



Crl.R.C.No.422 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2025

CORAM:

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

Crl.R.C.No.422 of 2023

P.Viswanathan

.... Petitioner

Versus

A.S.Karthikeyan

.... Respondent

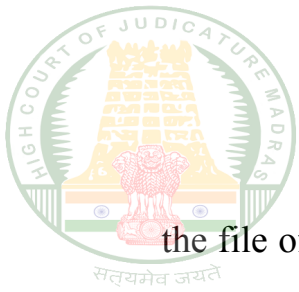
PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records and set aside the conviction imposed in the Judgment Dated 16.09.2021 made in C.A.No.73 of 2016 on the file of III Additional District and Sessions Judge of Tiruppur at Dharapuram confirming the conviction imposed the judgment dated 31.05.2016 made in C.C.No.500 of 2013 on the file of the Judicial Magistrate, kangayam.

For Petitioner : Mr.J.Ranjithkumar

For Respondent : Mr.V.S.Kesavan

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 16.09.2021 in Crl.A.No.73 of 2016 passed by the III Additional District and Sessions Judge of Tiruppur at Dharapuram, thereby confirming the conviction and sentence imposed by the trial Court in C.C.No. 500 of 2013 on



Crl.R.C.No.422 of 2023

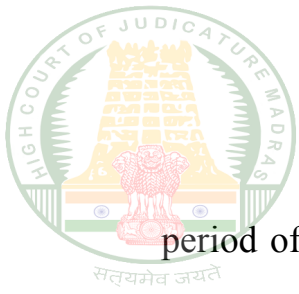
the file of the Judicial Magistrate, kangayam, for the offences punishable under

Section 138 of Negotiable Instruments Act.

2. The petitioner is the accused in a complaint lodged by the respondent under Section 138 of Negotiable Instruments Act, alleging that the petitioner had borrowed a sum of Rs.7,75,000/- from the respondent on 01.06.2013 for urgent family and business expenses. Towards repayment of the said loan amount, the petitioner issued a cheque for the said amount. When presented for collection, the cheque was returned dishonoured with the endorsement "Funds Insufficient". After causing statutory notice, the respondent lodged the complaint.

3. Before the trial Court, the the complainant examined himself as PW.1 and marked seven (7) exhibits as Ex.P1 to Ex.P7. In defence, one witness was examined as DW.1 and marked four (4) exhibits as Ex.D1 to Ex.D4.

4. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty and convicted him for the offence under Section 138 of N.I.Act. He was sentenced to undergo six months simple imprisonment with fine of Rs.3,000/-. In default, of payment, the petitioner shall undergo a further



Crl.R.C.No.422 of 2023

period of 30 days simple imprisonment. Aggrieved by the same, the petitioner

preferred an appeal, which was also dismissed, thereby confirming the judgment of the trial Court.

5. The learned counsel appearing for the petitioner would submit that the petitioner was employed in the respondent's company. Due to certain alleged misconduct, the petitioner's services were terminated and he subsequently resigned. After his resignation, the respondent claimed that the petitioner had borrowed a sum of Rs.7,75,000/- for personal and business purposes. It is highly improbable that a prudent employer would lend such a huge sum to a former employee without verifying his employment status, financial condition and ability to repay the loan particularly after resignation.

6. It was further contended that the cheque in question was post-dated and had been obtained during the course of employment and was later misused by the respondent. The petitioner, on receipt of the statutory notice, issued reply notice rebutting the statutory presumption. During the trial, he cross examined the complainant and elucidated that the petitioner was drawing only Rs.16,000/- as monthly salary and that the petitioner was entitled to receive certain dues from the employer even prior to the alleged borrower.



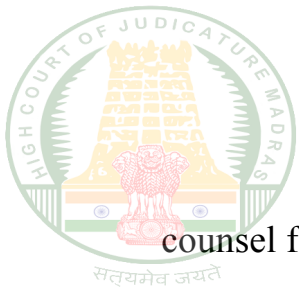
Crl.R.C.No.422 of 2023

Therefore, the respondent had failed to discharge the initial burden of proving

that the cheque was issued towards a legally enforceable debt. Without considering the above facts and circumstances, the trial Court as well as the appellate Court convicted the petitioner for the offence under Section 138 of N.I.Act.

7. Per contra, the learned counsel appearing for the respondent would submit that though the respondent is one of the directors of the company, it was not he who terminated the petitioner from employment. It was, not in fact, another director, who had taken that action. The petitioner had a habit of borrowing money from the respondent and in this instance, the petitioner borrowed a sum of Rs.7,75,000/- from the respondent after issuing a cheque for the said amount. on presentation of the cheque for collection, it was dishonoured with the endorsement "Funds Insufficient". Thereafter, the respondent issued a statutory notice and on failure of the petitioner to make payment, filed the present complaint. The respondent has clearly established his case and the trial Court as well as the appellate Court rightly convicted the petitioner punishable under Section 138 of Negotiable Instruments Act. Therefore, the conviction does not warrant any interference.

8. Heard the learned counsel for the petitioner and the learned



counsel for the respondent.

WEB COPY

9. The respondent lodged a complaint for the offence punishable under Section 138 of N.I.Act, alleging that the petitioner had borrowed a sum of Rs.7,75,000/- on 01.06.2013 for his family and business expenses and had issued post dated cheque for the said amount. On the instructions of the petitioner, the cheque was presented for collection, however, it was returned dishonoured with the endorsement "Fund Insufficient". Thereafter, the respondent issued a statutory notice. On receipt of the same, the petitioner sent a reply notice which was marked as Ex.P7. The respondent did not mention in the complaint the nature of his acquaintance with the petitioner. He merely stated that the petitioner was known to him and that he had borrowed the said loan amount by issuing post-dated cheque. For such a huge sum, the respondent did not insist on any other supporting document or security.

10. On perusal of the deposition of PW.1, it is revealed that the respondent examined as PW.1, is running an industry under the name of M/s.Noeevus Industries Private Limited, in which he is one of the partners. In the said company, the petitioner had been employed as a Maintenance Supervisor for the past 17 years. At the time of cessation of employment, the petitioner was drawing a sum of Rs.16,000/- as monthly salary. While being so,



the petitioner was relieved from his employment with effect from 13.01.2013.

WEB COPY

The respondent also stated that the company used to lend money not exceeding Rs.1,00,000/- to employees and such loan, normally depends upon their respective salary. At the time of lending a loan, they did not insist for any pro-note or cheque. The respondent admitted that the petitioner had been absent from work for four days and consequently he was stopped from employment. Though the termination was carried out by another Director or partner, it was within the knowledge of the respondent.

11. The Director who terminated the petitioner from employment had issued conduct certificate dated 24.01.2013, which was marked as Ex.D1, stating that the petitioner's conduct was good. That apart, the petitioner was also paid all his terminal benefits including Provident Fund and other dues, after the completion of his employment. Therefore, it is highly improbable that the respondent would have lent such a huge sum of Rs.7,75,000/-, that too without obtaining any form of security to a person who had already been relieved from service. Hence, the case of the respondent is unbelievable one.

12. Admittedly, Ex.P1, the cheque in question was issued merely as security at the time of the petitioner's resignation, intended to settle the other



Crl.R.C.No.422 of 2023

attendant benefits. However, after settling the petitioner's dues, the respondent

failed to return the cheque and instead misused it by presenting it for collection as if the petitioner borrowed a sum of Rs.7,75,000/-. Further, it is unbelievable that any prudent employer would advance such a huge sum as loan to a former employee that too after resignation especially without verifying the employee's subsequent employment status or financial capacity. The respondent himself admitted that he was unaware of where the petitioner was employed after resignation or whether he had the financial means to repay such a loan.

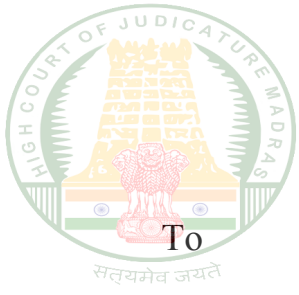
13. Therefore, without ascertaining these facts, no prudent employer would lend a loan to an employee that too after his resignation from service. Hence, the cheque in question was not issued for any legally enforceable debt but was given for security purposes, which has been misused by the respondent. In the light of the above, the order of conviction and sentence imposed by the trial Court are liable to be set aside. Accordingly, this Criminal Revision Case is allowed.

10.06.2025

Neutral citation : Yes/No
Speaking/non-speaking order
rpl

G.K.ILANTHIRAIYAN, J.

rpl



Crl.R.C.No.422 of 2023

WEB **1. The III Additional District and Sessions Judge of Tiruppur, Dharapuram.**

2. The Judicial Magistrate, kangayam.

Crl.R.C.No.422 of 2023

10.06.2025