IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2025

CORAM:

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

Crl.R.C.No.614 of 2025 &
Crl.M.P.Nos.10048 and 10049 of 2025

Mohammed Noorulla ... Petitioner

Vs

Narayanasamy ... Respondent

PRAYER: Criminal Revision Case is filed under Sections 438 /w 442 of BNSS, 2023 to set aside the impugned order of conviction and sentence passed by the learned Principal District and Sessions Judge, Kallakurichi in Crl.A.No.59 of 2024 dated 26.11.2024 confirming the order of conviction and sentence passed by the learned Judicial Magistrate, Sankarapuram in STC No.191 of 2022 dated 08.05.2024.

For Petitioner : Mr.G.Balamanikandan

For Respondent : Mr.T.Sezhian

ORDER

This Revision has been preferred to set aside the impugned order of conviction and sentence passed by the learned Principal District and Sessions Judge, Kallakurichi in Crl.A.No.59 of 2024 dated 26.11.2024 confirming the order of conviction and sentence passed by the learned Judicial Magistrate, Sankarapuram in S.T.C. No.191 of 2022 dated 08.05.2024.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The complaint was lodged by the respondent alleging that the petitioner is running a cement dealership business of Zuari Cement and he had acquaintance with the respondent, while being so, the petitioner borrowed a sum of Rs.15 Lakhs from the respondent on 24.12.2021 and in order to repay the said amount, he had issued cheque on 24.1.2022 and the same was presented for collection. However, it was returned dishonoured for the reason funds insufficient and after causing statutory notice, the respondent lodged a complaint and it was taken cognizance by the trial court. In order to prove the complaint, the respondent examined P.W.1 and P.W.2 and marked exhibits Exs.P.1 to P.6 and on the side of the petitioner, R.W.1 and R.W.2 were examined and no documents were marked. On the perusal of the oral and documentary evidence, the trial court found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo 8 months simple imprisonment and ordered to pay the cheque amount of Rs.15,00,000/-, as compensation. Aggrieved by the same, the petitioner

preferred an appeal and the same was also dismissed by confirming the order of conviction and sentence imposed by the trial court. As against the same, the petitioner has come up with the present revision.

3. The learned counsel for the petitioner would submit that in order to disprove the case of the respondent, the petitioner had examined D.Ws. 1 and 2 and he categorically rebutted the presumption and even then, the trial court mechanically convicted the petitioner. The petitioner used to borrow small amount from the respondent's father, therefore, the petitioner, who is the friend of R.W.2 handed over the cheque to the respondent's father for security purpose. Even after repaying the entire loan amount, the cheque was not returned to R.W.2 and it was misused in the name of the respondent and initiated proceedings under Section 138 of Negotiable Instruments Act. Except the said cheque, no other documents were received as security for such huge amount of Rs.15 Lakhs. The petitioner had absolutely no need to borrow such a huge amount, even then, the respondent failed to prove that the cheque was issued for any legally enforceable debt. That apart, the cheque was issued in the year 2013 and the alleged loan was borrowed in the year 2021 and the petitioner's cheque belong to Lakshmi vilas Bank. In the year 2020, the said bank was merged with DBS Bank. The said cheque, which belongs to Lakshmi Vilas Bank was

presented in the year 2022, as if it was issued on 24.01.2022. If at all the cheque was issued on 24.1.2022, it would be only from DBS Bank, however, without considering the above said facts and circumstances of the case, the trial court and the appellate court convicted the petitioner.

4. Per contra, the learned counsel appearing for the respondent would submit that the petitioner categorically admitted the signature and issuance of cheque, therefore, the respondent discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. The statutory notice was duly received by the petitioner, even then, the petitioner did not reply to rebut the initial presumption. Further, the petitioner categorically admitted in his cross examination that he issued the cheque from his loan account and his account was declared as 'NPA', therefore, it was returned for the reason 'funds insufficient', therefore, the trial court rightly convicted the petitioner and the same has been confirmed by the appellate court and hence there is no need for interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. The specific defence of the petitioner is that he had account with

Lakshmi Vilas Bank and R.W.2 is the friend of the petitioenr and he used to borrow small amount from the father of the respondent, while being so, in the year 2013, the cheque of the petitioner was issued for security purpose. Though R.W.2 paid entire loan amount to the respondent's father, he failed to return the cheque, which was issued for security purpose. Further, Lakshmi Vilas Bank was subsequently merged with DBS Bank in the year 2020. If at all the petitioner issued a cheque, it would be from DBS Bank and not from Lakshmi vilas Bank. Whenever a Bank merges with other Bank, the cheque book issued with the Bank to be invalidated, in support of petitioner's contention, he himself was examined as R.W.1. A perusal of his cross examination reveals that the petitioner also borrowed loan from DBS Bank and he committed default, therefore, his account was declared as 'Non performing asset'. Therefore, if at all there is any borrowal from the respondent, the petitioner would have issued cheque from DBS Bank.

7. Further, the petitioner / R.W.1 also categorically submitted that there was a complaint as against the R.W.2 by the respondent's father for which, Crime number has been registered for offence under Sections 294(b), 406, 420 and 506(ii) of IPC, therefore, the petitioner categorically rebutted presumption under Sections 118 and 139 Negotiable Instruments act that the cheque was not

issued for any legally enforceable debt. On going through the Ex.P.6, statement of account of the respondent from 01.9.2021 to 21.12.2021, it revealed that on various occasions, there was withdrawal to the tune of Rs.15 Lakhs, therefore, the trial court calculated that the said amount was lent in favour of the petitioner. However, the specific case of the respondent is that on a single stroke, that too by cash, he had lent loan to the tune of Rs.15 Lakhs to the petitioner on 24.12.2021, whereas the amount was withdrawn from his account on several occasions that too by various amounts, finally it was withdrawn on 24.12.2023, therefore, it was also not tallied with the complaint.

8. Admittedly, Ex.P.1, cheque was drawn on Lakshmi Vilas Bank in the year 2022 and Lakshmi vilas bank was merged with DBS Bank, therefore, if at all the petitioner borrowed a loan on 24.01.2022, he would have issued cheque from DBS Bank. In fact, he had account with DBS Bank and it was declared as 'Non Performing Asset', since he committed default, further, the manager of the DBS bank was examined as P.W.2, he deposed that the petitioner had account with DBS bank and it was declared as non performing asset on 01.05.2021, the respondent failed to prove that Ex.P.1 was issued for any legally enforceable debt. That apart, Ex.P.1 was issued by one SN Agency and it is a proprietary

concern of the petitioner, however, the respondent, who deposed as P.W.1 stated that the cheque was issued by SN agency and he did not know the proprietor of SN Agency. Further, the respondent also deposed that he also did not know the relationship between SN Agency and the respondent. Though at the time of issuance of cheque, the father of the respondent was present, he was not examined by the respondent The cheque was also filled by the respondent, which shows that the cheque was issued for security purpose and it was not issued for any legally enforceable debt, since the respondent failed to prove that he had lent Rs.15Lakhs, as loan to the petitioner. When the respondent did not know the relationship between SN agency and the petitioner, he could not have lent such a huge amount that too without any security purpose.

9. Without considering the above said facts, the trial court and the appellate court mechanically convicted the petitioner herein for offence under Section 138 of Negotiable Instruments Act, hence it cannot be sustained. Accordingly, the order passed by the learned Judicial Magistrate, Sankarapuram in S.T.C. No.191 of 2022 dated 08.05.2024 confirmed by the learned Principal District and Sessions Judge, Kallakurichi in Crl.A.No.59 of 2024 dated 26.11.2024 is set aside and the present revision is allowed. The trial court is directed to refund the amount to the petitioner, which was deposited by him.

Consequently, connected miscellaneous petitions are closed.

15.07.2025

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

G.K.ILANTHIRAIYAN, J.

ssd

To

1. The Judicial Magistrate,
   Sankarapuram

2. The Principal District and Sessions Judge,
   Kallakurichi

3. The Public Prosecutor,
   Madras High Court, Chennai.

Crl.R.C.No. 614 of 2025

15.07.2025