IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23219 of 2023
and
Crl.M.P.Nos.16234 and 16235 of 2023

M/s. Rajkham Housing,
Rep., by its Sole Proprietor,
Mr.M.Arumugam,
S/o. S.Murugesan,
"Rajkham Sristi", No.105,
Arcot Road, Kodambakkam,
Chennai – 600 024. ... Petitioner

Vs

M/s. Presidency Finance Limited,
A Company incorporated under the provisions of the Companies Act, 1956,
Represented by its Authorized Signatory/Authorized Representative,
Mr.Hiralal having its registered office at Door No.24/12, 3rd Floor,
Raghaviah Road, T.Nagar,
Chennai – 600 017. ... Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to S.T.C.No.1144 of 2023 on the file of the Judicial Magistrate Fast Tract Court No. III at Saidapet, Chennai and quash the same.

For Petitioner : Mr.M.Ravikumar for Mr.Arun.G

For Respondent : G.Vivekanand

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.1144 of 2023 on the file of the Judicial Magistrate Fast Tract Court No. III at Saidapet, Chennai.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act' for short).

3. The case of the respondent is that the petitioner availed a loan to the tune of Rs. 3 Crores from the respondent and also entered into an agreement. As per the loan agreement, the petitioner agreed to repay the said loan with interest at the rate of 21% compounded on a monthly basis. From the inception, the petitioner failed to comply with their obligations as per the loan agreement and committed default in repayment of the loan amount and the interest agreed by the accused. On 28.02.2023, the petitioner had

paid only a sum of Rs. 2,61,00,000/- on various dates against a total outstanding amount of Rs. 3,97,28,140/-. Therefore, the petitioner is in due of Rs. 1,36,28,140/- with future interest. Further, the cheque was issued by the petitioner on the date of the agreement for the loan and was presented for collection to the tune of Rs. 2 Crores in order to realise the loan amount. However, it was returned dishonoured for the reason "payment stopped by drawer". After causing statutory notice, the respondent filed a complaint.

4. The learned counsel for the petitioner would submit that even according to the respondent, and on the date of presentation of the cheque, there was only a due to the tune of Rs. 1,36,28,140/-. However, the cheque was presented for a sum of Rs. 2 Crores. Even according to the respondent, the petitioner had repaid the loan to the tune of Rs. 2,61,00,000/-, and he was in due to the tune of Rs. 1,36,28,140/-. It is a clear violation of the provision under Section 56 of the NI Act. In support of his contentions, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in ***Crl. A. No. 1497 of 2022 (Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and Another).***

5. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been served, the respondent has not entered appearance, either in person or through Counsel.

6. The only ground raised by the petitioner is that the respondent ought not have presented the cheque for collection for a sum of Rs. 2 Crores when the loan due was only to the tune of Rs. 1,36,28,140/-. Further, as on 28.02.2023, the petitioner had paid a sum of Rs. 2,61,00,000/- on various dates. Admittedly, the cheque was issued at the time of availing the loan and while executing the loan agreement dated 21.06.2021. After issuance of the said cheque, there was payment till 28.02.2023.

7. It is relevant to extract the provision under Section 56 of the NI Act, which reads as follows:-

> *"**56. Indorsement for part of sum due.**—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated*

for the balance."

8. Therefore, the cheque cannot be presented for encashment without recording the part payment made by the petitioner. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 of the NI Act cannot be attracted, since the cheque does not represent a legally enforceable debt at the time of encashment. Admittedly, on the date of complaint, there was a due only to the tune of Rs.1,36,28,140/-, but the respondent presented the cheque for a sum of Rs.2 Crores.

9. In this regard, it is relevant to extract the judgment of the Hon'ble Supreme Court of India in ***Crl. A. No. 1497 of 2022 (Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and Another),*** which reads as follows:-

> *"30. In view of the discussion above, we summarise our findings below:*
>
> *(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally*

enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encahsed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgements of this Court to mean the cheque amount. The conditions stipulated

in the provisions to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

10. The above judgment is squarely applicable to this case. In view of the above, the entire proceeding cannot be sustained and it is liable to be dismissed. Accordingly, the proceeding in S.T.C. No. 1144 of 2023 on the file of the Judicial Magistrate, Fast Track Court No. III at Saidapet, Chennai, is hereby quashed.

11. In the result, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

27.03.2025

Index:Yes/No
Neutral Citation/Yes/No
kv

To

1. The Judicial Magistrate Fast Tract Court No. III at Saidapet,
   Chennai.

2. The Public Prosecutor,
   High Court of Madras.

G.K.ILANTHIRAIYAN, J.

kv

Crl.O.P.No.23219 of 2023

27.03.2025