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Crl.R.C.No.36 of 2024
and Crl.M.P.No.281 of 2024

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and
Crl.M.P.No.281 of 2024

M. NIRMAL KUMAR, J.

Today, the matter is listed under the caption “For Being Mentioned”.

2.It is submitted that in the cause title as well in paragraph 8 of the order dated 31.01.2025, the respondent's counsel name has been wrongly mentioned as 'P.Parthasarathy' instead of 'D.Anantha Padmanaban'.

3.The Registry is directed to carry out the correction and issue fresh copy of the order dated 31.01.2025.

4. The issue is clarified, accordingly.

05.02.2025

rsi



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M. NIRMAL KUMAR, J.

rsi

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05.02.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2024
PRONOUNCED ON : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.R.C.No.36 of 2024
and
CRLM.P.No.281 of 2024**

P.Parthasarathy ... Petitioner / Accused

Vs.

R.Sundari ... Respondent / Complainant

Criminal Revision Petition filed under Sections 397 & 401, to set aside the order passed by the learned I-Additional District and Sessions Judge, Tiruvallur in Criminal Appeal No.152 of 2022, dated 14.08.2023, confirming the Judgment and Conviction passed by the Fast Track Court, Magisterial Level, Tiruvallur in S.T.C.No.19 of 2021, dated 28.11.2022.

For Petitioner : Mr.T.Sivagananasambandan

For Respondent : Mr.P.Parthasarathy



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ORDER

The Criminal Revision Case is filed against order dated 14.08.2023, passed by the learned I-Additional District and Sessions Judge, Tiruvallur in Criminal Appeal No.152 of 2022, confirming the Judgment and Conviction passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur in S.T.C.No.19 of 2021, dated 28.11.2022.

2.The gist of the case is that the Petitioner / Accused and the Respondent / Complainant are friendly neighbours. On 28.01.2018, the Petitioner borrowed a hand loan of Rs.11,00,000/- from the respondent by executing a promissory note to replay the amount with 12% interest per annum and a issued post dated cheque, dated 18.12.2020, bearing No.114593, for a sum of Rs.11,00,000/-, drawn on Canara Bank Kotturpuram Chennai. On 18.12.2020, when the respondent presented the cheque in Indian Bank, Thiruninravur Branch for encashment, it was returned as "Funds Insufficient" vide Challan, date 19.12.2020. The Respondent issued a legal Notice dated 26.12.2020 to the Petitioner. The Petitioner refused to receive the same.



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3. Mr.T.Sivagananasambandan, the learned counsel appearing for the petitioner/accused would submit that the petitioner was convicted by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur in S.T.C.No.19 of 2021 on 28.11.2022, for offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo six months Simple Imprisonment and to pay the cheque amount of Rs.11,00,000/-, as compensation to the respondent/complainant within two months, in default, to undergo a further period of two months Simple Imprisonment. Challenging the same, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Tiruvallur, in Crl.A.No.152 of 2022 and the same was dismissed on 14.08.2023, confirming the judgment of the trial Court.

4. The learned counsel would further submit that the respondent filed a private complaint for offence under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner projecting that the petitioner borrowed a hand loan a sum of Rs.11,00,000/- by cash on 28.01.2018 at the respondent's residence. On the same day, the

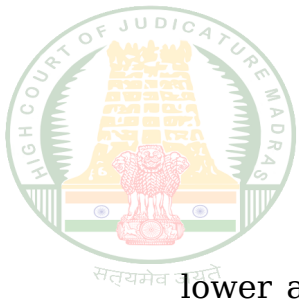


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petitioner executed Promissory Note (Ex.P5) agreeing to pay with interest at the rate of 12% per annum, issued a post dated cheque, dated 18.12.2020 for sum of Rs. 11,00,000/- drawn on Canara Bank, Kotturpuram Branch. When the said cheque presented for encashment, it was returned for the reason 'Funds Insufficient' on 19.12.2020. Thereafter, statutory notice, dated 26.12.2020 issued to the petitioner and the same received by him on 28.12.2020. Despite receipt of notice, the petitioner neither made payment of the cheque amount nor sent any reply. Hence, the complaint was filed by the respondent in S.T.C.No.19 of 2021 before the trial Court. During trial, on the side of the respondent/complainant, the respondent examined herself as PW1 and marked eight documents as Exs.P1 to P8. On the side of the defence/petitioner, three witnesses examined as DW1 to DW3 and marked one document as Ex.D1. The Forensic Report marked as Ex.C1. On conclusion of trial, the trial Court convicted the petitioner as stated above.

5. Adding further, the learned counsel submitted that the respondent admits that she is a housewife, she had drawn cash from the bank and some amount from her husband and son were collected and the loan of Rs.11,00,000/- given to the petitioner by way of cash is not possible. This was not considered by the trial Court as well as the

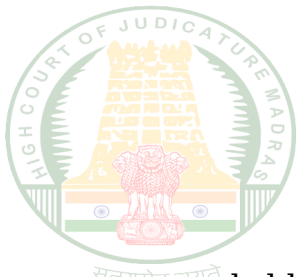


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lower appellate Court. In this case, neither the respondent's husband nor her son examined and no documents or materials produced to show that the respondent had an amount of Rs.11,00,000/- in cash and the same was given to the petitioner as loan. The petitioner examined three witnesses viz., DW1 his son, DW2 his wife and DW3 the Bank Manager of Indian Bank where the respondent maintaining the account. Ex.D1 is the Statement of Account of the respondent for the relevant period. On perusal of Ex.D1, it is seen that the respondent never had any amount not more than few thousands in her bank account at any point of time. Hence, the respondent had no source of income to lend such huge amount to the petitioner. The respondent not cross examined D.W.3/Bank Manager and disputed Ex.D1/ Statement of Account.

6. It is the further contention of the learned counsel that the petitioner took a loan of Rs.1,00,000/- from the respondent and the amount was only filled in numerical and other particulars left blank. Taking advantage of the same, the respondent made interpolation of Rs.1,00,000/- as Rs. 11,00,000/- in the cheque without the petitioner's knowledge, deposited the same and made false claim. The petitioner disputed the promissory note (Ex.P5) which was obtained in blank from him at the time of loan. Apart from that, the cheque of Rs.1,00,000/-



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and blank stamp paper of Rs.100/- and blank green sheet with signature of the petitioner obtained which were misused and projected as though the petitioner executed promissory note (Ex.P5) for Rs. 11,00,000/-. When the petitioner questioned about the same, though the respondent denied the receipt of blank signed papers, she feigns ignorance with regard to typing made in it and filling up of these documents. Thus, on cumulative study of defence witnesses with Exs.P5 & D1, it is proved that the respondent is not a person with source to lend such huge amount to the petitioner.

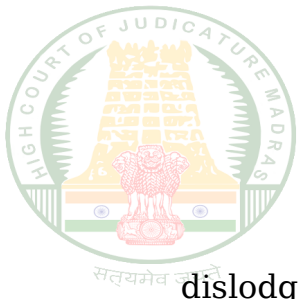
7. The learned counsel further submitted that both the Courts below failed to consider the decisions of the Hon'ble Apex Court in the cases of **Basalingappa v. Mudibasappa** reported in **(2010) 11 SCC 441** and **Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal** reported in **(1999) 3 SCC 35**. The Courts below invoking Section 20 of the Negotiable Instruments Act, 1881 convicting the petitioner would not arise in this case. In support of his submissions, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of **G.Pankajakshi Amma and others v. Mathai Mathew (dead) through LRs.**, and another reported in **(2004) 12 SCC 83** wherein the Hon'ble Apex Court held that 'If there are unaccounted transactions then they are



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illegal transactions. No Court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls'.

8. Mr.P.Parthasarathy, the learned counsel appearing for the Respondent/Complainant filed a typed set and vehemently opposed the petitioner's contention stating that the petitioner and the respondent are neighbours known to each other. For urgent need, the petitioner took loan of Rs.11,00,000/- from the respondent. The respondent clearly stated that she accumulated the amount of Rs. 11,00,000/- by collecting money from her husband, who is a building contractor/businessmen and from her son. It is admitted by DW1 and DW2, son and wife of the petitioner that in presence of the respondent's husband the loan amount was received by the petitioner. In Ex.P5, apart from the petitioner, signature of DW2 is available, which is not denied. DW1 and DW2 admit that at the time of availing loan, signed blank cheque, blank stamp paper and blank green sheet handed over. In view of the admission, Section 20 of the Negotiable Instruments Act, 1881 gives authority to the holder of cheque to fill up the same. The signature in the cheque (Ex.P1) and promissory note (Ex.P5) are not denied. Hence, Sections 118 and 139 of the Negotiable Instruments Act, 1881 comes into play. The petitioner attempted to



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dislodge the statutory presumption through the evidence of DW1 to DW3 and Ex.D1. The petitioner's contention is that the cheque for Rs.1,00,000/- was interpolated as Rs. 11,00,000/- and presented for encashment. Ex.P1 was sent to Forensic Examination and the Forensic Report (Ex.C1) confirmed that Q1 to Q3 i.e., numerals and writings stamped and marked have been made by tint of same ink. This proves the fact that Rs. 11,00,000/- both in numerical and in words written at the same point of time. Though specimen writings S1 to S8 does not confirm the person who have written Q1 to Q3, that does not help the petitioner in any manner. Thus, on cumulative study of evidence of DW1, DW2 and Ex.C1, it is proved that the petitioner handed over the cheque to the respondent. Thus, the conviction of the trial Court and the lower appellate Court is proper.

9.In reply, the learned counsel for the petitioner submitted that the respondent unable to give any answer with regard to source of income and her capability to lend such huge amount. There is no discussion with regard to the evidence of DW3 and Ex.D1 by both the Courts below. He further submitted that the respondent hand in glove with one Jayakumari, a neighbour, projected a false case against the petitioner, civil suit in O.S.No.258 of 2021 is pending before the learned Principal District Judge, Thiruvallur. He further submitted

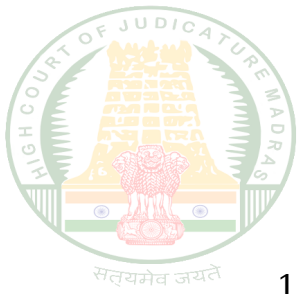


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that without examination of handwriting expert, the report / Ex.C1 cannot be taken in evidence and the petitioner was not given opportunity to question and clarify Ex.C1. The trial Court on its own considered the Report / Ex.C1 and placed heavy reliance on its, which needs reconsideration.

10. I have heard the learned counsels appearing on either side and perused the materials available on record.

12. It is not in dispute that the petitioner issued Ex.P1/Cheque, in favour the complainant and also not disputed his signature on the Cheque. Hence, it goes to show that the petitioner admitted the issuance Ex.P1/Cheque. It is the defense of the petitioner that he took a loan of Rs.1,00,000/- and the amount was only filled in numerical and other particulars left blank. Taking advantage of the same, the respondent made interpolation of Rs.1,00,000/- as Rs. 11,00,000/- in the cheque without the petitioner's knowledge, deposited the same and made false claim. Apart from that, the cheque of Rs.1,00,000/- and blank stamp paper of Rs.100/- and blank green sheet with signature of the petitioner obtained which were misused and projected as though the petitioner executed Ex.P5/Promissory Note, for Rs. 11,00,000/-.



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13. It is seen from the records that the petitioner has not denied the signature in the cheque. He also admits the instrument belongs to him. At the time of questioning under Section 313(1)(b) of Cr.P.C., the petitioner admitted that he issued a signed cheque for Rs.1,00,000/- by filling Rs.1,00,000/- in figures alone. Hence, the petitioner disputed the amount in words in the impugned cheque and the numeral "1" being inserted before Rs.1,00,000/-. Hence, the cheque was sent for Expert Opinion. From the Forensic Report it is revealed that the amount mentioned both in numerals and words are in same ink, but the specimen handwriting given by the petitioner differs. It reveals that the cheque amount in words and numerals filled by the petitioner as he himself admitted that numeral Rs.1,00,000/- in the cheque in dispute was written by him and the Report / Ex.C1 mentioned ink of Q1 to Q3 are same. Thus, the contention of the petitioner that he issued cheque for Rs.1,00,000/- does not rebut the presumption. Further, when Ex.P5, Promissory Note specified the amount as only Rs.11,00,000/- and the cheque number in Ex.P1 and also its date as 18.12.2020 mentioned in it, the contention that Ex.P1 / Cheque amount has been tempered with cannot be countenanced.

14. The contention of the petitioner that the complainant is only a house wife and she did not have sufficient source of income to lend



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such huge amount of Rs.11,00,000/-, by relying on Ex.D1, Statement of Account, is concerned, when P.W.1 specifically stated that her husband and son are earning members and also she had rental income from the property. Considering the fact that the petitioner has admitted his signature in the Instrument, the Forensic Report (Ex.C1) confirms that Q1 to Q3 i.e., numerals and writings stamped and marked have been made by tint of same ink, the defence raised by the Petitioner does not inspire confidence the standard of 'preponderance of probability'. Hence, I have no reasons to interfere with the findings of the Courts below.

15. In view of the foregoing reasons, the Criminal Revision Case stands dismissed.

31.01.2025

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

- 1.The I-Additional District and Sessions Judge,
Tiruvallur
2. The Judicial Magistrate,
Fast Track Court,
Magisterial Level,
Tiruvallur.
3. The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

vv2

Pre-Delivery Order made in

Crl.R.C.No.36 of 2024

31.01.2025