



Crl.RC.No.356 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.356 of 2025 and
Crl.M.P.Nos.3529 and 3531 of 2025

1. Mahaa Textiles
3/174 Vinayagar Kovil Street
Kombakaadu, Somanur
Palladam Taluk, Tirupur District

2. S.Aarumugam ... Petitioners

Vs.

T.Mohankumar ... Respondent

Prayer: Criminal Revision Case filed under Section 438 read with 442 of B.N.S.S. to set aside the conviction and sentence dated 29.02.2024 made in C.A.No.274 of 2022 dated 29.02.2024 on the file of the III Additional District & Sessions Court, Gobichettipalaym confirming the conviction and sentence made in S.T.C. No.920 of 2017 dated 29.11.2022 on the file of the Judicial Magistrate No.1, Gobichettipalayam and sentencing the petitioner to undergo simple imprisonment for 1 year and to pay a compensation of Rs.6,00,000/- to the respondent.



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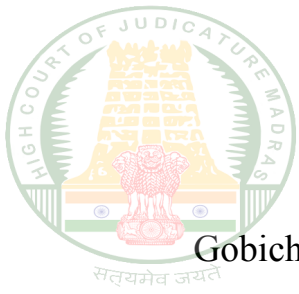
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For Petitioners : Mr.K.S.Karthik Raja
For Respondent : Mr.S.Dharmakkan

ORDER

This Criminal Revision Case has been filed by the petitioners/accused to set aside the conviction and sentence dated 29.02.2024 made in C.A.No.274 of 2022 dated 29.02.2024 on the file of the III Additional District and Sessions Court, Gobichettipalaym confirming the conviction and sentence made in S.T.C. No.920 of 2017 dated 29.11.2022 on the file of the Judicial Magistrate No.1, Gobichettipalayam and sentencing the petitioners to undergo simple imprisonment for one year and to pay a compensation of Rs.6,00,000/- to the respondent/complainant.

2. The case of the petitioners is that the respondent/complainant filed a private complaint against the petitioners for the offence under Sections 138 of the Negotiable Instruments Act before the Judicial Magistrate No.1,



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Gobichettipalayam in STC No.920 of 2017. The learned Magistrate after

enquiry, found the petitioners guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced for the 2nd petitioner to undergo one year simple imprisonment and directed the petitioners to pay Rs.6 lakhs as compensation to the respondent/complainant. Challenging the same, the petitioners filed an appeal in C.A.No.274 of 2022 before the III Additional District and Sessions Court, Gobichettipalayam. The learned appellate Judge, after hearing the arguments found that the petitioners have committed the offence under Section 138 of the Negotiable Instruments and thereby, dismissed the appeal by judgment dated 29.02.2024 and confirmed the judgment of conviction and sentence passed by the trial Court. Aggrieved by the same, the petitioners have filed the present revision.

3. The case of the respondent/complainant is that the 1st petitioner is a partnership firm and the 2nd petitioner is the partner of the 1st petitioner/partnership firm. The 2nd petitioner had borrowed a sum of Rs.6



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lakhs from the respondent for business purpose for the 1st petitioner/partnership

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firm on 20.03.2017 and for repayment of the said amount, had issued a post dated cheque bearing Cheque No.001287 dated 21.04.2017. Thereafter, when the respondent presented the said cheque for collection in his bank namely State Bank of Mysore, Gobichettipalayam on 21.04.2017, the cheque was returned for the reason that the account of the 2nd petitioner was blocked. The same was not informed to the petitioners through statutory notice dated 13.05.2017 which was received by the petitioners on 16.05.2017. However, they neither repaid money nor sent any reply. Hence, the respondent was constrained to invoke Section 138 of the Negotiable Instruments Act and Section 420 of IPC and filed a private complaint before the jurisdictional Magistrate.

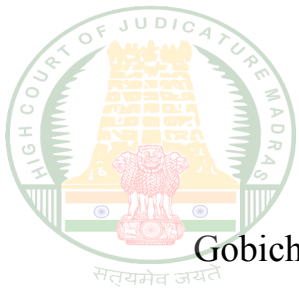
4. The contention of the petitioners is that they never borrowed any money from the respondent and issued any cheque to the respondent. The Courts below failed to consider that the respondent had not filed his IT returns.



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As per the income tax rules, cash transaction for more than Rs.20,000/- has to

be done only through bank and therefore, the money alleged to have been lent to the petitioners by the respondent, is not a legally enforceable debt. Further, no material was produced by the respondent to show that he lent such a huge amount to the petitioners. More over, the cheque was returned only for the reason of "account blocked" by the Bank and it was not returned for the reason funds insufficient. Even on the said date i.e. 21.04.2017, a sum of Rs.14 lakhs was in the account of the petitioners. Therefore, the offence under the Negotiable Instruments Act would not attract against the petitioners. Both the Courts below failed to consider the same. In order to substantiate their case, on the side of the petitioners, the Bank Managers of the petitioners' Bank as well as the respondent's Bank were examined as D.W.1 and D.W.2. However, the Courts below failed to appreciate and re-appreciate the evidence properly and convicted the petitioners. Though the respondent himself admitted that he withdrew a sum of Rs.50,000/- from the State Bank of Mysore,



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Gobichettipayam to give loan to the petitioners, Ex.D2, the respondent's Bank

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Statement falsified his evidence. The evidence of the defense witnesses and the documents marked on the side of the defense, clearly proved that the case of the respondent is false. Even the cheque number was wrongly mentioned in the statutory notice sent to the petitioners as 0001287 instead Cheque No.001287. It is settled proposition of law that the accused need not prove his innocence. Even the evidence can be rebutted by preponderance of probability and it is for the complainant to prove his case beyond all reasonable doubt. The accused can raise a doubt on the borrowal and financial capacity of the complainant and that the benefit should be extended to the accused when the complainant fails to prove his case beyond all reasonable doubt. In this case, the respondent failed to prove his financial capacity to lend such a huge amount to the petitioners. Both the Courts below failed to appreciate the evidence produced by the defense and erroneously given findings that the petitioners have committed the offence under Section 138 of Negotiable Instruments Act and



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convicted them. Therefore, the findings of the Courts below are liable to be set

aside and the petitioners have to be set free.

5. Heard and perused the materials available on record.

6. A reading of the complaint filed by the respondent shows that the petitioners borrowed a sum of Rs.6 lakhs and in repayment of the same, they issued the cheque and when the cheque was presented in the Bank for collection on 21.04.2017, it was returned as Account Blocked. Therefore, the respondent sent a statutory notice/Ex.P4 and Ex.P5 to the petitioners and same were also acknowledged/Ex.P.6 and E.P.7 by the 1st and 2nd petitioners, however, the petitioners neither sent any reply nor paid the cheque amount. In order to substantiate his case, the respondent examined himself as P.W.1 and produced the cheque alleged to have been issued by the petitioners and the same was marked as Ex.P.1.

7. D.W.1, the Branch Manager of the petitioners' Bank has clearly stated that a sum of Rs.20 lakhs O.D. has been given in the said account and



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therefore, the account holder has to maintain the account by giving stock

statement every month failing which, the account would be blocked, which shows that the petitioners did not maintain the account by giving the stock statement upto the ceiling limit as per the Bank agreement and therefore, the petitioners' account was blocked. Therefore the contention of the learned counsel for the petitioners that since because the account was blocked by the Bank, the cheque was returned, is not acceptable. Therefore, it would attract the offence under Section 138 of the Negotiable Instruments Act.

8. According to the petitioners, they neither borrowed money from the respondent and nor issued cheque to the respondent. Though non sending of reply to the statutory notice may not be a ground for conviction, however, when an un-knownwn person is sending a statutory notice and the same was acknowledged by the petitioners, if at all the petitioners were not aware of the person who sent the statutory notice, immediately they ought to have sent a reply and should have taken effective steps to find out how their cheque leaf



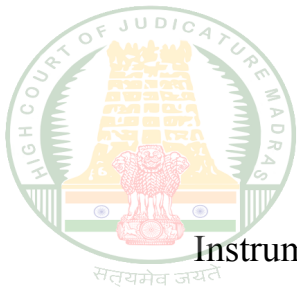
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went to the hands of the un-known person and should have taken steps to get

back the cheque. Though the petitioners stated that the said cheque was given to some other person and not to the respondent, the petitioners have not examined the said person and established that the cheque was not issued to the respondent.

9. In this case, the petitioners had not sent any reply to the statutory notice and also not able to establish that how the cheque went to the hands of respondent. But the respondent has substantiated his case by examining himself as P.W.1 and marking of documents, viz., cheque/Ex.P.1, Collection memo/Ex.P.2, return memo/Ex.P.3, statutory notice/Ex.P.4 and Ex.P.5, postal acknowledgements/Ex.P.6 and Ex.P.7 and cheque online copy/Ex.P.8. When there is a legal presumption that the cheque was issued by the petitioners for discharging legally enforceable debt, then it is for the petitioners to rebut the presumption in the manner known to law.

10. It is pertinent to refer to Section 118 and 139 of the Negotiable



Instruments Act:

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Section 118 of Negotiable Instruments Act,

1881 - Presumption as to negotiable Instruments-

Until the contract is proved, the following presumption shall be made:

(a) of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted endorsed, negotiated or transferred for consideration;

(b) as to date -that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance- that every accepted bill of exchange was accepted within a reasonable time after its date and before maturity;

(d) as to time of transfer - that every transfer of a negotiable instrument was made



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before its maturity;

(e) as to order of endorsements -that the endorsements appearing upon negotiable instrument were made in the order in which they appear there upon;

(f) as to stamps - that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder-in-due course- that the holder of a negotiable instrument is a holder-in-due course;

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud; or for unlawful consideration, the burden of proving that the holder is a holder-in-due course lies upon him.



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"Section 139 of Negotiable Instruments Act,

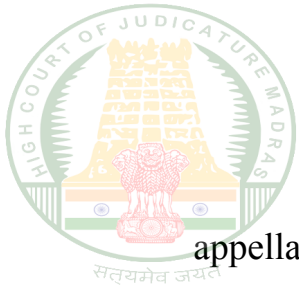
1881- Presumption in favour of holder-It

shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part of any debt or other liability.

11. A reading of Section 118 and 139 of Negotiable Instruments Act, the averments made in the complaint, statutory notice and the evidence of P.W.1 and also the documentary evidence, this Court finds that both the Courts have properly appreciated and re-appreciated the materials and material evidence and found that the respondent has proved his complaint and therefore, both the Courts below rightly given findings that the petitioners have committed the offence under Section 138 of Negotiable Instruments Act.

12. It is settled proposition of law that the jurisdiction of the revision Court is very limited. The revision Court cannot sit in the arm chair of the

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appellate Court and re-appreciate the entire materials and give its own findings

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unless the Court finds that there is perversity in the findings of the Court below.

13. A reading of the entire materials and the grounds taken by the petitioners are not sufficient to rebut the statutory presumption and prima facie there is no material to admit this revision.

14. Therefore, this Criminal Revision Case is dismissed at the admission stage itself. Consequently, the connected Miscellaneous Petitions are closed.

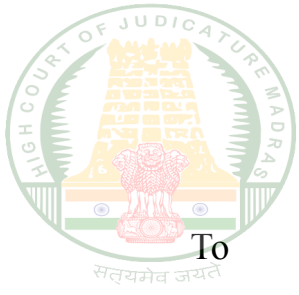
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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

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1. The III Additional District and Sessions Court,
Gobichettipalaym
2. The Judicial Magistrate No.1,
Gobichettipalayam



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P.VELMURUGAN. J.

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