



Crl.R.C.No.1279 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

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Renukadevi

... Petitioner

Versus

Rajan

... Respondent

PRAYER: Criminal Revision Case is filed under Sections 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS), 2023, to call for the records and to set aside the order of conviction dated 11.07.2024 passed in C.A.No.121 of 2022 by the learned I-Additional District and Sessions Judge of Tiruppur, confirming the Judgement in C.C.No.52 of 2016 dated 08.08.2022 on the file of the learned Judicial Magistrate No.1, Udumalpet and prays for the acquittal of the accused.

For Petitioner : Mr. P.A. Sai Govinda Raja

For Respondent : Mr. Prakash Adiapadam



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ORDER

WEB COPY This revision has been filed against the Judgement dated 11.07.2024

passed in C.A.No.121 of 2022, on the file of the I-Additional District and Sessions Court, Tiruppur, thereby confirming the conviction and sentence imposed by the Trial Court in C.C.No.52 of 2016 dated 08.08.2022, on the file of the Judicial Magistrate Court No.1, Udumalaipet, for the offence under Section 138 of the Negotiable Instruments (N.I.) Act, 1881.

2. The petitioner is the accused in the complaint lodged by the complainant/respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881. It is alleged that the petitioner borrowed a sum of Rs.30 Lakhs on 05.01.2014 for her real estate business and for purchase of certain property, agreeing to pay interest at the rate of 1% per month. On the date of the alleged borrowal, the petitioner also executed a promissory note in favour of the respondent. Thereafter, the petitioner failed to repay any interest. When the respondent demanded the borrowed amount, the petitioner issued a cheque for the said amount. Upon receipt of the cheque, the respondent returned the promissory note to the petitioner. However, when the cheque was presented for collection but, it was returned dishonoured for the reason 'Account Closed'. After causing statutory notice, the respondent lodged a complaint, which was



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taken cognizance of by the Trial Court in C.C.No.52 of 2016. In order to prove

WEB the charges, on the side of the respondent herein, the respondent was examined

as P.W.1 and marked Exs.P1 to P4. On the side of the accused/petitioner herein, no one was examined and no document was adduced. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments (N.I.) Act, 1881, and sentenced her to undergo two years simple imprisonment and awarded to pay the cheque amount as compensation. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.121 of 2022 before the I-Additional District and Sessions Court, Tiruppur. The Appellate Court dismissed the appeal, confirming the conviction and sentence imposed by the Trial Court. Hence, the present revision has been filed before this Court.

3. The learned counsel for the petitioner submitted that the respondent failed to prove the loan of such huge amount of Rs.30 Lakhs. Though the petitioner did not send any reply notice, he categorically cross-examined the respondent and rebutted the presumption as contemplated under Sections 118 and 139 of the N.I. Act. During cross-examination, the respondent admitted that the petitioner had borrowed only a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and executed a promissory note, and at that time, the

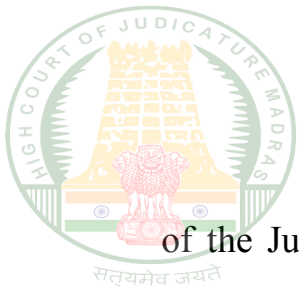


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petitioner had also issued a signed blank cheque for security purposes. Further,

he submitted that the petitioner had executed a sale agreement in respect of her property, which was duly registered before the Registration Authority vide Doc.No.4648 of 2013. The said cheque was misused by the respondent and initiated proceedings under Section 138 of the N.I. Act as if the petitioner had borrowed a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only). Though the respondent admitted that the petitioner had borrowed only a sum of Rs.5 Lakhs and had executed the sale agreement along with one Pappammal; however, he claimed that the said transaction was completely different one from the present case. Further, he also submitted that the respondent failed to examine any of the witnesses mentioned in the promissory note or those present at the time of borrowal. The respondent failed to examine any of these witnesses, in order to prove the borrowal. When the petitioner rebutted the statutory presumption, the burden shifted to the shoulder of the respondent; and even then, the respondent failed to establish that the cheque was issued towards a legally enforceable debt. Unfortunately, without considering the facts and circumstances of the case, the Trial Court and the Appellate Court convicted the petitioner. He further submits that while granting suspension of sentence in Crl.MP.No.11189 of 2024 dated 14.12.2024, this Court recorded that the petitioner had already deposited a sum of Rs.12 Lakhs to the credit of C.C.No.52 of 2016 on the file

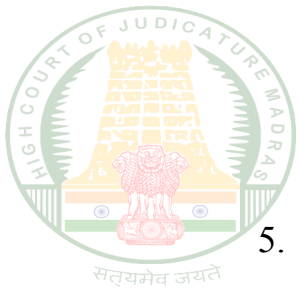


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of the Judicial Magistrate No.1, Udumalpet, by way of two installments. The

respondent has also been permitted to withdraw the said amount.

4. Per contra, the learned counsel appearing for the respondent submitted that the on the date of borrowal, the petitioner executed a promissory note to the respondent. Subsequently, upon issuance of a cheque for a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only), the respondent returned the promissory note to the petitioner. Hence, the respondent was not in a position to produce the promissory note before the Trial Court, and therefore, the necessity of examining the attesting witnesses to the promissory note did not arise. Further, he submitted that though the respondent admitted that the petitioner had borrowed a sum of Rs.5 Lakhs, the said transaction was entirely distinct from the present one. The petitioner has neither denied the signature found in the cheque nor the issuance of the cheque. Therefore, the respondent had discharged his initial burden, whereas the petitioner failed to rebut the statutory presumption. Therefore, the Trial Court rightly convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act, which does not warrant any interference of this Court.



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5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent, and perused the materials available on record, including the copy of the sale agreement dated 02.07.2013 registered vide Doc. No.4648/2013, produced by the learned counsel for the petitioner. The same is taken on record.

6. On the basis of the above submissions made by the learned counsel on either side, the following points arise for consideration:-

i) Whether the cheque was issued for any legally enforceable debt?

ii) Whether the petitioner had borrowed a sum of Rs.5 Lakhs and executed an agreement of sale in favour of the respondent?

iii) Whether the petitioner has rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881?

7. The specific case of the respondent was that the petitioner borrowed a sum of Rs.30,00,000/- on 05.01.2014 by executing a promissory note. Thereafter, upon issuance of a cheque for the said loan amount, the



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respondent returned the promissory note to the petitioner. According to the

respondent, the petitioner agreed to pay the interest at the rate of Rs.1/- per Rs.100/- per month. However, the respondent received a cheque only for the principal amount of Rs.30,00,000/-, though the alleged borrowal was on 05.01.2014, and the cheque was issued on 26.03.2014. Further, it was stated the respondent did not obtain any other documents as security for the said loan, at the time of borrowal of such huge amount of Rs.30 Lakhs, that too, which was advanced in cash.

8. Apart from the above, in order to prove the source of income, the petitioner cross-examined the respondent. During his cross-examination, the respondent stated that an immovable property had been sold in the year 2007 and the sale consideration was deposited in his bank account, and that the said amount was thereafter advanced to the petitioner as a loan. However, the respondent failed to produce any material evidence to prove either the alleged sale of immovable property in the year 2007 or he had a balance of Rs.30,00,000/- in his account, at the time of the alleged borrowal. Moreover, no prudent person would lend such a huge amount of loan by way of cash, that too without obtaining any security.



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9. This Court observed that a sale agreement was executed in favour

of the respondent vide Document No.4648 of 2013 by the petitioner, along with one Pappammal. However, the said document was not marked either before the Trial Court or before the Appellate Court. In the interest of justice, this Court has received the document and taken it into consideration for the purpose of deciding this case effectively. On perusal of the said agreement for a sale, it is seen that the petitioner, along with two others, agreed to sell an immovable property in favour of the respondent for a total consideration of Rs.6,50,000/-, of which a sum of Rs.5,00,000/- was paid as advance on 02.07.2013.

10. In fact, during cross-examination, the respondent admitted that the said agreement for sale was executed in connection with the loan borrowed by the petitioner to the tune of Rs.5,00,000/-. It was further admitted that, when the respondent insisted on an agreement for a sale of the immovable property, at that time of lending sum of Rs.5 Lakhs, but, surprisingly, no such security or agreement was insisted upon for the huge amount of Rs.30 Lakhs owed by the petitioner.

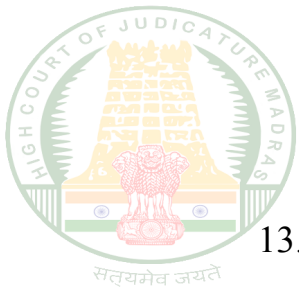
11. That apart, at the time of alleged borrowal, the petitioner executed a promissory note. Thereafter, after upon issuance of the cheque in question,



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the respondent returned the said promissory note. It is unheard of that, when a promissory note is executed for such a huge amount, any prudent person would return the same merely on receipt of a cheque. The cheque was marked as Ex.P1. On perusal of Ex.P1, it is evident that except the signature of the petitioner, the remaining particulars were filled up by the respondent. This circumstances clearly indicates that Ex.P1 was issued only for security purpose at the time of borrowal of loan, along with the execution of the sale agreement in favour of the respondent.

12. Subsequently, when the petitioner failed to repay the said loan amount and also did not execute any sale deed in favour of the respondent, the respondent filled up the signed blank cheque issued by the petitioner, for sum of Rs.30 Lakhs and presented it for collection. In these circumstances, the petitioner has categorically rebutted the presumption as contemplated under Sections 118 and 139 of the N.I. Act. Even thereafter, the respondent failed to prove that the cheque was issued for any legally enforceable debt. Therefore, the conviction and sentence imposed on the petitioner for the offence under Section 138 of the Negotiable Instruments Act cannot be sustained and are liable to be set aside.

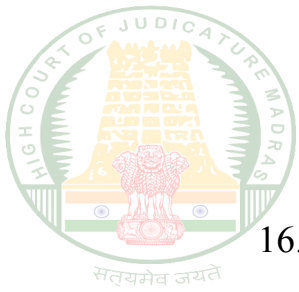


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13. Further, this Court also observed that, at the time of granting suspension of sentence, the petitioner had already deposited a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) to the credit of C.C.No.52 of 2016 before the Trial Court, as directed by this Court, and the said sum has since been permitted to be withdrawn by the respondent.

14. Admittedly, the petitioner had borrowed only a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and had executed an agreement for sale. Therefore, this Court is of the considered view that the amount already deposited before the Trial Court can be adjusted towards the said loan borrowed by the petitioner from the respondent, together with the applicable interest.

15. In view of the above facts and circumstances, this Court is inclined to set aside the order dated 08.08.2022 passed in C.C.No.52 of 2016 by the learned Judicial Magistrate No.1, Udumalaipet, and which was confirmed by judgement dated 11.07.2024 passed in C.A.No.121 of 2022 by the learned I-Additional District and Sessions Court, Tiruppur.



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16. Insofar as the conviction and sentence imposed on the petitioner are concerned, the imprisonment for a period of two years cannot be sustained and it is set aside.

17. With regard to the compensation, it is reduced and modified to the extent of the amount already deposited by the petitioner, which has been withdrawn by the respondent.

18. In the result, this Criminal Revision Case is partly allowed to the extent indicated above.

20.08.2025

Speaking / Non-Speaking Order
Neutral Case Citation : Yes/No
Index : Yes/No

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To

1. The I-Additional District and Sessions Court, Tiruppur.
2. The Judicial Magistrate No.1, Udumalaipet.



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G.K.ILANTHIRAIYAN, J.

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