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Crl.RC.No.99 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2025

CORAM:

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

Crl.RC.No.99 of 2023

C.Manikandakumar

... Petitioner

Versus

V.N.Parasuraman

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the conviction and sentence dated 17.11.2022 made in CA.No.136 of 2021 on the file of the III Additional District and Sessions Court, Gobichettipalayam confirming the conviction and sentence dated 13.10.2021 made in CC.No.50 of 2017 on the file of the Court of Judicial Magistrate No.2, Gobichettipalayam the sentencing the petitioner to undergo simple imprisonment for 1 year and to pay a compensation at Rs.5,00,000/- to the respondent.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.X.Selvam Sounder



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ORDER

This criminal revision case has been preferred against the judgment dated 17.11.2022 passed in CA.No.136 of 2021 on the file of the III Additional District and Sessions Court, Gobichettipalayam, confirming the judgment dated 13.10.2021 passed in CC.No.50 of 2017 on the file of the Court of Judicial Magistrate No.2, Gobichettipalayam, thereby the petitioner was convicted under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner borrowed a sum of Rs.5,00,000/- from the respondent. On the date of the borrowal, the petitioner also issued a post-dated cheque dated 04.10.2016 for the said amount. On instruction, it was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged the complaint.



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3. On the side of the respondent, he had examined PW1 and PW2 and marked Ex.P1 to Ex.P8. On the side of the petitioner, no one was examined, however marked Ex.D1. On perusal of the oral and documentary evidences, the trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo simple imprisonment for one year and also ordered to pay compensation to the tune of the cheque amount to the complainant. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and the order of conviction and sentence imposed by the trial court was upheld.

4. The learned counsel for the petitioner would submit that the petitioner rebutted the presumption by way of cross examination. The respondent had no source of income to lend such a huge amount of Rs.5,00,000/-. He further submitted that when the cheque was issued for security purpose, it was misused by the respondent. On perusal of the evidence of PW1 and the documents which were marked through PW1, it is revealed that on 22.09.2016, a sum of Rs.5,00,000/- was deposited and



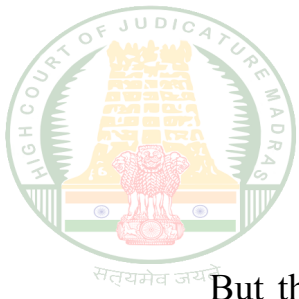
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on 01.10.2016, the same was withdrawn to lend loan in favour of the petitioner. Therefore, the respondent had no income to lend loan to the petitioner.

5. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

6. On perusal of records, it is revealed that though the petitioner had taken specific stand that the cheque was issued for security purpose, the petitioner failed to rebut the same by way of any oral or documentary evidence. The respondent proved his case as contemplated under Sections 118 and 139 of NI Act. Though the petitioner can rebut the same by way of preponderance of probabilities, the petitioner failed to do so. Though the petitioner had taken defence that the petitioner used to borrow loan from the respondent and repaid the same and at the time of borrowal of loan, the respondent used to receive cheque, after repayment of the loan amount, the respondent used to return the same, however on the said borrowal, the respondent failed to return the cheque.



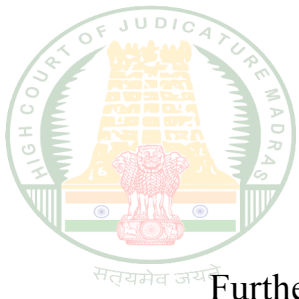
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But the petitioner did not substantiate those contentions. Therefore, the trial court as well as the appellate court rightly convicted the petitioner for the offences under Section 138 of NI Act.

7. At this juncture, the learned counsel for the petitioner requested to reduce the sentence of imprisonment considering the age of the petitioner.

8. Therefore, considering the age of the petitioner, this Court is inclined to modify the sentence alone. Accordingly, the conviction imposed on the petitioner by the judgment dated 17.11.2022 passed in CA.No.136 of 2021 on the file of the III Additional District and Sessions Court, Gobichettipalayam and the judgment dated 13.10.2021 passed in CC.No.50 of 2017 on the file of the Court of Judicial Magistrate No.2, Gobichettipalayam, is hereby confirmed. However, the sentence of one year simple imprisonment alone is reduced for the period of six months. The trial Court is directed to secure the petitioner for the purpose of sentencing him to undergo the reduced/modified period of sentence.



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Further, the period of remand already undergone by the petitioner if any, is ordered to be set off against the sentence imposed.

9. In the result, the Criminal Revision Case stands partly allowed.

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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non speaking order
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To

- 1.The III Additional District and Sessions Court, Gobichettipalayam
- 2.The Judicial Magistrate No.2, Gobichettipalayam



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