



CrI.R.C.No.1216 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.1216 of 2019

J. Punitha
Proprietrix
Gabriel Promoters
B.1, R.C. Winsor Castle
No.16/20, S.R.P.Koil Street
Agaram, Chennai – 82

.. Petitioner

Versus

S. Nelson Dominic Johnstone

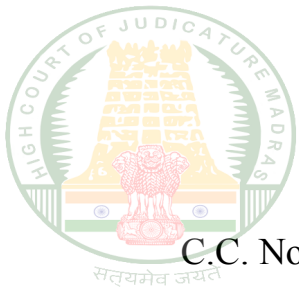
.. Respondent

Criminal Revision Case is filed under Section 397 r/w. 401 of Code of Criminal Procedure, to set aside the Judgment dated 02.01.2019 made in Criminal Appeal No.177 of 2015 on the file of the learned V Additional Sessions Judge, Chennai confirming the judgment dated 26.08.2015 made in C.C.No.810 of 2012 on the file of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

For Petitioner	:	Mr. V. Sakkarapani
For Respondent	:	Mr. R. Thamarai Selvan for Mr. S. Shankar

ORDER

This Criminal Revision Case had been filed by the Petitioner, who is the Accused in C.C. No. 810 of 2012, dated 26.08.2015 on the file of the relearned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai. The said



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C.C. No. 810 of 2012 was filed by the Respondent herein under Section 138 of

The Negotiable Instruments Act, 1881. After trial, the Petitioner/Accused was convicted for the offence under Section 138 of The Negotiable Instruments Act, 1881 and sentenced to undergo one year simple imprisonment and to pay compensation of the cheque amount of Rs.6,50,000/- to the Complainant, failing which to undergo simple imprisonment for a period of three months.

2. Aggrieved by the same, the Petitioner/Accused had filed Criminal Appeal No. 177 of 2015 before the learned V Additional Sessions Judge, City Civil Court, Chennai and it was dismissed on 02.01.2019. Therefore, the Petitioner has come up with the instant Criminal Revision Case to set aside the aforesaid orders of the Courts below.

3. The circumstance which led the Respondent herein to file C.C. No. 810 of 2012 before the learned Metropolitan Magistrate, Egmore, Chennai are succinctly narrated hereunder:-

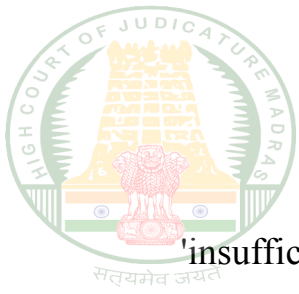
3.1. The Complainant and the Revision Petitioner/Accused are neighbours and they know each other. According to the Complainant, the Revision Petitioner/Accused was the proprietor of M/s. Gabriel Promoters engaged in construction work. During the course of such business, the



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Revision Petitioner/Accused approached the Complainant/Respondent for a

loan of Rs.7,50,000/-. It was represented by the Revision Petitioner/Accused that she will return the loan amount within three months with interest. Having regard to the proximity of relationship between them, the Complainant paid Rs.6,50,000/- as loan amount. On receipt of the loan amount, the Revision Petitioner/Accused issued six cheques drawn on Bank of Baroda, Egmore, Chennai and they are (i) Cheque No.001972 dated 30.04.2011 for Rs.1,00,000/- (ii) Cheque No. 018419 dated 15.05.2011 for Rs.50,000/-, (iii) Cheque No. 018428 dated 15.06.2011 for Rs.50,000/- (iv) Cheque No. 018426 dated 30.06.2011 for Rs.2,00,000/- (v) Cheque No. 009816 dated 15.07.2011 for Rs.50,000/- and (vi) Cheque No. 009817 dated 10.08.2011 for Rs.2,00,000/-. However, 15 days before the due date for presenting the first cheque, on 15.04.2011, the Revision Petitioner/Accused contacted the Complainant/Respondent and informed him not to present the cheques and requested to grant her three more months to repay the amount. Further, in order to show her *bona fides*, the Revision Petitioner/Accused issued a demand draft for Rs.20,000/- in favour of the Complainant/Respondent and sought time till 10.08.2011. Therefore, the Complainant did not present the cheques on the dates indicated thereof. Later, on 11.08.2011, the Complainant presented the cheques only to see that they were dishonoured for the reason



'insufficient funds' by his bankers Axis Bank, Periyar Nagar, Chennai – 600

082. Therefore, on 19.08.2011, the Respondent issued the statutory notice calling upon the Revision Petitioner/Accused to pay the cheque amount of Rs.6,50,000/-. On receipt of the notice, the Revision Petitioner/Accused sent a reply notice dated 31.08.2011 with false and untenable averments. Therefore, the complaint was filed by the Complainant.

3.2. The complaint of the Complainant was taken cognisance of and summons were issued to the Revision Petitioner/Accused. On appearance, the Revision Petitioner/Accused denied the charge under Section 138 of the Negotiable Instruments Act, 1881 and claimed to be tried. Therefore, trial was ordered. During trial, the Complainant/Respondent examined himself as P.W-1 and marked 15 documents as Ex.A-1 to Ex.A-15. On behalf of the Revision Petitioner/Accused, 4 documents were marked as Ex.B-1 to Ex.B-4. The trial Court on considering the Ex.B-1 to Ex.B-4, concluded that they have no reference to the cheques which are the subject matter of the complaint and the receipts under Ex.B-1 to Ex.B-4 relates to the past transaction between the Revision Petitioner/Accused, and her husband with the Complainant. Further, there was no documentary evidence filed to show that the sum of Rs.6,50,000/- covered under the six cheques have been paid by the Revision Petitioner/Accused to the Complainant. Further, Ex.B-1 to Ex.B-4 filed by the



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Revision Petitioner/Accused came into existence in the year 2005 and it would only disclose that there are transactions between the Complainant and the Revision Petitioner/Accused since 2005. Therefore, the trial Court held the Revision Petitioner/Accused guilty of the offence under Section 138 of The Negotiable Instruments Act, 1881 and sentenced her to undergo one year simple imprisonment, as mentioned supra.

3.3. The Appeal preferred by the Revision Petitioner/Accused before the Appellate Court was also dismissed on 02.01.2019 concurring with the conclusions reached by the trial Court.

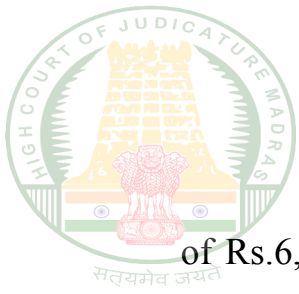
3.4. Aggrieved by the judgment dated 02.01.2019 made in Criminal Appeal No.177 of 2015, the Accused had preferred this Criminal Revision Case.

4. The learned Counsel for the Revision Petitioner/Accused Mr.V.Sakkarapani, would contend that the Revision Petitioner/Accused was working as a School Teacher in a Government aided School. Her husband was the Proprietor of M/s. Gabriel Promoters, a construction firm. In the course of his construction business, the husband of the Revision Petitioner/Accused availed loan from many persons, including his neighbour, the Complainant herein. For repayment of the loan, the husband of the Revision



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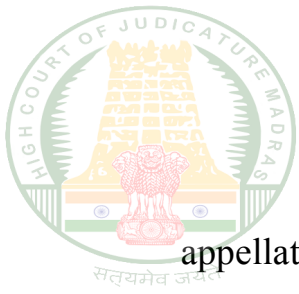
Petitioner/Accused had issued cheques belonging to his wife/Revision Petitioner/Accused as security. Subsequently, in the construction sector, he faced severe financial difficulties and therefore, he absconded and his whereabouts were not known. It was further stated that there was also a dispute between the Revision Petitioner/Accused and her husband and it was also one of the reasons due to which the husband of the Revision Petitioner/Accused absconding from his house. As the Revision Petitioner/Accused absconded, the construction projects he had taken were left incomplete. In such circumstances, the Revision Petitioner/Accused, who was working as a School Teacher in Government aided School, resigned her job and took upon the responsibility to proceed further with the construction business on her own. It was stated that the Revision Petitioner/Accused had been managing the construction business and she had almost settled the debts/loans availed by her husband from various creditors. In the course of clearing the debts, Revision Petitioner/Accused also cleared the debts/loans availed by her husband from the Complainant as well. The wife of the Complainant also, on repayment of the loan, returned the cheques and promissory notes obtained from the husband of the Revision Petitioner/Accused. While so, the Revision Petitioner/Accused was taken by surprise to receive a notice dated 19.08.2011 calling upon her to settle the dues



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of Rs.6,50,000/- covered under the cheques bearing (i) Cheque No.001972, dated 30.04.2011 for Rs.1,00,000/-; (ii) Cheque No.018419, dated 15.05.2011 for Rs.50,000/-; (iii) Cheque No.018428, dated 15.06.2011 for Rs.50,000/-; (iv) Cheque No.018426, dated 30.06.2011 for Rs.2,00,000/-; (v) Cheque No.009816, dated 15.07.2011 for Rs.50,000/- and (vi) Cheque No.009817, dated 10.08.2011 for Rs.2,00,000/- drawn on Bank of Baroda, as though the cheques were dishonoured for “insufficient funds” from the Bank of the Complainant – Axis Bank, Periyar Nagar Branch, Chennai – 82. The Accused was surprised to receive the notice dated 19.08.2011 regarding the above cheques presented by the Complainant. On receipt of the notice, the Accused had sent a reply dated 31.08.2011, disputing the claim of the Complainant *inter alia* warning the Complainant that if he falsely proceeds with any complaint, the same will be resisted as per law. After receipt of the reply, the Complainant filed the complaint before the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

5. The learned Counsel for the Revision Petitioner/Accused further submitted that in the course of the cross-examination of P.W-1, Ex.D-1 to Ex.D-4 were marked on behalf of the Revision Petitioner/Accused, but they were not properly considered by the trial Court. It is further stated that the



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appellate Court dismissed the appeal not on merits but on the ground that there is no representation for the Appellant/Accused.

6. The learned Counsel for the Revision Petitioner/Accused further stated that the Respondent was her neighbour and he is in the business of lending money. The Revision Petitioner had settled the dues to the Respondent/Complainant, apart from several other creditors. In fact, it was the wife of the Respondent who had handed over the blank cheques duly signed by the Revision Petitioner. Therefore, the Revision Petitioner was under the impression that she had settled all the dues. However, the Respondent with ulterior motive seems to have retained few cheques with him which he had utilised for filing the complaint under Section 138 of The Negotiable Instruments Act, 1881.

7. The learned Counsel for the Revision Petitioner invited the attention of this Court to the evidence of the Complainant as P.W-1 particularly in cross-examination. It is his submission that in the cross examination, the suggestion put to him by the learned Counsel for the Accused/defence was admitted in the cross-examination. Still, the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, failed to



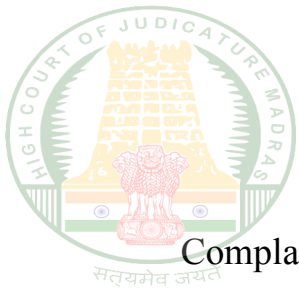
appreciate the evidence in the light of the specific admissions in the cross-examination. Also the learned Counsel for the Revision Petitioner invited the attention of this Court to the observations made by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, in the concluding paragraph of the judgment to the effect that the cheques mentioned by the Accused may be for a different transaction. The only ground under which the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, had recorded the finding of guilt against the Accused is on the presumption under Section 138 of the Negotiable Instruments Act, 1881 which is found to be perverse. Therefore, he seeks to set aside the judgment of conviction recorded by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

8. It is his further submission that the Appeal was dismissed for default and was not heard on merits and disposed of. Aggrieved by the same, the Accused/Appellant had approached this Court by this Revision. In any event, the documents under Ex.D-1 to Ex.D-4 were omitted to be considered. The initial presumption raised by the Complainant has been rebutted by issuing a reply notice under Ex.A-15 but the reply notice was not taken into consideration by both the courts below.



9. It is further contended by the learned Counsel for the Revision

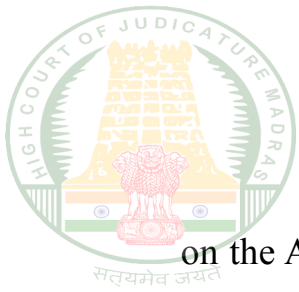
Petitioner that the Counsel who appeared before the trial Court and before the learned Appellate Court had misrepresented to the party that he will look after the case and she need not worry about it. However, the Counsel never informed the Revision Petitioner/Accused about the developments in the appeal. Suddenly, on enquiry, she came to know that the appeal ended against her thereby the Judgment of conviction was confirmed. Further, only when she received the certified copy of the judgment, she came to know that her Counsel did not appear before the Appellate Court and therefore, she sought records to engage a different Counsel. The learned Counsel for the Revision Petitioner further contends that the Counsel who appeared for the Revision Petitioner before the Appellate Court did not handover the copies of the records to her which compelled the Revision Petitioner to file a complaint before the Bar Council of Tamil Nadu and Puducherry. The Appeal was dismissed for non-appearance of the learned Counsel for the Appellant as well as the Respondent. It is the contention of the Appellant that the Appellant was not informed of the stage of the case by the Counsel appointed by her. He had made her believe that her case will be taken care of by him. It is also the contention of the learned Counsel for the Revision Petitioner that as neighbours they used to borrow money from the Complainant. The wife of the



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Complainant handed over the promissory notes and other documents obtained from her and her husband. Therefore, the Revision Petitioner was under the impression that she had settled all the dues. It is in this context, the reply notice sent by the Revision Petitioner/Accused is required to be considered, which would expose the case projected by the Complainant/Respondent.

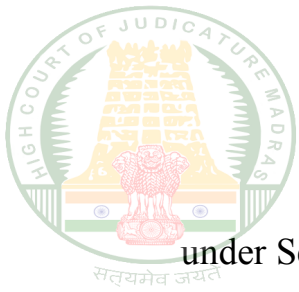
10. The learned Counsel for the Revision Petitioner also submitted that in the course of the cross-examination, there were materials made available by the Revision Petitioner/Accused. P.W-1 admits that he had not marked any document as proof for the claim that the Accused owe Rs.6,50,000/-. He claims that he had received interest from the Accused by way of cheque. While so, the claim of the Complainant that the Accused had to repay Rs.6,50,000/- towards loan as well as interest is not proper. The learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, without assessing the entire evidence available before him had convicted the Accused based only on the materials available in examination-in-chief of P.W-1/Complainant. The judgment of conviction was recorded based on the presumption available to the trial Court under Section 18 of the Negotiable Instruments Act, 1881 and Section 139 of the Negotiable Instruments Act, 1881 presuming that the contents of the complaint are true and the burden is



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on the Accused to disprove the complaint. When the Accused had not entered the witness box, the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai was under the impression that the Accused failed to discharge her burden and convicted her. In the Appeal, the Counsel engaged by the Revision Petitioner has assured that he will take care of the case she need not worry about it, however, he did not appear before the Appellate Court and left the Appeal to be dismissed for non-prosecution. The learned V Additional Sessions Judge also, without perusal of the material records confirmed the judgment of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai. Therefore, the judgment of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai as well as the learned V Additional Sessions Judge, City Civil Court, Chennai are perverse and they are to be set aside. Accordingly, the learned Counsel for the Revision Petitioner/Accused seeks to set aside the judgment of conviction recorded by the learned Metropolitan Magistrate, Fast Track Court No.II (Magisterial level), Egmore in C.C.No.810 of 2012, dated 26.08.2015, which was confirmed by the Appellate Court in Crl.A. No. 177 of 2015.

11. Per contra, Mr. R. Thamarai Selvan, learned Counsel for the Complainant/Respondent submitted that this Criminal Revision Case is filed



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under Section 397 r/w. Section 401 of Cr.P.C. In a Revision filed under Section

397 of Cr.P.C. this Court need not re-appreciate the evidence or consider the facts which were already appraised by the trial Court as well as the Appellate Court. The finding of the trial Judge as well as the learned Appellate Court Judge can be considered only if the Judgment of the Trial Court is perverse, materially irregular and based on irrelevant material evidence. In this regard, the learned counsel for the Complainant/Respondent invited the attention of this Court to Sections Sections 397 and 401 of Code of Criminal Procedure and they are extracted as under:

“397. Calling for records to exercise powers of Revision. – (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the Accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation. - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of Revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Section 401. High Court's powers of Revision. - (1) In the case of any proceeding the record of which has been called for by itself or which



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otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the Accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of Revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for Revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for Revision as a petition of appeal and deal with the same accordingly.

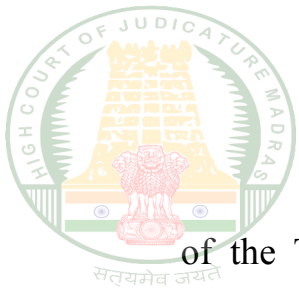
12. By referring to the above, the learned Counsel for the Complainant/Respondent contended that both the Courts below, on appreciation of the materials placed on record has come to a correct conclusion that the guilt of the Revision Petitioner/Accused has been proved. Further, the Revision Petitioner/Accused did not deny the signatures contained in the cheques. She also did not dispute that those cheques have been issued to the Complainant/Respondent herein. In such circumstances, the presumption is that those cheques have been issued for a legally enforceable debt and liability. Further, the Revision Petitioner/Accused did not step into the witness box for



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the reasons best known to her. In such circumstances, the presumption raised by the Complainant/Respondent gets stronger, which has not been rebutted by the Revision Petitioner/Accused. In fact, the trial court has scanned Ex.B-1 to Ex.B-4 filed by the Revision Petitioner/Accused and concluded that those receipts have been issued in the year 2005 and they have no reference to the loan amount borrowed by the Revision Petitioner/Accused. In such circumstances, it cannot be said that the judgment passed by the Courts below are perverse. The concurrent findings arrived at by the Courts below need not be disturbed by this Court in this Revision.

13. The learned Counsel for the Complainant/Respondent also submitted that though the learned Counsel engaged by Revision Petitioner/Accused did not appear before the appellate Court and made his submissions, the Appellate Court, in the judgment dated 02.01.2019, referred to the case projected by the Complainant, grounds raised by the Revision Petitioner/Accused, as appellant, in the appeal, determined point for consideration and answered it elaborately. The learned Counsel therefore submits that even if the learned Counsel engaged by the Complainant/Respondent submitted his arguments before the appellate Court, the appellate Court could have only confirmed the well considered Judgment



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of the Trial Court. Thus, it is submitted that merely because the learned Counsel engaged by the Appellant did not appear before the Appellate Court, it has got nothing to do with the disposal of the appeal by the Appellate Court on merits. Accordingly, the learned Counsel for the Respondent prayed for dismissal of this Criminal Revision.

Point for consideration:

Whether the judgment dated 02.01.2019 passed in CrI.A.No.177 of 2015 by the learned V Additional Sessions Judge, City Civil Court, Chennai confirming the judgment of conviction recorded by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai in C.C.No.810 of 2012, dated 26.08.2015 is to be set aside as perverse?

14. Heard the learned Counsel for the Revision Petitioner as well as the learned Counsel for the Respondent. Perused the materials placed on record.

15. On perusal of the cross-examination of P.W-1, it is found that he had stated that being neighbours the Revision Petitioner and her husband used to borrow money. Even though the Revision Petitioner sought Rs.7,50,000/-, the Complainant/Respondent paid only Rs.6,50,000/- as loan. In the cross-examination, to the question as to how the loan amount of Rs.6,50,000/- was



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paid to the Revision Petitioner/Accused, whether by way of cash or cheque or other instrument, the Complainant/Respondent claims that he had handed over the money to the Accused by withdrawing amount from his Axis Bank account at Periyar Nagar Branch. However, to substantiate the same, the Complainant/Respondent had not produced the Bank statement to show that he had withdrawn the amount and paid it to the Revision Petitioner/Accused. Thus, there is nothing on record to show the manner in which the amount was paid by the Complainant/Respondent to the Revision Petitioner/Accused.

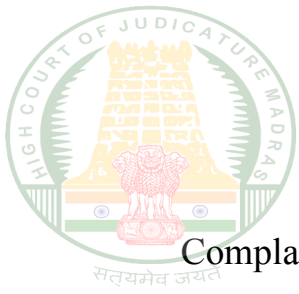
16. The Complainant/Respondent also admitted in cross-examination that he had issued acknowledgments marked as Ex.D-1 to Ex.D-4. The Complainant admits that for the amount received by the Accused, he had obtained cheques from her. The Complainant also admits that at the time when the amount was repaid, he had issued acknowledgments which were marked as Ex.D-1 to Ex.D-4. Thus, at the time of repayment, the Complainant/Respondent did not return the cheques received either from the Revision Petitioner or from her husband. This piece of statement of the Complainant/Respondent in his cross-examination only shows that the initial presumption raised by the Complainant/Respondent has been rebutted by the Accused under Section 139 of the Negotiable Instruments Act, 1881 by cross-



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examining the Complainant. That apart, the Revision Petitioner/Accused also issued a reply notice to the statutory notice thereby denied the case projected by the Complainant.

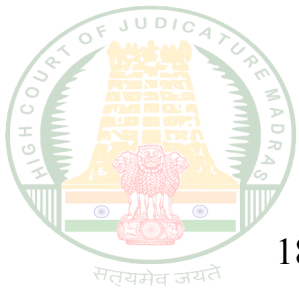
17. As per the reported ruling of the Hon'ble Supreme Court in the case of *Krishna Janardhan Bhat vs. Dattatraya G. Hegde* reported in (2008) 4 SCC 54; and in the case of *Rangappa Vs. Sri Mohan* reported in (2010) 11 SCC 441, the Accused need not enter the witness box and examine himself to rebut the presumption. It is sufficient to the Accused to rely on the materials available during the evidence of the Complainant, either by cross-examination or by examination-in-chief. Here in this case, the Complainant was cross-examined and certain vital documents were marked under Ex.B-1 to Ex.B-4. Under those circumstances, it is found that the claim of the Complainant that the Accused owes him Rs.6,50,000/- which are covered by way of cheques drawn on different dates is not supported with documentary evidence. When the Complainant admits that the promissory note and cheques were returned to the Accused for the outstanding dues, the claim of the Complainant that he had drawn the amount from the Axis Bank, Periyar Nagar Branch to pay the loan amount to the Accused and her husband has not been substantiated. When the Complainant is unable to mark those documents, it is to be presumed that the



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Complainant had filed the complaint based on the duly signed, unfilled cheques retained by him from the Accused. The admission of the Complainant in the cross-examination that he had withdrawn the amount from Axis Bank, Periyar Nagar Branch to disburse the loan of Rs.6,50,000/- to the Accused is unbelievable. The Complainant/Respondent went on to state that he is unable to furnish documents regarding withdrawal of the amount from his Bank Account. If it is so, it should be presumed that there is no such document that may be available for being produced to prove such a statement. Added to that, his admission regarding Ex.D-1 to Ex.D-4 indicates that the Complainant had admitted that for the outstanding amount, the Accused had cleared certain amounts. Under those circumstances, it is not known as to how the Complainant arrived at a sum of Rs.6,50,000/- as the balance amount. This has not been substantiated by the Complainant/Respondent in any manner. The Complainant only claims that the Revision Petitioner/Accused is liable to pay Rs.6,50,000/-. However, as to how the sum of Rs.6,50,000/- was paid has not been substantiated by him. Merely based on cheques issued by the Revision Petitioner on various dates, the Court below have erroneously arrive at a conclusion that the Accused had committed offence under Section 139 of the Negotiable Instruments Act, 1881.



18. In the cross -examination P.W-1, he admits that in some cases the wife of the Complainant had accepted the amount from the Accused and issued acknowledgments. Here again, it is for the Complainant/Respondent to substantiate that he had paid Rs.6,50,000/- to the Revision Petitioner/Accused which remains unpaid. When he had not furnished the statement from his Bank account, it is hard to accept the case of the Complainant/Respondent. In such event, both the courts ought to have drawn an adverse inference against the Complainant as per Section 114 of the Indian Evidence Act, but it was not done. Both the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai as well as the learned V Additional Sessions Judge, City Civil Court, Chennai committed a legal error in accepting the case projected by the Complainant/Respondent as gospel truth. When the Complainant is unable to produce the statement of account to show that he has withdrawn the entire amount of Rs.6,50,000/- and paid it to the Revision Petitioner/Accused, his complaint has to be dismissed as vague, weak and fragile.

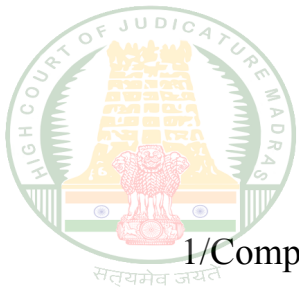
19. Among the several grounds raised by the Revision Petitioner/Accused, this Court finds that the learned Counsel engaged by her did not appear before the Appellate Judge and she had even given a complaint against her Counsel before the Bar Council of Tamil Nadu and Puducherry



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alleging professional misconduct. This is also one of the reasons for entertaining this Criminal Revision Case by this Court. Even though it could not be presumed that if the Counsel for the Revision Petitioner/Accused appeared before the Appellate Court it would have resulted in the appeal being allowed, the fact remains that the Counsel engaged by the Revision Petitioner/Accused did not make his submissions before the Appellate Court and on this ground the Revision petition has to be entertained. This Court as Revisional Court shall not re-appreciate the evidence as the Appellate Court. But here is a case, where the Revision Petitioner/Accused blames the Counsel engaged by her did not appear before the Appellate Court and did not co-operate with the Revision Petitioner/Accused at the fag end of the appeal. Therefore, the filing of the case under Section 397 and 401 of Cr.P.C. is found justified.

20. The contents of the reply notice under Ex.P-15 along with the documents executed by the Complainant under Ex.D-1 to Ex.D-4 indicate that the claim of the Accused that the Complainant had filled up the duly signed blank cheques issued by her and filed this false case is found justified. When the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai had not considered the materials available in cross-examination of P.W-



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1/Complainant, especially when Complainant in his cross-examination admitted that he does not maintain the accounts regarding loans disbursed to the Accused herein, it is not known as to how the Respondent/Complainant arrived at Rs.6,50,000/- as the loan amount to be paid by the Revision Petitioner/Accused. Therefore, the preponderance of probability is that the cheques available with him were filled up by him and presented to his Bank. Instead of handing over the cheques issued by the Accused, after having been settled the loans, the Complainant unlawfully retained those cheques, presented them in his Bank and filed the instant complaint under Section 138 of The Negotiable Instruments Act, 1881.

21. The learned V Additional Sessions Judge, City Civil Court, Chennai, without hearing the arguments of the Counsel for the Appellant/Accused dismissed the Appeal invoking the powers under Sections 397 of Cr.P.C. and therefore, this Court is justified in exercising discretion under Section 401 of Cr.P.C. Since both the Courts below convicted the Revision Petitioner only based on presumption under Section 139 of the Negotiable Instruments Act, 1881 without looking into the admissions made by the Complainant in his cross-examination, the Judgment of the Courts below required to be interfered with.



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22. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner/Accused and against the Respondent/Complainant. The judgment dated 02.01.2019 passed in Crl.A.No.177 of 2015 by the learned V Additional Sessions Judge, City Civil Court, Chennai confirming the judgment of conviction recorded by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai in C.C.No.810 of 2012, dated 26.08.2015 are found perverse and they are liable to be set aside.

In the result, **this Criminal Revision is allowed.** The judgment dated 02.01.2019 passed in Crl.A.No.177 of 2015 by the learned V Additional Sessions Judge, City Civil Court, Chennai confirming the judgment of conviction recorded by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai in C.C.No.810 of 2012, dated 26.08.2015 is set aside.

03.06.2025

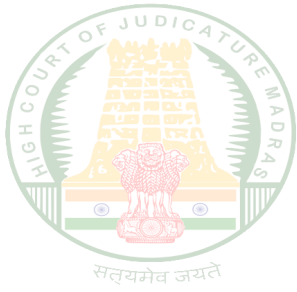
shl/srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

SATHI KUMAR SUKUMARA KURUP, J



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shl/srm

To

1. The V Additional Sessions Judge,
City Civil Court,
Chennai.
2. The Metropolitan Magistrate,
Fast Track Court No.II,
Egmore, Chennai.
3. The Section Officer,
Criminal Section,
High Court Madras.

Order made in
Crl.Revision Case No.1216 of 2019

03.06.2025