IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM:

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

Crl.RC.No.162 of 2023

Boopalan ... Petitioner

Versus

M.Rajendran ... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure praying to call for the records and to set aside the judgment dated 06.06.2019 in CA.No.79 of 2016 on the file of the learned XVII Additional City Civil Court, Chennai by confirming the conviction and sentence imposed by the learned Metropolitan Magistrate Fast Track Court No.IV, George Town, Chennai in CC.No.428 of 2014 by an order dated 08.03.2016.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.V.Ramamurthy

ORDER

This criminal revision has been filed against the judgment dated 06.06.2019 passed in CA.No.79 of 2016 on the file of the XVII Additional City Civil Court, Chennai, thereby confirmed the conviction and sentence imposed by the trial court in CC.No.428 of 2014 dated 08.03.2016 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai for the offence punishable under Section 138 of NI act.

2. The respondent lodged complaint for the offence punishable under Section 138 of NI Act against the petitioner herein alleging that the respondent advanced a loan for a sum of Rs.40 lakhs to the petitioner on 06.06.2013 by executing a pronote in favour of the respondent. Towards repayment of the said loan amount with interest at the rate of 1.5%, the petitioner had issued a cheque for a sum of Rs.43,60,000/-. It was presented for collection. However it was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged the complaint.

3. On the side of the respondent, he had examined himself as

PW1 and marked Ex.P1 to Ex.P5. On the side of the petitioner, no one was examined and no documents were marked. On Perusal of oral and documentary evidence, 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 a period of two years and also awarded competition to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and the conviction and sentence imposed by the trial court was upheld, against which the present criminal revision has been filed.

4. The learned counsel for the petitioner would submit that the respondent failed to prove that he had source of income at the time of lending such a huge amount of Rs.40 lakhs. The respondent also failed to account the loan amount in his income tax returns. The respondent did not produce any income tax returns to show that the loan amount lent by him was accounted in his income tax returns. Further, except the pro-note and the cheque, no other documents have been executed in favour of the respondent as security for such huge sum of Rs.40 lakhs. Therefore, the respondent failed to prove that there is legally enforceable debt for which

the petitioner issued cheque. Admittedly the petitioner and the respondent had business transaction and there was money transaction also, in which the petitioner already handed over a cheque for security purpose. After repayment of the loan amount, the cheque was misused by the respondent and proceedings under Section 138 of NI Act was initiated and the same was also elucidated by way of cross examination from the respondent. Therefore, the petitioner categorically rebutted the presumption. However, without considering the above facts and circumstances, the trial court as well as the appellate court convicted the petitioner for the offence punishable under Section 138 of NI Act.

5. The learned counsel for the respondent would submit that the petitioner never denied the issuance of cheque and never disputed the signature found in the cheque. In fact, the respondent specifically deposed that he had money for the loan lent to the petitioner and it has been accounted in his income. There is absolutely no need to produce the income tax returns and therefore the respondent did not produce any income tax returns. The respondent is running a business and he is earning Rs.10 lakhs per month. He is capable to lend a sum of Rs.40

lakhs. He further submitted that even after receipt of statutory notice, the petitioner failed to reply by way of reply notice. The petitioner did not even let in any evidence to disprove the case of the respondent. Therefore, both the courts below rightly convicted the petitioner and they do not warrant any interference by this Court.

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

7. The petitioner borrowed a sum of Rs.40 lakhs from the respondent on 06.06.2013. On the date of borrowal, the petitioner had also executed a pro-note. Towards the repayment of the said loan with interest at the rate of 1.5 %, the petitioner issued a cheque for a sum of Rs.43,60,000/-. It was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged complaint. The pro-note was marked as Ex.P1 and the cheque was marked as Ex.P2. Statutory notice was duly received by the petitioner and the acknowledgment card was also marked as Ex.P5. However, the petitioner failed to send any reply to put forth his

defence in the earlier stage. The petitioner had taken a specific stand that the cheque Ex.P2 was issued for security purpose. However, in order to substantiate the same, the petitioner did not put forth any defence on his side before the trial court. Mere cross examination would not be sufficient to rebut the presumption under Section 138 of NI Act. On the other hand, the respondent categorically deposed that his income was Rs.10 lakhs per month at the time of lending the loan to the petitioner. It is not the case of the petitioner that the petitioner did not issue the cheque, and he never disputed the signature found in the cheque. The petitioner also executed a pro-note, which was marked as Ex.P1. There was no denial about the execution of the pro-note. Therefore, the respondent categorically proved his case beyond any doubt and the trial court rightly convicted the petitioner for the offence punishable under Section 138 of NI Act. The appellate court also rightly confirmed the conviction and sentence imposed by the trial court. As such, this criminal revision is liable to be dismissed.

8. Accordingly, this criminal revision is dismissed.

03.06.2025

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

G.K.ILANTHIRAIYAN. J,

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To
1.The learned XVII Additional City Civil Court, Chennai
2.The learned Metropolitan Magistrate Fast Track Court No.IV, George Town, Chennai

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