



CrI.R.C.No.105 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 30.06.2025

CORAM:

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

CrI.R.C.No.105 of 2023

Sankar

... Petitioner

Vs.

1. Kumar (Deceased)
2. Kanniyammal
3. Vijayalakshmi
4. Yagnesh
5. Akash
R2 to R5 impleaded as per
order dated 14.06.2024 in
CrI.M.P.No.8545 of 2023
in CrI.R.C.No.105 of 2023

... Respondents

PRAYER: Criminal Revision has been filed under Section 397 r/w. 401 of Cr.P.C., praying to to call for the records and set aside the conviction and sentence passed by the learned Judicial Magistrate, Tambaram passed in S.T.C.No.1856 of 2016 dated 07.06.2019 convicting the petitioner herein for the offence U/s.138 of Negotiable Instrument Act and sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/-in default to undergo 2 weeks simple imprisonment and also directed to pay a sum of Rs.41,20,000/- to the complainant as compensation U/s.357 Cr.P.C., which was confirmed by the learned Principal District and Sessions Judge of Kancheepuram District at Chengalpattu in C.A.No.62 of 2019 dated 07.03.2022.



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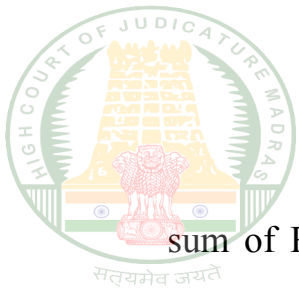
For Petitioner : Mr.T.R.Ravi

For Respondents : Mr.R.Dhanasekar

ORDER

This Criminal Revision has been preferred challenging the judgment dated 07.03.2022 passed by the learned Principal District and Sessions Judge, Kancheepuram District, Chengalpattu, in C.A.No.62 of 2019, confirming the judgment dated 07.06.2019 passed by the learned Judicial Magistrate, Tambaram, in S.T.C.No.1856 of 2016, thereby convicting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as “the NI Act”)

2. The petitioner is an accused in the complaint lodged by the deceased first respondent for the offence punishable under Section 138 of the NI Act, alleging that the first respondent sold out three flats to an extent of SF1, 890 sq.ft., SF2, 960 sq.ft., & SF3, 960 sq.ft., situated at Old S.No.168/3 new S.No.168/5, plot No.29, Jaya Nagar Lay-out, Medavakkam, Solinganallur, Kancheepuram district, (hereinafter referred to as “the subject property”) in total extent at 2810 sq.ft., for the valuable consideration. Accordingly, the total sale consideration was fixed at Rs.1,12,40,000/- and the petitioner had paid a

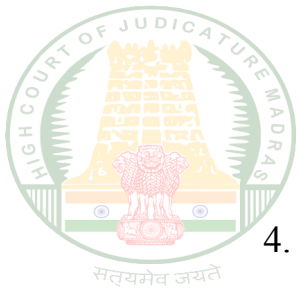


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sum of Rs.71,20,000/- by way of demand draft and cash. For the remaining amount of Rs.41,20,000/-, the petitioner had issued two cheques for a sum of Rs.21,20,000/- each. Both the cheques were presented for collection and same were returned dishonoured for the reason “funds insufficient”. After causing statutory notice, the deceased first respondent filed complaint and the same was taken cognizance by the trial Court in S.T.C.No.1856 of 2016.

3. On the side of the deceased first respondent, he had examined P.W.1 to P.W.3 and marked documents in Ex.P.1 to Ex.P.8. On the side of the petitioner, no one was examined and six documents were marked as Ex.D.1 to Ex.D.6. On perusal of the oral and documentary evidences, the trial Court found the petitioner guilty for the offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment of six months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for further period of two weeks. The trial Court also awarded compensation to the tune of Rs.41,20,000/- to the deceased first respondent. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by the appellant Court confirming the order passed by the trial Court. Hence the present revision.



4. The learned counsel appearing for the petitioner submitted that

the petitioner had purchased three flats in his favour and his wife and also in the name of the proprietary concern. Therefore, the entire liability cannot be foisted as against the petitioner alone, though the petitioner had issued cheque. He also filed calculation memo and the petitioner is liable to pay Rs.86,000/-. He also relied upon the sale agreements in respect of the three flats purchased by the petitioner. Further, after lodgement of complaint the respondent introduced the indemnity bond as if it was executed by the petitioner and the same was marked as Ex.P.6. It is only after thought and after filing the complaint it was prepared by the respondent. However, the trial Court and the appellate Court mechanically convicted the petitioner for the offence punishable under Section 138 of the NI Act, without considering the above facts and circumstances.

5. Per contra the learned counsel appearing for the respondents submitted that even before the presentation of cheque, the petitioner had issued legal notice dated 29.04.2016. Accordingly, the petitioner categorically admitted his liability of Rs.41,20,000/- and also issuance of two cheques, which were presented and got dishonoured in this case. Further, the petitioner also categorically admitted his liability through his reply notice dated



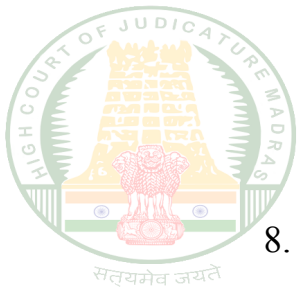
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27.05.2016, which was marked as Ex.P.7. When the petitioner failed to rebut

the presumption, he is liable to punish for the offence under Section 138 of the NI Act. Therefore, the trial Court as well as the appellate Court rightly convicted the petitioner and it doesn't warrant any interference from this Court.

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

7. Admittedly, the petitioner purchased three flats by the sale agreements dated 10.07.2015, 14.07.2015 & 03.08.2015 respectively and had entered into construction agreements and the same was also duly registered by the deceased first respondent herein. Further the petitioner admitted the sale consideration for three flats at Rs.1,12,40,000/- in which the petitioner had paid a sum of Rs.71,20,000/-. For the remaining amount of sale consideration, the petitioner had issued two cheques for a sum of Rs.21,20,000/-. Both cheques were presented for collection and the same were returned dishonoured for the reason funds insufficient. The respondent caused statutory notice, which was marked as Ex.P.5. On receipt of the same, the petitioner had issued reply notice, which was marked as Ex.P.7.



8. On perusal of the reply notice, it is revealed that the petitioner

admitted the issuance of both the cheques and also admitted his liability to the tune of Rs.41,20,000/-. Though the petitioner demanded for some pending works in respect of the purchased flats, it is no way connected with the offence committed by the petitioner under Section 138 of the NI Act. After having been purchased three flats and also registered in his favour, now the petitioner cannot raise dispute in respect of the property.

9. Further, the petitioner cannot dispute the sale consideration, which was duly agreed by the petitioner to pay. Further the signature found in the cheque and the issuance of the cheque were also categorically admittedly by the petitioner. Therefore, the respondent discharged his initial burden as contemplated under Section 139 of the NI Act. However, the petitioner failed to rebut the same with any evidence. Therefore, both the Courts below rightly convicted and sentenced the petitioner and this Court finds no infirmity or illegality in the order passed by the Courts below.



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WEB COPY10. Accordingly, the Criminal Revision Case stands dismissed.

30.06.2025

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

rts

To

1. The Principal District and Sessions Judge
Kancheepuram District,
Chengalpattu

2. The Judicial Magistrate,
Tambaram



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G.K.ILANTHIRAIYAN. J,

rts

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