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Crl.RC.No.388 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.388 of 2025 and
Crl.M.P.Nos.4078 and 4081 of 2025

T.Sumathi

... Petitioner

Vs.

V.Aruldas

... Respondent

Prayer: Criminal Revision Case filed under Section 438 and 442 of B.N.S.S. to set aside the judgment dated 20.08.2024 in Crl.A.No.180 of 2023 on the file of the Special Court for Trial of Cases registered under SC/ST (POA) Act, Namakkal, confirming the conviction and sentence in the judgment dated 22.11.2023 made in S.T.C.No.1805 of 2022 on the file of the Judicial Magistrate No.1, Namakkal.

For Petitioner

: Mr.W.Camyles Gandhi

For Respondent

: No Appearance



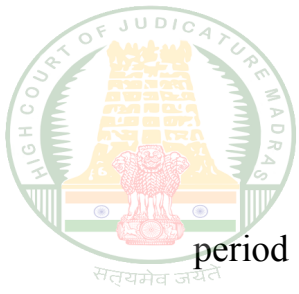
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ORDER

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This Criminal Revision Case has been filed by the petitioner to set aside the judgment dated 20.08.2024 in Crl.A.No.180 of 2023 on the file of the Special Court for Trial of Cases registered under SC/ST (POA) Act, Namakkal, confirming the conviction and sentence imposed by the judgment dated 22.11.2023 made in S.T.C.No.1805 of 2022 on the file of the Judicial Magistrate No.1, Namakkal.

2. It is seen from the records that the petitioner is the accused and the respondent is the complainant. The respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, in S.T.C.No.1805 of 2022 before the Judicial Magistrate No.1, Namakkal. The learned Magistrate, after enquiry, found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced her to undergo simple imprisonment for six months and to pay Rs.5 lakhs, being the cheque amount, as compensation to the complainant, within a



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period of two months from the date of judgment and in default of payment of

compensation amount, she shall undergo simple imprisonment for a further period of one month.

3. Aggrieved by the above judgment of conviction and sentence, the petitioner preferred an appeal before the Special Court for Trial of Cases registered under SC/ST (PoA) Act, Namakkal, in Crl.A.No.180 of 2023. The learned Special Judge, by judgement dated 20.08.2024, dismissed the appeal by confirming the conviction and sentence made by the trial Court. Aggrieved by the same, the present revision petition has been filed by the accused.

4. The case of the respondent/complainant is that, the complainant and the husband of the petitioner are close friends. On 04.08.2022, the petitioner borrowed a sum of Rs.5 lakhs as hand loan from the respondent and in repayment of the same, she issued a post-dated cheque bearing No.142013 dated 22.08.2022 for a sum of Rs.5 lakhs, drawn on Union Bank of India, Namakkal Ramesh Theatre Branch and when the respondent presented the cheque for



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collection on 22.08.2022 in HDFC Bank, Namakkal Branch, the same was

dishonoured through Return Memo stating as "funds insufficient" on 23.08.2022 in the account maintained by the accused. Thereafter, the respondent issued a statutory demand legal notice on 13.09.2022 and the same was returned with endorsement as "door locked" on 26.09.2022. The accused neither paid the cheque amount, nor issued any reply notice to the legal notice given by the respondent/complainant. Hence, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate No.I, Namakkal.

5. Before the trial Court, in order to substantiate his complaint, the respondent examined himself as P.W.1 and reiterated the averments made in the complaint and also marked four documents as Ex.P.1 to Ex.P.4. The cheque said to have been executed by the petitioner, was marked as Ex.P.1, the bank return memo was marked as Ex.P.2, the statutory notice issued by the respondent through Advocate was marked as Ex.P.3 and the postal-track

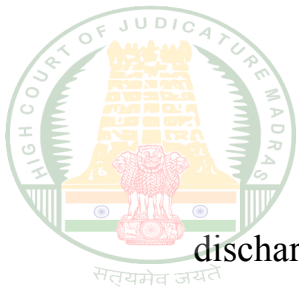


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consignment, was marked as Ex.P.4. During cross examination, the petitioner/accused had put a suggestion that the husband of the petitioner/accused had borrowed a sum of Rs.2 lakhs and at that time, he issued a cheque and promissory note, which goes to show that the petitioner admitted the signature and the execution of the cheque, however, she only denied the liability.

6. In this case, the respondent/complainant had complied with the statutory provisions under Section 138 of Negotiable Instruments Act. Since the petitioner/accused did not repay the amount within the stipulated time, the respondent was constrained to file the complaint before the Magistrate under Section 138 of Negotiable Instruments Act. Even during cross-examination, the petitioner could not rebut the presumption.

7. It is settled proposition of law that when once the execution of cheque is admitted, under Section 138 of Negotiable Instruments Act, statutory presumption would come into play that the cheque was issued towards



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discharge of legally enforceable debt and it is for the accused to rebut the presumption in the manner known to law.

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8. When once the petitioner admitted the execution of cheque and respondent substantiated the foundational fact that the petitioner issued the cheque only for discharge of legally enforceable debt and also substantiated his averments made in the complaint by examining himself as P.W.1 and marking of documents, the initial burden of the respondent/complainant has been discharged and hence the onus shifted on the petitioner/accused. Therefore it is for the petitioner/accused to discharge his onus in the manner known to law. Though the burden of the defence is not as much heavy as that of the complainant in the criminal proceedings to prove the offence beyond reasonable doubt, however, the accused has to rebut the presumption by preponderance of probability.

9. It is settled proposition of law that the revisional Court cannot sit in the arm chair of the appellate Court and revisit and re-appreciate the entire



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evidence. The revisional Court, while exercising its power, has to see as to whether the findings of the trial Court or the appellate Court, are perverse or not and whether there is any illegality or infirmity in the findings of the Courts below.

10. Once the accused admitted the execution, the Court can draw the statutory presumption under Section 139 of the Negotiable Instruments Act that the cheque was issued only to discharge legally enforceable debt. Then it is for the accused to rebut the same. Even though the accused need not come into witness box, still he can establish his defence by oral and documentary evidence and he can rebut the presumption by way of cross examining the witnesses.

11. In this case, on a reading of the entire materials, this Court does not find that the petitioner rebutted the statutory presumption in the manner known to law.

12. This Court, while exercising its power as a revisional Court, does not



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find any illegality or infirmity in the findings of the Courts below and does not

find any compelling reason to interfere with the findings of the Courts below.

There is no merits in this revision.

13. Accordingly, this Criminal Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petitions are closed.

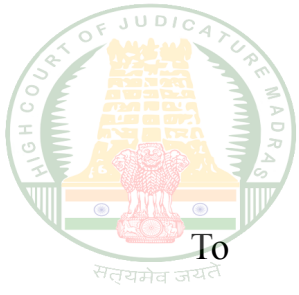
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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

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1. The Special Court for Trial of Cases registered under SC/ST (POA) Act,
Namakkal
2. The Judicial Magistrate No.1,
Namakkal.



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P.VELMURUGAN. J.

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