appeal and the same was also dismissed and the order of the trial court

was confirmed. Hence, this criminal revision case has been filed by the accused.

4. The learned counsel for the petitioner would submit that the petitioner categorically rebutted the presumption by detailed cross examination. The respondent had no source of income to lend such huge amount of Rs.10,00,000/- as loan. That apart, the respondent did not even receive any document as security at the time of lending such huge amount. Mere non issuance of reply notice and failure to let in evidence would not mean that the petitioner admitted her guilt for the offence punishable under Section 138 of NI Act. On the request of the petitioner, the respondent produced Ex.P5 and Ex.P6. Both are statement of accounts of the respondent. They revealed that the respondent had no money on the date of the alleged borrowal of Rs.10,00,000/-. That apart, the respondent did not even whisper in his statutory notice as well as the complaint as to the date on which the petitioner borrowed loan. Therefore, the petitioner rebutted the presumption as contemplated under Sections 118 and 139 of NI Act. Even then, the trial court and the appellate court mechanically convicted the petitioner for the offence punishable under Section 138 of NI Act.

5. Per contra, the learned counsel for the respondent would submit



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that on receipt of the statutory notice, the petitioner failed to issue any reply

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notice. She also admitted her signature found in the cheque and the issuance of the cheque. Therefore, the respondent discharged his initial burden and the trial court rightly convicted the petitioner. In fact, the respondent had examined the bank manager as PW3. He deposed that 1 ½ months prior to borrowal, the respondent had more than Rs.7,00,000/- in his account and there were huge transactions. Therefore, the respondent, who is a retired officer from Neyveli Lignite Corporation Limited, had source of income to lend money. That apart, both the courts below concurrently held that the petitioner is liable to be punished under Section 138 of NI Act. As such, the order of conviction and sentence imposed by the courts below does not warrant any interference by this Court.

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

7. On perusal of the statutory notice as well as the complaint of the respondent, it is revealed that the respondent did not even whisper about the date of the alleged borrowal of Rs.10,00,000/- as loan, that too for family



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expenses. Further, on the date of the alleged borrowal, the respondent did not

receive any document for security purpose. The respondent was examined as

PW1. In his cross examination, he stated the the loan was lent by him on

23.09.2019. However, he did not even whisper about the said date of the alleged

borrowal in his statutory notice as well as his complaint. Therefore, it was only

after thought and no prudent person would lend such huge amount, that too

without any security document. On the request of the petitioner, the respondent

produced statement of accounts from two banks and the same was were marked

as Ex.P5 and Ex.P6. On perusal of Ex.P5 and Ex.P6, it is found that at no point

of time, the respondent had sum of Rs.10,00,000/- in his account. Once once,

there was nearly Rs.7,00,000/- in Ex.P6 and the same was also immediately

withdrawn by him in the month of July 2019. Therefore, there is absolutely no

evidence to show that the respondent had withdrawn the amount and lent the

same in favour of the petitioner herein. Further, from the statement recorded

under Section 313 of Cr.P.C., it is revealed that the alleged cheque was issued

for security purpose at the time of borrowing small amount by her husband from

the respondent herein. Even after repayment of the said loan amount, the said

cheque was not returned by the respondent herein. It was misused by the

respondent to initiate proceedings under Section 138 of NI Act. Further, in the

cross examination of PW1, he also admitted that the signature of the petitioner

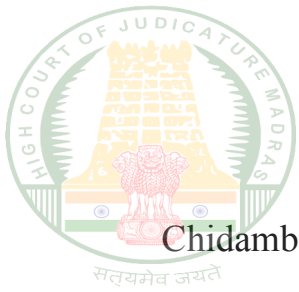


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is in different ink and other letters are in different ink. That apart, the petitioner signed in tamil and all the other things were filled up in English. Therefore, if at all the petitioner issued the cheque towards liability, it would have been filled by the petitioner. Though the security cheque also can be filled up and presented for collection, there should be liability at the time of presentation of the cheque.

8. In the case on hand, the respondent failed to prove that the cheque was issued for any legally enforceable debt or the cheque was issued for security purpose at the time of borrowal of loan amount. The petitioner categorically rebutted the presumption by preponderance of probabilities. Therefore, the entire burden shifts on the shoulder of the respondent. Even then, the respondent failed to prove that the cheque was issued for any legally enforceable debt. Therefore, this Court finds that the findings of both the courts below are perverse and they cannot be sustained. Though the petitioner admitted the signature in the cheque, in over all circumstances, the petitioner rebutted the presumption as contemplated under Sections 118 and 139 of NI Act. As such, the impugned judgments cannot be sustained and the same are liable to be set aside.

9. Accordingly, the judgment passed in Crl.A.No.49 of 2022 dated 25.04.2023 by the learned II Additional District and Sessions Judge,



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Chidambaram and the judgment passed in CC.No.1 of 2020 dated 10.10.2022

by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil are set aside. The petitioner is acquitted of all the charges for the offence under Section 138 of NI Act. The bail bond, if any executed by the petitioner, shall stand cancelled. Fine amount, if any paid, shall be refunded to the petitioner forthwith. It is made clear that the petitioner is permitted to withdraw the amount which was already deposited by her to the credit of CC.No.1 of 2020. It is also made clear that the trial court shall permit the petitioner to withdraw the said amount without ordering any notice to the respondent.

10. In the result, this criminal revision case stands allowed. Consequently, connected miscellaneous petition is closed.

18.08.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
lok

G.K.ILANTHIRAIYAN, J.
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To
1.The learned II Additional District and Sessions Judge,
Chidambaram
2.The learned District Munsif cum Judicial Magistrate,
Kattumannarkoil

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