IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2025

CORAM:

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

Crl.R.C.No.555 of 2023

J.Mathiyalagan .... Petitioner

Versus

Ramakrishnan .... Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to set aside the conviction imposed in the Judgment dated 06.09.2021 made in CA.03/2019 on the file of the Hon'ble IV Additional District and Sessions Judge, Coimbatore, Confirming the Judgment dated 04.12.2018 made in C.C.153/2015 on the file of the Learned Judicial Magistrate Fast Track Court Magisterial Level-2 Coimbatore by allowing this Crl.R.C.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.M.Mohammed Riyaz
for Mr.T.Balaji

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 06.09.2021 passed in Crl.A.No.03 of 2019 by the IV Additional District and Sessions Judge, Coimbatore, thereby confirming the conviction and sentence imposed by the Trial Court in C.C.No.153 of 2015 on the file of the Judicial Magistrate Fast Track Court Magisterial Level-2 Coimbatore, for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner is the accused in a complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. It is alleged that the petitioner, being the power of attorney holder of the original owners of the property comprised in Survey No.163/2B1 situated at Vadavalli village, Coimbatore, entered into an agreement for sale with the respondent on 28.08.2012. On that day, the petitioner received a sum of Rs.1,00,000/- as advance and a period of six months was fixed for completion of the sale as per the terms of the agreement.

3. Subsequently, the time for execution of sale agreement was extended by another six months and a further agreement was executed on 07.10.2013, pursuant to which an additional sum of Rs.15,00,000/- was paid by the respondent. The petitioner agreed to clear all encumbrance and pending litigations in respect of the property and to execute the sale deed in favour of the respondent.

4. However, the petitioner failed to resolve the legal disputes and complete the sale transaction. Consequently, the respondent demanded to repay the advance amount which was received by the petitioner. In order to repay the amount, the petitioner issued two cheques, each for a sum of Rs.8,00,000/-. Both cheques were presented for collection, but were returned unpaid with an endorsement “Insufficient Funds”. After causing statutory notice, which was received by the accused on 07.11.2014, the complaint has been filed before the Judicial Magistrate Fast Track Court Magisterial Level-2, Coimbatore.

5. Before the trial Court, the complainant examined himself as PW.1 and marked ten (10) exhibits as Ex.P1 To Ex.P10. In defence, the accused examined himself as DW.3 and two other witnesses as DW.1 and DW.2 and marked three (3) Exhibits as Ex.D1 to Ex.D3.

6. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act. Accordingly, the petitioner was convicted and sentenced to undergo six months simple imprisonment and also awarded compensation of the entire cheque amount of Rs.16,00,000/- with interest at the rate of 6% per annum from the date of the cheques to be paid to the complainant within one month from the date of Judgment. In default of payment, the petitioner shall undergo a further period of three months simple imprisonment.

7. Aggrieved by the said conviction and sentence, the petitioner preferred an appeal. The appellate Court dismissed the appeal and confirmed the conviction and sentence imposed by the Trial Court. Hence, the present Criminal Revision Case.

8. The learned counsel appearing for the petitioner would submit two primary contentions:

(i) The cheques in question were issued in favour of the respondent only for security purposes at the time of execution of agreement. Therefore, the cheques were not issued in discharge of any legally enforceable debt or liability.

(ii) The petitioner, being the power of attorney holder of the original owners of the property, entered into a sale agreement with the respondent on 28.08.2012 and received a sum of Rs.1,00,000/- as advance. Subsequently, another agreement was executed on 07.10.2013, thereby, extending the time for execution of sale deed till the completion of litigation concerning the property. No further advance amount was paid by the respondent thereafter. Further, the second agreement dated 07.10.2013 which extended the earlier agreement, is still in force. Hence there is no obligation on the part of the petitioner to return the advance amount allegedly received by the respondent.

Accordingly, there existed no legally enforceable debt or liability at the time of issuance of the cheques, which were issued only as security. However, without considering the above, the trial Court as well as the appellate Court convicted the petitioner for the offence punishable under Section 138 of N.I.Act.

9. Per contra, the learned counsel appearing for the respondent would submit that the respondent had duly discharged his initial burden and drawn the statutory presumption under Section 139 of N.I.Act, in support of the complaint under Section 138 of N.I.Act. It is submitted that as per the first agreement, the petitioner received a sum of Rs.1,00,000/- and thereafter, another agreement was executed on 07.10.2013, pursuant to which a further sum of Rs.15,00,000/- was paid by the respondent. Both agreements were marked as Ex.P2 and Ex.P3. As per the second agreement, the petitioner had undertaken to complete the pending litigation within a short span of time and to execute the sale deed. However, the petitioner failed to fulfil this obligation and deliberately delayed the execution of sale deed in favour of the respondent.

10. Consequently, the respondent demanded the return of the advance amount, on which, the petitioner issued two cheques, each for a sum of Rs.8,00,000/- towards repayment. Both cheques were presented for collection, but were dishonoured for insufficient of funds. Though the petitioner issued a reply notice and examined DW.1 to DW.3, in support of his defence, he failed to rebut the statutory presumption under Section 139 of N.I.Act. Therefore, both the trial Court and the appellate Court rightly convicted the petitioner and the same does not warrant any interference by this Court.

11. The petitioner's principals, Sumitra Devi and Deivam were owners of the property comprised in Survey No163/2B1, situated at Vadavalli village, Coimbatore. In order to sell the property, a power of attorney was executed in favour of the petitioner. Pursuant to the said power, the petitioner entered entered into a sale agreement with the respondent on 28.08.2012 and received a sum of Rs.1,00,000/- as advance. The period for execution of the sale was fixed as six months. However, the petitioner could not able to execute the sale deed due to some litigation pending. Therefore, an agreement for extension of time was executed between them on 07.10.2013, during which the respondent paid further sum of Rs.15,00,000/-. Thus, the petitioner received a total sum of Rs.16,00,000/- as advance towards the sale of the property.

12. Heard the learned counsel appearing on either side and perused the materials available on record.

13. On perusal of second agreement Ex.P3, it is evident that the time fixed for execution of sale deed was 10 days after the completion of pending litigation. Further, the petitioner had assured that the litigation will be over within a short span of time. However, the petitioner failed to complete the litigation and therefore, the respondent made a demand to return the advance amount. Admittedly, the possession of the said property was not handed over to the respondent. Consequently, the respondent made a demand for return of advance amount. In response, the petitioner issued two cheques each for a sum of Rs.8,00,000/- towards repayment of the advance. However, both the cheques were returned dishonoured on presentation. After receipt of statutory notice, the petitioner issued reply notice which was marked as Ex.P.10.

14. On perusal of the Ex.P.10, it is revealed that the petitioner had taken a specific defence that the alleged cheques were issued only for security purposes at the time of receiving the advance amount. Further, the cheques were not issued in discharge of any legally enforceable debt or liability. The petitioner also claimed that the agreement is still in force and therefore, there was no obligation to return the advance amount at that stage. In support of this defence, the petitioner cross examined PW.1 and examined DW.1 to DW.3. However, nothing was elucidated in cross examination to substantiate the claim that the cheques were not issued towards a legally enforceable debt as contemplated under Section 138 of Negotiable Instruments Act. Further, the petitioner failed to produce any documentary evidence before the trial Court to support his defence.

15. Admittedly, Ex.P2 and Ex.P3 are the agreements for sale in respect of the subject property. As per the exhibits, the petitioner received a sum of Rs.16,00,000/- as an advance. Therefore, there was absolutely no necessity for the petitioner to issue cheques that too for security purposes.

16. However, the learned counsel appearing for the respondent would submit that two blank cheques were issued by the petitioner to the respondent and though initially stated to be for security purposes, the liability to repay arose subsequently. On the date of the presentation of the cheques, there existed a legally enforceable liability on the part of the petitioner to return the advance amount, as the petitioner had failed to complete the litigation and also failed to execute the sale deed in favour of the respondent. It was only on demand made by the respondent that the petitioner issued both cheques. Therefore, on the date of their presentation, the cheques were legally enforceable against the petitioner.

17. In this regard, the learned counsel placed reliance on the judgment of this Court in ***Crl.A.(MD).No.395 of 2021***, in the case of ***Thavamoni Stephen Jeyaraj Vs. Muthukrishnan,*** in which, this Court has held as follows:-

> *"16.In this regard, the learned counsel appearing for the appellant relied upon the Judgment of the Honourable Supreme Court of India in (2016) 10 SCC 548 – Sampelly Sattanarayana Rao Vs. Indian Renewable Energy Development Agency Limited, wherein it has been held as follows:-*
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> *"9.We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in Indus Airways (supra) with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*

10.Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of installments. The repayment becomes due under the agreement, the moment the loan is advanced and the installment falls due. It is undisputed that the loan was duly disbursed on 28th February, 2002 which was prior to the date of the cheques. Once the loan was disbursed and installments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability."

In the case on hand, as per the agreement Ex.P.6, dated 24.05.2012, Ex.P.1 was issued for discharge of debt or liability. Admittedly, there was due payable by the respondent to the tune of Rs.43,00,000/- on the date of issuance of cheque. Therefore, the dishonoured of subject cheque would fall under Section 138 of the Negotiable Instruments Act and it undoubtedly represented the outstanding liability.

17.The learned counsel appearing for the appellant relied upon another Judgment of the Honourable Supreme Court of India in 2021 SCC Online SC 1002 - Sripati Singh (since deceased) Through his son Gaurav Singh Vs. State of Jharkhand and another, wherein it has been held as follows:-

"17.A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance.'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I.Act would flow."

18.The learned counsel appearing for the appellant relied upon the Judgment of the Honourable Supreme Court of India in 2021 SCC Online SC 1174 – Sunil Todi and others Vs. State of Gujarat and another, wherein it has been held as follows:-

"35.The submission which has been urged on behalf of the appellants, however, is that the fact that the cheques in the present case have been issued as a security is not in dispute since it stands admitted from the pleading of the second respondent in the

suit instituted before the High Court of Madras. The legal requirement which Section 138 embodies is that a cheque must be drawn by a person for the payment of money to another "for the discharge, in whole or in part, of any debt or other liability'. A cheque may be issued to facilitate a commercial transaction between the parties. Where, acting upon the underlying purpose, a commercial arrangement between theparties has fructified, as in the present case by the supply of electricity under a PSA, the presentation of the cheque upon the failure of the buyer to pay is a consequence which would be within the contemplation of the drawer. The cheque, in other words, would in such an instance mature for presentation and, in substance and in effect, is towards a legally enforceable debt or liability. This precisely is the situation in the present case which would negate the submissions of the appellants."

The Honourable Supreme Court of India held that the cheque issued as a security to a financial transaction cannot be considered as a worthless piece of paper and security cheques also covered under Section 138 of the Negotiable Instruments act, as it is a security ensuring certain payment under a transaction and the same would be a valid cheque in the event of failure on the part of the borrower to pay the money.

19.In the case on hand, as per Ex.P.6 agreement, Ex.P.1 was issued and as such, it would mature for prosecution and would become as a cheque envisaged under Section 138 of the Negotiable

Instruments Act. Thus, the above Judgments are squarely applicable to the case on hand."

18. Therefore, the contention raised by the petitioner cannot be accepted and both the Courts have rightly convicted the petitioner for the offence punishable under Section 138 of N.I.Act. Further, although the agreement for sale marked as Ex.P3 is stated to be in force, it does not stipulate any specific time limit for execution of sale deed. After substantial payment of the sale consideration, no prudent person would remain inactive without taking steps to ensure execution of the sale deed. The second agreement for sale was executed on 07.10.2013. Even after the lapse more than one year, the sale deed was neither executed in favour of the respondent nor was possession of the property handed over to him.

19. In view of petitioner's failure to fulfil his contractual obligations, the respondent insisted on a refund of the advance amount, in which the petitioner issued two cheques. Further, the petitioner took inconsistent stands on one hand, disputing the payment of the additional advance under the second agreement dated 07.10.2013 and on the other, issuing two cheques for a sum of Rs.8,00,000/- each.

20. Therefore, the petitioner failed to rebut the statutory presumption under Section 139 of Negotiable Instruments Act and both the trial Court and the appellate Court rightly convicted the petitioner for offence punishable under Section 138 of N.I.Act. This Court finds no infirmity or illegality in the concurrent findings of the Courts below.

21. Accordingly, this Criminal Revision Case is dismissed.

10.06.2025

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

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To

1. The IV Additional District and Sessions Judge, Coimbatore

2. The Judicial Magistrate Fast Track Court Magisterial Level-2 Coimbatore

G.K.ILANTHIRAIYAN, J.

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