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Crl.R.C.No.2386 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.03.2025

Orders Pronounced on : 28.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.2386 of 2024

and

Crl.M.P.Nos.18401 and 18402 of 2024

--

Haridoss Udaiyar, S/o Annamalai Udaiyar
Vs.

.. Petitioner

Prabudoss, S/o Kathirvel

.. Respondent

Criminal Revision Case filed under Section 438 and 442 of the BNSS
praying to call for the records in Crl.Appeal No.46 of 2024, dated
15.10.2024 on the file of the Principal Sessions Court, Kallakurichi,
confirming the judgment in C.C.No.190 of 2019 on 10.04.2024 on the file
of the Judicial Magistrate No.2, Ulundurpet and set aside the same.

For petitioner : Mr.R.Singaravelan, Senior Counsel for
Mr.M.Muruganantham

For respondent: Mr.Irfan Baasha

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ORDER

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This revision petition is filed praying to call for the records in CrI.Appeal No.46 of 2024, dated 15.10.2024 on the file of the Principal Sessions Court, Kallakurichi, confirming the judgment in C.C.No.190 of 2019 on 10.04.2024 on the file of the Judicial Magistrate No.2, Ulundurpet and set aside the same.

2. The revision petitioner is an accused in C.C.No.190 of 2019 on the file of the Judicial Magistrate No.2, Ulundurpet, in which, the respondent/complainant filed a complaint under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act.

3. The learned Judicial Magistrate, after trial, convicted the revision petitioner/accused and sentenced him to undergo simple imprisonment for one year and directed to pay the cheque amount of Rs.12 lakhs as compensation under Section 357(3) Cr.P.C., and in default of payment of compensation, the accused shall undergo a further sentence of two months imprisonment. Challenging the judgment of conviction and sentence imposed by the trial Court, the revision petitioner/accused filed an appeal in

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CrI.A.No.46 of 2024 on the file of the Principal Sessions Court, Kallakurichi, which was dismissed, confirming the conviction and sentence imposed 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.

4. 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.6 lakhs to the revision petitioner on 19.05.2019, for which, the petitioner issued cheque, dated 19.06.2019 for the said amount. The respondent presented the cheque on 19.06.2019 for collection, and the cheque was returned with endorsement "funds insufficient" through a return memo, dated 20.06.2019.

5. Therefore, the respondent issued statutory notice on 25.06.2019, which was received by the petitioner on 27.06.2019. 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 the Negotiable Instruments Act. Accordingly, the complaint

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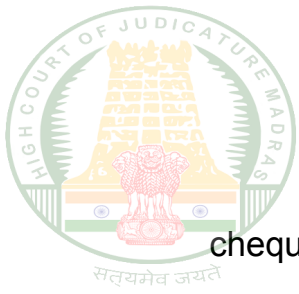
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was filed on 13.08.2019 before the Judicial Magistrate No.2, Ulundurpet.

The learned Magistrate took cognizance of the complaint and issued summons to the revision petitioner/accused, who appeared on 04.01.2020 on summons. The revision petitioner admitted his signature and denied the receipt of Rs.6 lakhs as mentioned in the cheque.

6. In order to prove the case, on the side of the complainant, he was examined as P.W.1 and four documents were marked. On the side of the revision petitioner/accused, he was examined as D.W.1 and one Amaladoss was examined as D.W.2. to prove the defence. The trial Court allowed the complaint and convicted the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment with compensation of Rs.12 lakhs (being twice the amount mentioned in the disputed cheque). Challenging the judgment of conviction and sentence, the accused preferred appeal before the appellate Court, which was dismissed, confirming the conviction and sentence of the trial Court. As against the said judgment of the appellate Court, the accused has preferred the present revision petition.

7. The main defence taken by the revision petitioner/accused is that the respondent/complainant took the above said cheque along with another



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cheque in the year 2016 and after three years, he presented the cheque as if he received Rs.6 lakhs. In the presence of D.W.2, the complainant received the disputed unfilled cheque and when the complainant presented the cheque for collection, it was returned with unfilled columns. But subsequently, he did not return the cheque and the complaint was not filed within the statutory period of limitation of one month from the date of cause of action. Therefore, the complaint is barred by limitation. The cheque was not issued to discharge the legally enforceable debt. The complaint was taken beyond the period of 30 days prescribed for filing the complaint under Section 138(b) of the Negotiable Instruments Act.

8. Another defence taken by the revision petitioner is that the respondent took the cheque along with another cheque and after three years, he presented the cheque as if he had received Rs.6 lakhs. It is the further defence of the revision petitioner/accused that he handed over two signed cheques on the request of the respondent/complainant that he has to give the cheque for securing TNPSC Group-4 job for him and with all reluctance, the petitioner handed over the cheque to the complainant based on his assurance that in the event of the job being not secured, the cheques have to be returned and even after one year, it appears that no

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job was secured and even after the request of the return of the cheque(s), he did not return the cheque and subsequently, the respondent/complainant made use of the cheque and thereafter, filed the complaint, and therefore, the cheque is not issued for legally enforceable debt. No amount had been paid in respect of the cheque.

9. Learned Senior Counsel appearing for the revision petitioner/accused submitted that under Section 142(b) of the Negotiable Instruments Act, the cognizance of the offence has to be taken within 30 days from the date of cause of action. The date of the alleged cheque is 19.06.2019 and the date of return of the memo as per Ex.P-2 is 20.06.2019 and the date of demand notice as per Ex.P-3 is 25.06.2019 and the date of receipt of demand notice as per Ex.P-4 is 27.06.2019. Further, within 15 days from the date of receipt of demand notice, the payment has to be made, i.e. on or before 12.07.2019, for which, the date of receipt of the notice, dated 27.06.2019 has to be excluded. After excluding the said date of 27.06.2019, the payment has to be made on or before 12.07.2019. The period of limitation for filing the complaint starting date excluding the 15th day is 13.07.2019 and within 30 days, the complaint has to be lodged i.e. on or before 11.08.2019. Since 11.08.2019 happened to be Sunday,

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the last date for filing the complaint is on or before 12.08.2019, whereas, the present complaint was lodged before the Magistrate only on 13.08.2019, which is beyond the period of limitation. The cognizance of the complaint taken on file is 13.08.2019. It is illegal and the Magistrate ought not to have taken the complaint on file, since the complaint preferred by the respondent/complainant is beyond the prescribed period of limitation.

10. The learned Senior Counsel appearing for the revision petitioner/accused further contended that the respondent admittedly was working as a daily wage employee in a vegetable shop and he has no other source of income to lend such huge amount of Rs.6 laksh to the revisoin petitioner.

11. It is further submitted by the learned Senior Counsel that without hearing the revision petitioner's side arguments, the trial Court convicted the revision petitioner and the appellate Court had also confirmed the same without remanding the matter to the trial Court and hence, it is liable to the set aside.

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12. It is the further submission of the learned Senior Counsel appearing for the revision petitioner that the revision petitioner/accused proved his case to the extent of possible probability, as the two cheques were issued in the year 2016 for securing the job for the revision petitioner and since the respondent was not able to secure the job, the revision petitioner insisted the return of the cheque(s) in the presence of D.W.2 Amaldoss, but instead of returning the cheque, the respondent preferred a complaint as if the revision petitioner had borrowed money from him.

13. It is the further contention of the learned Senior Counsel appearing for the revision petitioner/accused that non-issuance of reply notice is not fatal to the case of the accused, as settled in a number of judgments of the Honourable Supreme Court. Moreover, when the revision petitioner approached the respondent along with demand notice, the respondent stated that the notice was mistakenly given to him. The revision petitioner did not give suitable reply and believing the words of the respondent. The cheques were issued in 2016 only as security for securing the job by the revision petitioner. The Courts below failed to look into this aspect, and therefore, the impugned orders of the Courts below are liable to be set aside.

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14. Learned counsel for the respondent/complainant submitted that the revision petitioner/accused borrowed a sum of Rs.6 lakhs and issued cheque(s) for repayment of the loan and at his request, when the cheque(s) were presented for collection, the same was/were returned and the respondent approached the petitioner, he made a request to re-present the cheque(s) and make arrangement for honouring the cheque(s). Thereafter, when he presented the cheque(s) on 19.06.2019, the same was returned by the Bank on 20.06.2019 with endorsement "insufficient funds". Therefore, the respondent/complainant sent statutory notice on 25.06.2019 and the same was received by the revision petitioner/accused on 27.06.2019. Even after receipt of notice, the revision petitioner neither repaid the money, nor he sent any reply. Therefore, the respondent was constrained to file a complaint before the Magistrate for taking cognizance of the offence under Section 138 of the Negotiable Instruments Act.

15. In order to substantiate the claim, the respondent/complainant was examined as P.W.1 and four documents were marked as Exs.P-1 to P.4. Ex.P-1 is the cheque dated 19.06.2019. Ex.P-2 is the cheque return memo sent by the Bank. Ex.P-3 is the demand notice and Ex.P-4 is the

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acknowledgment of receipt of notice.

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16. Even during the course of cross-examination, the revision petitioner admitted the signature found in the cheque (Ex.P-1). Therefore, when once he has admitted the signature, there is a statutory presumption under Sections 119 and 139 of the Negotiable Instruments Act that the cheque has been issued to discharge the legally enforceable debt or liability. Therefore, the learned Magistrate has rightly come to the conclusion that the revision petitioner has committed the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him as indicated above.

17. The learned Magistrate has given sufficient opportunities to both parties. After trial, on several occasions, the matter was adjourned. However, the revision petitioner did not come forward to argue the matter through his counsel. Therefore, the learned Magistrate has considered the entire materials placed before him and decided the matter on merits and in accordance with law.

18. Since the revision petitioner/accused has not canvassed the

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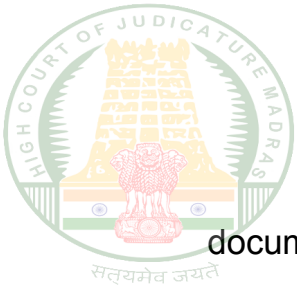
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defence before the appellate Court, the appellate Court also has rightly dismissed the appeal and in the trial Court and before this Court, by way of this revision petition, there is no merit in the revision petition. If at all the revision petitioner has got any defence, soon after receipt of notice, he ought to have sent a reply, but he failed to send any reply.

19. Even otherwise, the learned Magistrate, after recording the sworn statement from the respondent/complainant and the summons issued to the revision petitioner and put a question under Section 251 Cr.P.C. At the first instance, the revision petitioner admitted that he received only Rs.2 lakhs and not Rs.6 lakhs. Only subsequently, after engaging a counsel, he took a different stand that the cheque was issued for securing the employment/job, since the respondent could not secure job, he ought to have returned the cheque, but the respondent/complainant failed to return the cheque and he has filed the present complaint.

20. The above defences of the revision petitioner had not been taken when he was questioned under Section 251 Cr.P.C. Therefore, the defences taken by the revision petitioner, are an after-thought and hence, both the Courts below have rightly appreciated the materials and

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documents and the learned trial Magistrate convicted, which was confirmed by the appellate Court, and hence, the revision petition lacks merit.

21. Heard both sides and perused the materials available on record.

22. The specific case of the respondent/complainant is that as per the complaint in C.C.No.190 of 2019 on the file of Judicial Magistrate No.2, Ulundurpet, the revision petitioner is known to him and he borrowed Rs.6 lakhs for his family necessity and for construction work for repayment of the loan. Therefore, the cheque was issued on 06.09.2019, which is dated 19.05.2019. At the request of the revision petitioner, the respondent/complainant presented the cheque for collection through the State Bank of India, Periasavalai Branch on 19.06.2019. The same was returned by the Bank on 20.06.2019 with endorsement "insufficient funds". Therefore, the respondent has issued statutory notice on 25.06.2019 and the same was received by the revision petitioner on 27.06.2019 and since he did not repay the amount within 15 days from the date of receipt of the notice and he has also not sent any reply for the said statutory notice, the respondent filed the complaint before the learned Magistrate, which was taken on file in C.C.No.190 of 2019. After trial, the learned Magistrate

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found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him as stated earlier with a fine of Rs.12 lakhs as compensation to the respondent. Aggrieved by the same, the revision petitioner filed appeal in Crl.A.No.46 of 2024 and after hearing the appeal, the same was dismissed and therefore, he has filed the present revision petition.

23. The main defence taken by the revision petitioner before the trial Court was that he had handed over two signed cheques at the request of the respondent/complainant for securing job through TNPSC Group.4 post. He had issued the two cheques for securing the job to the respondent, however, the respondent could not secure any job to him, and therefore, the revision petitioner asked the respondent to return the cheque(s) in the presence of D.W.2, but he did not return the same after one year and thereafter, he filed the complaint. Therefore, the cheques were not issued to discharge the legally enforceable debt or liability. The revision petition has rebutted the presumption and both the Courts below had failed to consider the same.

24. On a reading of the materials available on record, it is clear that

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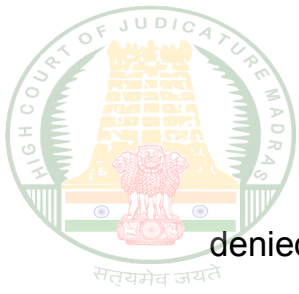
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the revision petitioner admitted the signature found in Ex.P-1 cheque. Even at the time of answering the question under Section 251 Cr.P.C., he admitted that he borrowed only Rs.2 lakhs and issued the unfilled cheque. Therefore, at the first instance, on summons, he appeared before Court and admitted the signature and execution of the cheque and only the denial of partial consideration. Later, at the time of cross-examination, the revision petitioner posed certain suggestion as defence before the respondent. He claimed that the cheque(s) was issued for only securing a job and denied borrowing any money. He also stated that the respondent was not financially capable of lending such huge amount of Rs.6 lakhs.

25. It is further seen from the records that the revision petitioner, on receipt of the statutory notice, never sent the reply denying his liability and after filing of the complaint, on receipt of the complaint, he appeared and admitted the signature and execution of the cheque and only denied partial consideration.

26. Though it is settled proposition of law that the non-sending of the statutory notice by the accused, is not fatal to the defence of the accused, however, when the notice was sent, the revision petitioner ought to have

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denied the liability of sending reply. Even assuming that the revision petitioner did not send the reply, when he first appeared before the Magistrate, he admitted that he had received only Rs.2 lakhs. He did not deny initially the execution of the cheque. Only later the revision petitioner has taken the defence regarding the issuance of blank cheque for securing the job, which is only an after-thought and in order to escape from the criminal liability, and therefore, the trial Court found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act. Though the revision petitioner has not taken the defence of limitation before the Magistrate, however, the contention of the learned Senior Counsel for the revision petitioner is that the revision petitioner was not given an opportunity to put forth the arguments and without giving an opportunity, the Magistrate decided the case.

27. Though the main defence taken by the revision petitioner before the learned Magistrate was that he issued the cheque in the year 2016 for securing a job, but from the cross-examination of the defence witness, it is seen that after one year, since the respondent could not secure the job, the revision petitioner asked for the return of the cheque, whereas, the cheque was presented only on 19.06.2019, but there is no explanation as to why

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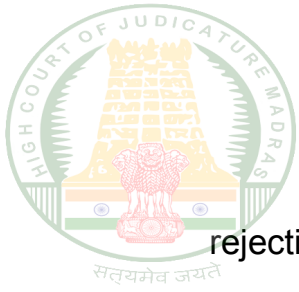
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the revision petitioner has not taken any steps to get back the cheque. If at all the respondent-complainant failed and refused to return it, the petitioner ought to have taken steps to get back the cheque or atleast, they would have sent a notice or otherwise, they would have sent a reply to the notice sent by the respondent/complainant, but he failed to take any steps either to get back the cheque or send reply to the notice sent by the respondent/complainant. The revision petitioner has now taken a defence that there is no need to send any reply and non-sending of the reply would not affect his case, is not acceptable.

28. Further, on a reading of the entire materials available on record, it is clear that the revision petitioner has not taken any defence of limitation before the Magistrate. But however, on a perusal of the Memorandum of grounds of appeal filed before the appellate Court, one of the grounds taken by the revision petitioner is that the complaint filed by the revision petitioner was barred by limitation beyond the period prescribed under Section 138 read with Section 142 of the Negotiable Instruments Act.

29. On a reading of the order of the judgment of the appellate Court, it is seen that the appellate Court has not given any answer or reason for

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rejecting the defence of limitation. Hence, as far as the limitation is concerned, the learned Senior Counsel appearing for the revision petitioner relied on the following limitation calculation, as filed along with the revision petition:

Limitation calculation

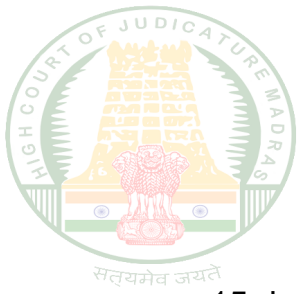
(as per the judgment in Saketh India Ltd. and others Vs. India Securities, reported in 1999 (3) SCC 1):

Notice received on 27.06.2019 - Ex.P-3

15 days time starts from 28.06.2019.

<i>Day</i>	<i>Date</i>
1	28.06.2019
2	29.06.2019
3	30.06.2019
4	01.07.2019
5	02.07.2019
6	03.07.2019
7	04.07.2019
8	05.07.2019
9	06.07.2019
10	07.07.2019
11	08.07.2019
12	09.07.2019
13	10.07.2019
14	11.07.2019
15	12.07.2019

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15 days time expired on 12.07.2019.

The time for filing complaint starts from 13.07.2019.

The period of limitation starts from 13.07.2019 for filing complaint:

<i>Day</i>	<i>Date</i>
1	13.07.2019
2	14.07.2019
3	15.07.2019
4	16.07.2019
5	17.07.2019
6	18.07.2019
7	19.07.2019
8	20.07.2019
9	21.07.2019
10	22.07.2019
11	23.07.2019
12	24.07.2019
13	25.07.2019
14	26.07.2019
15	27.07.2019
16	28.07.2019
17	29.07.2019
18	30.07.2019
19	31.07.2019
20	01.08.2019
21	02.08.2019
22	03.08.2019



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<i>Day</i>	<i>Date</i>
23	04.08.2019
24	05.08.2019
25	06.08.2019
26	07.08.2019
27	08.08.2019
28	09.08.2019
29	10.08.2019
30	11.08.2019

Thus, it is clear that the period of limitation ended 11.08.2019, but 11.08.2019 is Sunday. Last date for filing complaint is 12.08.2019. Hence, according to the learned counsel for the revision petitioner/accused, the complaint is time barred.

30. Thus, on a perusal of the above calculation of limitation dates as stated by the revision petitioner, it is clear that admittedly, the notice was received by the revision petitioner on 27.06.2019. Therefore, on receipt of the notice, the accused has to make the payment within 15 days, whereas in this case, the accused neither made any payment, nor sent reply within the statutory period. The respondent/complainant is entitled to file complaint within one month from the date of cause of action and the limitation that starts for filing the complaint is from 13.07.2019 and therefore, from that date, within one month, the complaint ought to have been filed, i.e. on or before 11.08.2019 and since

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11.08.2019 happened to be Sunday, the complaint ought to have been filed on or before 12.08.2019, whereas, in this case, the complaint was filed on 13.08.2019 as seen from the records and the same was taken as date of cognizance of the offence, i.e. on 13.08.2019 itself.

31. Therefore, the complaint appears to have been filed after the period of one month from the date of cause of action. Since the revision petitioner did not take the defence before the trial Court, when they took the grounds of appeal before the appellate Court, it has not even given any answer for the same. However, even assuming that the revision petitioner has committed the offence, there is limitation to take cognizance of the offence for which he was convicted. Therefore, the impugned judgment of the appellate Court is liable to be set aside. Resultantly, the judgment of conviction and sentence passed by the trial Court is also set aside and the matter is remitted back to the trial Court and the trial Court is directed to give an opportunity for arguments and after hearing the arguments, the trial Court is directed to consider the defence of limitation also raised by the respondent/complainant and proviso to Section 142(b) of the Negotiable Instruments Act and dispose of the complaint, i.e. C.C.No.190 of 2019 on merits and in accordance with law, preferably within a period of one month from the date of receipt of a copy of this order.



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32. Therefore, for the foregoing reasonings, the revision petition is disposed of and the matter is remitted back to the trial Court with the above direction. The miscellaneous petitions are closed.

28.03.2025

CS

To

1. The Judicial Magistrate No.2, Ulundurpet, Villupuram District.
2. The Section Officer, Criminal Section - Records Wing, High Court, Madras.



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P.VELMURUGAN, J

CS

Pre-delivery Order in
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Order pronounced on 28.03.2025

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