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CrI.R.C.No.3 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.3 of 2023

Benny Samraj

S/o.Joseph Simson

... Petitioner

..VS..

Lalith Kumar

S/o.Gokulchand

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., to call for the records and set aside the conviction and sentence passed by the learned Judicial Magistrate, Maduranthakam passed in C.C.No.92 of 2015 dated 10.03.2020, which was confirmed by the learned Principal District and Sessions Judge, Chengalpattu in C.A.No.1 of 2021 dated 27.10.2022.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mr.S.Nambirajan

ORDER

This criminal revision petition has been filed challenging the concurrent findings of the Courts below.

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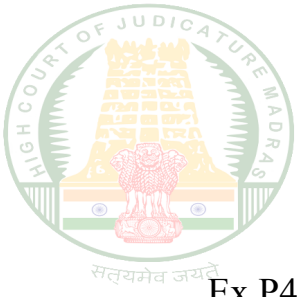
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2. The respondent filed a private complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act') before the learned Judicial Magistrate, Maduranthakam in C.C.No.92 of 2015.

3. The case of the respondent/complainant, as per the complaint filed before the trial Court is that, he was alleged to have given a sum of Rs.2,10,000/- to the revision petitioner/accused on 08.09.2013, for which, the petitioner issued a cheque. When the respondent presented the cheque for collection, it was returned with an endorsement "insufficient funds" through a return memo, dated 12.12.2013.

4. Therefore, the respondent issued a statutory notice on 13.12.2013, which was received by the petitioner on 16.12.2013. On receipt of the statutory notice, the revision petitioner neither repaid the amount within the statutory period, nor sent any reply denying the liability. Hence, the respondent was constrained to file a complaint for the offence under Section 138 of N.I.Act.

5. In order to prove the case, on the side of the complainant, he examined himself as P.W.1 and four documents were marked as Ex.P1 to

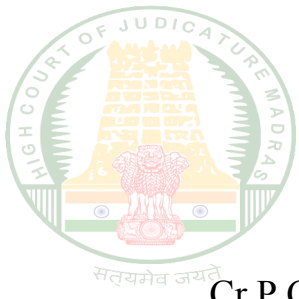


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Ex.P4. On the side of the revision petitioner/accused, he examined himself as R.W.1 and no exhibits were marked.

6. The learned Judicial Magistrate, after trial, convicted the revision petitioner/accused and sentenced him to undergo simple imprisonment for one year and directed the petitioner/accused to pay a sum of Rs.4,20,000/- as compensation under Section 357 Cr.P.C.. Challenging the judgment of conviction and sentence imposed by the trial Court, the revision petitioner/accused filed an appeal in Crl.A.No.1 of 2021 on the file of the Principal District and Sessions Judge, Chengalpattu, which was dismissed, confirming the conviction and sentence imposed and compensation ordered by the trial Court. As against the judgment of conviction and sentence confirmed by the appellate Court, the revision petitioner/accused has filed the present revision petition.

7. Learned counsel for the petitioner/accused submitted that the trial Court without considering the materials available on record, passed the judgment of conviction and sentence and also directed the petitioner to deposit twice the cheque amount as compensation under Section 357



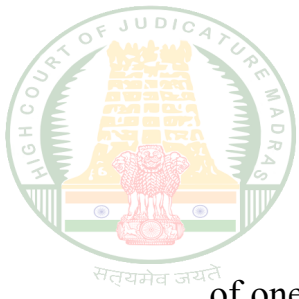
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Cr.P.C., to the complainant. He further submitted that pursuant to the directions of this Court dated 15.03.2021 in Crl.O.P.No.5151 of 2021, the petitioner had already deposited 20% of the cheque amount i.e., Rs.84,000/- to the complainant. After filing of the revision petition, the petitioner was ready to pay the balance cheque amount of Rs.1,26,000/- and he has also produced a copy of the Demand Draft before this Court. He further submitted that as per the defence the disputed cheque amount is only for a sum of Rs.2,10,000/-, but the trial Court directed the petitioner to deposit twice the cheque amount i.e., Rs.4,20,000/-, which was confirmed by the appellate Court, which warrants interference by this Court.

8. Heard the learned counsel for the respondent on the submissions and perused the materials available on record.

9. On a reading of the entire materials, it is seen that though the issuance of cheque is not denied however the legally enforceable debt is not rebutted by the petitioner/accused, the trial Court, after appreciating the entire materials, convicted and sentenced the petitioner for a period



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of one year and also directed the petitioner to deposit twice the amount of the cheque as compensation. However, it is the contention of the petitioner/accused that the complaint itself was filed for dishonour of cheque for a sum of Rs.2,10,000/-, but, the trial Court directed the petitioner to pay the compensation twice the amount of the cheque i.e., Rs.4,20,000/-. As per Section 138 of N.I.Act, if the issuance of cheque is not denied, there is legal presumption under Section 139 of N.I. Act however, the legally enforceable debt is not rebutted in the manner known to law, hence, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

10. At this juncture, it is useful to extract Section 138 of Negotiable Instruments Act, 1881, which reads as follows :

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the



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bank unpaid. either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice. to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless-

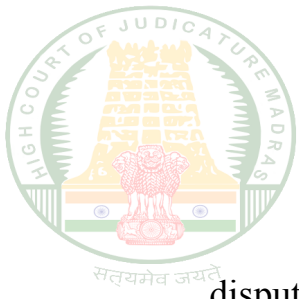
(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

11. In the present case, the petitioner/ accused himself admitted that the signature and execution of the cheque, which shows that the



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disputed cheque was issued to discharge the legally enforceable debt.

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The main defence taken by the petitioner/accused that the cheque which was dishonoured was only for a sum of Rs.2,10,000/- and he had already deposited a sum of Rs.84,000/- before the Court below and handed over a demand draft to the respondent for the balance amount of Rs.1,26,000/-. Further, the respondent/complainant himself admitted that he was alleged to have given a sum of Rs.2,10,000/- to the revision petitioner/accused on 08.09.2013 and that the petitioner issued a cheque for the said amount.

12. Therefore, considering the facts and circumstances and also considering the submissions of both sides, this Court finds that in order to meet the ends of justice, the conviction of sentence imposed on the petitioner is set aside and compensation amount ordered by the trial Court is modified from Rs.4,20,000/- to that of the original cheque amount i.e., Rs.2,10,000/-. Since the petitioner has already deposited a sum of Rs.84,000/- before the Court below and handed over a demand draft to the respondent for the balance amount of Rs.1,26,000/-, the respondent is at liberty to withdraw the amount lying in the Court deposit



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without filing any formal application.

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13. With the above modification and directions, this revision petition is disposed of.

15.04.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
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To

The Judicial Magistrate,
Maduranthakam.



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P.VELMURUGAN, J.

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