BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.81 of 2023
and
Crl.M.P.(MD)No.1047 of 2023

Prabavathi ... Petitioner

-vs-

Udayakumar ... Respondent

PRAYER : Criminal Revision Case filed under 397 r/w. 401 of Cr.P.C., to call for the records and set aside the order dated 27.10.2022 passed in the Criminal Appeal in C.A.No.2 of 2017 on the file of the learned Additional District and Sessions Court, Paramakudi, confirming the order dated 09.03.2016, passed in the Summary Trial Case in S.T.C.No.355 of 2014 on the file of the learned Judicial Magistrate Court, Paramakudi.

For Petitioner : Mr.J.Barathan
For Respondent : Mr.P.Muthusamy

ORDER

Challenging the judgment passed by the learned Additional District and Sessions Judge, Paramakudi, in Criminal Appeal C.A.No.2 of 2017, dated 27.10.2022, confirming the order dated 09.03.2016 passed in Summary Trial Case S.T.C.No.355 of 2014 on the file of the learned Judicial Magistrate, Paramakudi, convicting the petitioner and sentencing her to undergo simple imprisonment for nine months and directing her to pay compensation of Rs.35,00,000/- and further sentencing her to undergo simple imprisonment for two months in default of payment, this Criminal Revision Case has been filed.

2.For the sake of convenience, the parties herein are referred to by their ranks before the learned Trial Court.

Factual Matrix of the Complainant's Case:-

3.The complainant alleged that the accused borrowed a sum of Rs. 30,00,000/- from him on 03.08.2013, to meet her business needs and family expenses and agreed to repay the amount within one month. On that day itself, she issued a post-dated cheque dated 03.09.2013, bearing No.001130, drawn on City Union Bank, Paramakudi Branch, for Rs. 30,00,000/-. The cheque was presented for collection on 06.09.2013 in the complainant's account with Indian Overseas Bank, Paramakudi, but was returned with the endorsement "exceeds arrangement". When informed, the accused requested the complainant to present the cheque again. Upon re-presentation on 11.09.2013, the same endorsement appeared. Thereafter, the complainant issued a lawyer's notice dated 24.09.2013, to which the accused did not respond. Consequently, the complainant filed a complaint under Section 138 of the Negotiable Instruments Act,1881.

Judgment of the Learned Trial Court:-

4.The learned Trial Court recorded that the complainant and the accused were personally acquainted and that on 03.08.2013, the accused borrowed Rs.30,00,000/-, issued the post-dated cheque dated 03.09.2013, for Rs.30,00,000/- (Ex.P1), and assured repayment within one month. The cheque was returned on both presentations, i.e., on 06.09.2013 and 11.09.2013, for "exceeds arrangement" (Ex.P2). The complainant issued legal notice on 24.09.2013 (Ex.P3) and its acknowledgement card (Ex.P4) showed receipt by the accused on 25.09.2013. The accused denied issuing the cheque, claimed it was forged, asserted non-receipt of the notice and challenged the complainant's capacity to lend such a large sum, noting the loan was not reflected in the complainant's income tax returns. The learned Trial Court rejected these defences:-

(i)**Signature and Issue of Cheque:** P.W.1's evidence and Ex.P2 confirmed the cheque was issued by the accused and returned for insufficient funds, not forgery. The accused's application for signature comparison was dismissed for non-compliance of conditions.

(ii)**Receipt of Legal Notice:** Ex.P4 and the accused's admission of residence near the notice address established valid service.

(iii)**Capacity to Lend:** The learned Trial Court held that non-reflection of the loan in income tax returns did not prove absence of the loan, relying on ***P.Pandiyarajan v. Sri Parkunan***[1]. Further, evidence showed the complainant engaged in substantial business activity.

(iv)**Capacity of Drawer:** Noting that a proprietorship is not a separate legal entity, the cheque issued by the proprietor (the accused) was maintainable against her personally, as per ***S.K.Real Estates and another v. S.Ahmed Meeran***[2].

5.Having found all ingredients of Section 138 satisfied, the learned Trial Court convicted the accused, sentenced her to nine months simple imprisonment, directed payment of Rs.35,00,000/- as compensation within one month and in default, imposed a further two months simple imprisonment.

Judgment of the Additional District and Sessions Judge, Paramakudi:-

6.In Criminal Appeal in C.A.No.2 of 2017, the appellant raised grounds that the proprietorship (Prabha Enterprises) should have been impleaded. Any transaction above Rs.50,000/- must be through banking channels, and the alleged home transaction of Rs.30 lakhs was fabricated. The loan was absent from the complainant's income tax returns for 2014–2015. The learned Appellate Court observed that the accused admitted being sole proprietor of Prabha Enterprises and receiving all

1 2015 (1) TNLR 379 (Mad) (MB)
2 2002 Cr. LJ 1689

communications at her residential address, so she could not absolve liability for non-impleading of the proprietorship. The requirement for transactions above Rs.50,000/- to be through banking channels is directory. The absence of proof of banking transaction did not falsify the claim, given the complainant's admitted business dealings. Non-reflection of the loan in a single year's returns did not invalidate the transaction, as the complainant could declare it in subsequent years, as per the evidence of D.W.2. Accordingly, the learned Appellate Court confirmed the learned Trial Court's conviction, sentence and compensation order. Challenging the same, the present Criminal Revision Case has been filed.

Grounds of Criminal Revision Case:-

7.The judgments under challenge are manifestly erroneous and constitute serious errors of law. The impugned judgment is illegal, improper and perverse on its face. The Courts below have wrongly exercised the jurisdiction conferred on them without application of mind, resulting in a flagrant violation of legal principles and a failure of justice to the petitioner/accused. The impugned judgment suffers from defects of legality, propriety, correctness and regularity. The lower Courts failed to note that the complainant's own pleading alleges that the accused borrowed Rs.30,00,000/- on 03.08.2003, for business and family expenses, agreed to repay within one month and on that very day, issued a post-dated cheque dated 03.09.2003. A cursory examination of that cheque readily discloses material alterations, both in words and figures. Both the Courts below overlooked that the complainant and the accused's son had colluded and the cheque was stolen from the accused's house, her signature was forged and she never received any legal notice on 25.09.2013. They further failed to note that the complainant and her son conspired to fabricate the entire complaint. The second return-memo dated 12.09.2013, bears no seal of City Union Bank, Paramakudi.

8.The learned Trial Court's finding that the cheque was returned on both occasions under return-memos dated 07.09.2013 and 12.09.2013 for "exceeds arrangement" and not for any signature discrepancy is unsustainable. A cheque may be dishonoured for multiple reasons and it is not necessary to recite all of them, mentioning one suffices. The learned Trial Court therefore erred in concluding that the absence of a signature discrepancy endorsement negates any material alteration. Paragraph no.9 of the learned Trial Court's judgment—"the cheque was issued by the accused and bears her signature"—is erroneous. The cheque bears two purported signatures, one at the drawer's place and another adjacent to the altered amount. The learned Trial Court misconstrued the complainant's suggestion to P.W.1 and wrongly concluded that the accused had issued the cheque.

9.The lower Courts also ignored that the accused is a 70 year old lady who relied on her son to conduct her case and that son colluded with the complainant and subjected his mother to undue hardship. The learned Trial Court's reliance on the decision in ***P.Pandiyarajan***[3] is misplaced and that case does not lay down any legal principle regarding nondisclosure of alleged borrowings in income-tax returns.

10.The learned Trial Court failed to appreciate that the accused subpoenaed the Income Tax Department for the assessment year 2012–2013, 2013–2014 and 2014–2015 and those returns were marked Exs.D1, D2 and P5. The Courts below also overlooked that the complainant's own returns show "sundry debtors/creditors" as nil, and that for the assessment year 2014–2015 (Ex.P5), his total business profit was only Rs. 2,90,000/- and agricultural income only Rs.90,000/-. The allegation that the complainant lent Rs.30,00,000/- on 03.08.2003 is inherently unbelievable and is duly rebutted by the accused. In assessment year 2012–2013 (Ex.D1), the complainant's total aggregate income was only Rs. 2,68,000/-. In assessment year 2013–2014 (Ex.D2) it was only Rs. 3,10,000/-. The first Appellate Court erred in paragraph no.12 of its judgment in holding that the complainant was entitled to submit "altered" returns for earlier assessment years by paying tax with interest and penalty. There is no case for altered returns and that finding should have

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led to allowance of the appeal and setting aside of the learned Trial Court's findings.

Submissions:-

11.The learned counsel appearing for the petitioner accused attacks the impugned judgments on three grounds, namely, that material alterations in the cheque, non-reflection of the alleged Rs.30,00,000/- transaction in the complainant's income-tax returns for assessment year 2014–2015 and non-compliance with the mandates of Section 138 of the Negotiable Instruments Act. The learned counsel further submits that Ex.P1 (the cheque) is not supported by consideration, as required by Section 87 of the Negotiable Instruments Act and that Exs.D1 and D2 prove that the complainant never had the means to lend Rs.30,00,000/-. In particular, Ex.P5 (assessment year 2014–2015 return) does not reflect any such transaction.

12.The learned counsel appearing for the complainant contends that the accused herself filled up and issued the cheque and that cross-examination of P.W.1 did not sufficiently rebut that case. He relies on Section 20 of the Negotiable Instruments Act to argue that a filled-in signed blank cheque cannot absolve the drawer of liability under Section 138.

13.Heard the learned counsel on either side and carefully perused the materials available on record.

Analysis:-

14.To attract offence under Section 138, the following conditions must be fulfilled:-

A cheque is drawn by a person on an account maintained by him for discharge of debt or liability. The cheque is returned unpaid for "insufficient funds" or "exceeds arrangement." The payee/due-course holder presents the cheque within six months or its validity and gives notice to the drawer within thirty days of return. The drawer fails to pay within fifteen days of such notice. In this case, the cheque dated 03.09.2003 for Rs.30,00,000/-, bearing No.001130 on City Union Bank, Paramakudi (A/c.OD16412000016649) was presented on 06.09.2013 and 11.09.2013, and returned on 07.09.2013 and 12.09.2013, both times with "exceeds arrangement" endorsements (Ex.P2). The complainant claims to have issued statutory notice on 24.09.2013 (Ex.P3), acknowledged on 25.09.2013 (Ex.P4).

15.A careful perusal of Ex.P4 shows the postal seal on the sender's side dated 17.05.2014 and on the receiver's side dated 18.05.2014, long after the complaint was filed (31.01.2014) and the sworn statement recorded. No postal receipt is produced. This fatal defect means the statutory notice was never received by the accused and the fifteen days period envisaged by Section 138 never commenced. Both Courts below erred in ignoring this.

16.Moreover, the visible material alterations on Ex.P1, in “Rs.30 lakhs” and changes in the words are apparent. Although the learned Trial Court allowed an application under Section 45 of Evidence Act for expert opinion, the accused failed to comply with conditions and the cheque was not sent for examination. Having neglected that opportunity, the accused may not raise material alteration now, but the absence of proof of receipt of notice is fatal in any event.

17.Even assuming Section 139 presumption arose, the accused rebutted it by pointing to Exs.D1, D2 and P5 and defence witnesses. The standard to rebut on preponderance of probabilities was met. The lower Courts should have acquitted the accused.

In the result:-

18.The complainant failed to satisfy the mandates of Section 138. Even assuming Section 139 presumption arose, it was rebutted by the accused. The impugned judgment passed by the learned Additional District and Sessions Judge, Paramakudi, in Criminal Appeal C.A.No.2 of 2017, dated 27.10.2022, confirming the order dated 09.03.2016 passed in Summary Trial Case S.T.C.No.355 of 2014 on the file of the learned Judicial Magistrate, Paramakudi, is hereby set aside and the criminal case under Section 138 of the Negotiable Instruments Act is dismissed. Accordingly, the Criminal Revision Case is allowed. The fine amount if any paid, shall be refunded to the petitioner. No Costs. Consequently, connected miscellaneous petition is closed.

21.07.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes
Mrn

To

1.The Additional District and Sessions Judge, Paramakudi.

2.The Judicial Magistrate, Paramakudi.

L.VICTORIA GOWRI, J.

Mrn

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