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Crl.RC.No.56 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2025

CORAM:

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

Crl.RC.No.56 of 2023

Mythili

... Petitioner

Versus

Manimegalai

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the conviction and sentence imposed by judgment made in Crl.A.No.7 of 2021 on the file of the III Additional District & Sessions Judge, Erode at Gopichettipalayam, dated 08.07.2022 confirming the conviction and sentence imposed by judgment made in STC.No.951 of 2018 on the file of the Judicial Magistrate No.1, Gopichettipalayam, dated 27.11.2020 by allowing this revision.

For Petitioner : Mr.B.Kumarasamy

For Respondent : No appearance



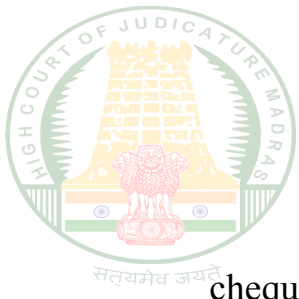
Crl.RC.No.56 of 2023

WEB COPY

ORDER

This criminal revision has been preferred against the judgment dated 08.07.2022 passed in Crl.A.No.7 of 2021 on the file of the III Additional District & Sessions Judge, Erode at Gopichettipalayam, thereby confirming the conviction and sentence imposed by the trial court in STC.No.951 of 2018 on the file of the Judicial Magistrate No.1, Gopichettipalayam, dated 27.11.2020, for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent herein. The respondent lodged complaint for the offence punishable under Section 138 of NI Act and alleged that on 29.07.2018, the petitioner borrowed a sum of Rs.5,00,000/- as hand loan for urgent need. On the said day, the petitioner had issued post-dated cheque for the said sum dated 07.08.2018. On 07.08.2018, the said cheque was presented for collection. However it was returned dishonoured for the reason 'account blocked situation covered in'. On request, once again it was re-presented for collection on 08.10.2018. For the second time, the



Crl.RC.No.56 of 2023

WEB COPY

cheque was returned dishonoured for the very same reason “account blocked situation covered in”. After causing statutory notice, the respondent lodged complaint.

3. On the side of the complainant, she had examined P.W.1 and marked Ex.P1 to Ex.P5. On the side of the petitioner, no one was examined and no exhibits were marked. On the basis of the oral and documentary evidence, the trial court found the petitioner guilty for the offences under Section 138 of NI Act and sentenced her to undergo simple imprisonment for a period of six months and also awarded compensation to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and confirmed the judgment of the trial court, against which this criminal revision has been filed.

4. The learned counsel for the petitioner would submit that the respondent is none other than a tenant of the petitioner's parents. The alleged cheque was handed over to her parents to avail loan by using the



Crl.RC.No.56 of 2023

WEB COPY

said cheque as security for her educational purpose in abroad. She had joined medicine in China, due to which she intended to avail loan. The said cheque was misused by the respondent. He also pointed out that the respondent never had any acquaintance with the petitioner. Further, the said amount was borrowed from her husband. The respondent did not know any detail of the petitioner. It was categorically admitted by her in cross examination. The petitioner, who is doing medicine, had no need to borrow any amount, that too from the respondent herein. Therefore, the cheque was not issued for any legally enforceable debt and without considering the above facts and circumstances, both the courts below convicted the petitioner for the offence punishable under Section 138 of NI Act.

5. Though notice was served and respondent's name has been printed in the cause list, no one appeared on behalf of the respondent before this Court today either in person or through pleader.

6. Heard, the learned counsel appearing for the petitioner and



Crl.RC.No.56 of 2023

perused the records produced before this Court.

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7. On perusal of records revealed that the respondent lodged complaint for the offence punishable under Section 138 of NI Act alleging that the petitioner borrowed a sum of Rs.5,00,000/- as hand loan and also issued post dated cheque. On the very same day, the cheque was presented for collection on 07.08.2018. It was returned dishonoured for the reason 'account blocked situation covered in'. Now it is to be seen that whether the said endorsement attracts the offence under Section 138 of NI Act or not. The account was blocked by the banker for the reason 'situation covered in'. Thus it is clear that the account was blocked by the banker and not on the ground that the petitioner instructed to block the account. On some other reason, the account of the petitioner was blocked and not due to the reason of insufficient-fund to attract the offence under Section 138 of NI Act. That apart, on perusal of the cross examination of PW1, revealed that she did not even know the petitioner. She knows only the petitioner's parents.



Crl.RC.No.56 of 2023

WEB COPY

8. Admittedly the respondent is a tenant under the petitioner's parents. Though the respondent specifically stated that the petitioner borrowed a sum of Rs.5,00,000/- on 29.07.2018, except the post dated cheque, no other documents were executed by the petitioner while borrowing such huge amount as hand loan. Further, the respondent borrowed loan from a third party in order to lend loan to the petitioner. No prudent person borrows loan from a third party to lend loan to other person. The respondent also admitted that the said amount was lent by her without interest.

9. This court itself in a different occasion in the case of **Challani Rank Jewellery and Ors v. Ashok Kumar Jain (Crl.O.P.No. 21268 of 2024)**, has observed that,

“31. Though “account blocked” is not specifically mentioned as a reason for dishonour to attract Section 138 of NI Act, the judicial pronouncements had made it clear that the two contingencies mentioned in the Section 138 of the NI Act are genus, the reasons like account closed, stop payment, signature differs etc., are species. If the complaint disclosed that the subject cheque was given



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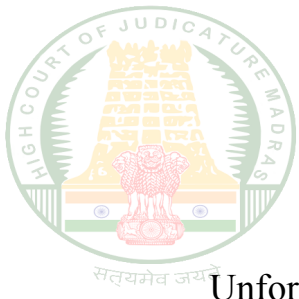


Crl.RC.No.56 of 2023

without sufficient fund or in excess of arrangement, the other reasons which are species to the genus will follow to proceed under Section 138 of NI Act.”

10. But in the present case on hand, on a careful observation of the evidences, it can be noted that the subject cheque was not drawn by the petitioner to fulfill a legally enforceable debt as mandated by Section 138 of the NI Act, rather, it was given to her parents to avail loan by using the said cheque as a mere security for her abroad education. This Court in the case of **S.Jayanthi vs P.Sukumaran, Crl.A.No.529 of 2017**, has also held that even though the cheque was returned dishonored for the reason “account blocked situation covered in”, the other evidences should incriminate the accused beyond reasonable doubts and that onus lies on the complainant. Hence, in case of absence of legally enforceable debt, the offence under Section 138 of NI Act will not be attracted.

11. Thus it is clear that the respondent herein failed to prove that the alleged cheque was issued for any legally enforceable debt.



Crl.RC.No.56 of 2023

WEB COPY

Unfortunately, the trial court as well as the appellate court, without considering the above facts and circumstances, mechanically convicted the petitioner on the ground that the petitioner did not dispute her signature found in the cheque. Therefore, the conviction and sentence imposed against the petitioner for the offence under Section 138 of NI Act cannot be sustained.

12. In view of the above, this criminal revision deserves to be allowed. As such, the judgment dated 08.07.2022 passed in Crl.A.No.7 of 2021 on the file of the III Additional District & Sessions Judge, Erode at Gopichettipalayam and the judgment passed in STC.No.951 of 2018 on the file of the Judicial Magistrate No.1, Gopichettipalayam, dated 27.11.2020 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.



Crl.RC.No.56 of 2023

13. In the result, this criminal revision stands allowed.

WEB COPY

02.06.2025

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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Crl.RC.No.56 of 2023

G.K.ILANTHIRAIYAN. J,

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To

- 1.The III Additional District & Sessions Judge, Erode at
Gopichettipalayam
- 2.The Judicial Magistrate No.1, Gopichettipalayam
- 3.V.R.Section,
High Court of Madras

Crl.RC.No.56 of 2023

02.06.2025