



CrL.R.C.(MD)No.144 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CrL.R.C.(MD)No.144 of 2023

and

CrL.M.P.(MD)No.2031 of 2023

A.Subramanian

... Petitioner

-VS-

Chandrasekaran

... Respondent

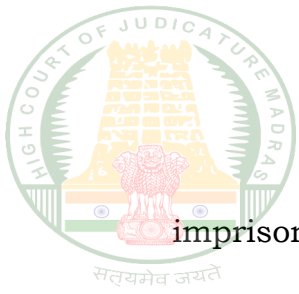
PRAYER : Criminal Revision Case filed under **397 r/w. 401 of Cr.P.C.**, to call for the records pertaining to the impugned judgment of conviction and sentence passed by the learned Principal District Judge, Karur, in C.A.No. 55 of 2022 dated 23.12.2022 when confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Karur, in C.C.No.76 of 2019 dated 30.03.2022 and set aside the same.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.S.Bageethan

ORDER

This Criminal Revision Case is directed, against the concurrent judgments of conviction and sentence passed by the Courts below, whereby the petitioner was found guilty under Section 138 of the Negotiable Instruments Act, 1881, sentenced to undergo simple



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imprisonment for a period of two years, and further directed to pay a sum of Rs.4,00,000/- to the complainant as compensation under Section 357 of Cr.P.C.

2.For ease of reference, the parties are referred to as per their rank before the learned Trial Court.

Factual Background:-

3.The case of the complainant is that the accused, well known to him, had borrowed a sum of Rs.4,00,000/- on 02.10.2016 for his urgent family expenses and executed a promissory note. Towards repayment of the said loan, the accused issued a cheque bearing No.199019 dated 11.10.2018, drawn on Axis Bank Limited, Karur. The cheque was presented for collection by the complainant through his account with State Bank of India, Thanthoni Branch, Karur, on 12.10.2018. It was returned with the endorsement “effects not cleared, present again.” On re-presentation on 17.11.2018, the cheque was again dishonoured on 19.11.2018 with the endorsement “funds insufficient.” Thereafter, a statutory notice dated 27.11.2018 under Section 138(b) of the Negotiable Instrument Act, 1881, was issued and duly served on the accused on 28.11.2018. However, the accused neither replied to the said notice nor repaid the amount within the statutory period. Consequently, a private complaint under Section 200 of Cr.P.C., 1973, was filed. The complainant



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was examined as P.W.1 and documents Ex.P1 to Ex.P7 were marked. The Trial Court, on considering the uncontroverted testimony and applying the presumptions under Sections 118 and 139 of the Negotiable Instrument Act, 1881, found the accused guilty and sentenced him accordingly. The said conviction and sentence were confirmed on Appeal.

Grounds of Revision:-

4.The revision petitioner has primarily challenged the impugned judgments on the grounds that the accused was not represented by a counsel at trial and that no effective opportunity was afforded to cross-examine the complainant (P.W.1). The learned Trial Court failed to appoint legal aid counsel or *amicus curiae*, despite the prolonged absence of representation and that the conviction is based solely on untested evidence, violating the principles of natural justice and fair trial enshrined in Article 21 of the Constitution of India.

Submissions:-

5.The learned counsel appearing for the petitioner submitted that the entire proceedings are vitiated due to the absence of legal representation and that the Trial Court proceeded with the matter despite the accused being unrepresented. It is contended that the conviction based on untested testimony violates the doctrine of fair trial and natural justice.



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6. Reliance was placed on the following decisions:-

(i) ***Khattri v. State of Bihar***¹ – holding that the right to legal aid is a fundamental right implicit under Article 21.

(ii) ***Suk Das v. Union Territory of Arunachal Pradesh***² – holding that denial of legal aid renders trial unfair and unconstitutional.

(iii) ***M.Kannan v. State***³ – reiterating that a trial conducted in the absence of legal assistance to the accused is vitiated.

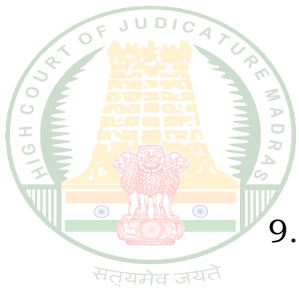
7. It was argued that the petitioner was denied the right to rebut the statutory presumptions under Sections 118 and 139 of Negotiable Instrument Act, 1881, due to absence of cross-examination and thus the conviction deserves to be set aside and matter remanded.

8. The learned counsel appearing for the respondent/complainant contended that the petitioner had been given ample opportunities between 26.03.2019 and 21.12.2021 to cross-examine P.W.1 and adduce defence evidence but failed to do so. It was further submitted that the statutory presumptions under Sections 118 and 139 of Negotiable Instrument Act, 1881, remain unrebutted.

1 (1981) 1 SCC 627

2 (1986) 2 SCC 401

3 2017 (2) MLJ (CrL.) 1



9. Reliance was placed on the following judgments:-

(i) ***Vinod Kumar v. State of Punjab***⁴ – holding that courts are not to be silent spectators when accused adopt dilatory tactics.

(ii) ***K.N.Beena v. Muniyappan***⁵ – holding that failure to reply to statutory notice is a relevant factor for presumption.

(iii) ***State of Kerala vs Puttumana Allah Jathavedan Namboodiri***⁶
- The High Court in the exercise of its revision jurisdiction, should not act as an Appellate Court.

(iv) ***C.A.Unnikrishnan vs State of Kerala***⁷ and ***Navaneet Singh Gogia vs State of Maharashtra***⁸ - Courts are justified in closing proceedings when a party is “unwilling to avail of the opportunities given”.

(v) ***Dnyandeo Sabaji Naik vs Pradnya Prakash Khadekar***⁹ - Courts must impose exemplary costs to curb frivolous litigation.

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

Point for Determination:-

The only point that arises for determination is whether the conviction rendered against the petitioner is sustainable in law when the accused was

4 (2015) 3 SCC 220

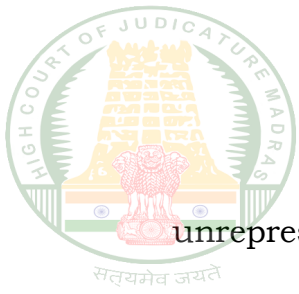
5 (2001) 8 SCC 458

6 (1999) 2 SCC 452

7 CrL.Rev.Petition No.626 of 2011

8 2025: BHC – AS : 3054

9 (2017) 5 SCC 396



unrepresented by any counsel and was denied the opportunity to cross-examine P.W.1 ?

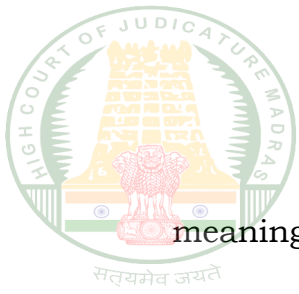
Discussion:-

11.It is axiomatic that a fair trial is the cornerstone of criminal jurisprudence and an integral facet of Article 21 of the Constitution of India. The Hon'ble Supreme Court in ***Suk Das v. Union Territory of Arunachal Pradesh***¹⁰, categorically held that the right to legal aid is a fundamental right implicit in Article 21 and a trial conducted in breach thereof is unconstitutional.

12.In the present case, though the petitioner entered appearance, he remained unrepresented at critical stages of trial. The complainant's evidence stood untested as the accused failed to cross-examine P.W.1 and the learned Trial Court failed to appoint a legal aid counsel or *amicus curiae*. The learned Appellate Court also overlooked this fundamental procedural lapse. The presumption under Sections 118 and 139 of Negotiable Instrument Act, 1881, is rebuttable. The accused must be given a fair opportunity to rebut it. In ***Kumar Exports v. Sharma Carpets***¹¹, the Hon'ble Supreme Court held that "presumption of law is not to be confused with proof." The burden is only to raise a probable defence, which cannot be discharged if no opportunity is granted. The failure to afford a

¹⁰ Supra 2

¹¹ (2009) 2 SCC 513



meaningful opportunity for defence, especially in a case involving penal consequences, amounts to a violation of the principle of natural justice. The learned Trial Court's failure to act *suo motu* to secure representation vitiates the entire proceeding.

Conclusion:-

13.This Court, therefore, holds that the conviction and sentence passed by the Courts below cannot be sustained. The matter requires remand to enable the accused to cross-examine the complainant and adduce defence evidence.

14.In view of the foregoing, this Court passes the following order:-

(i)The judgment of conviction and sentence dated 30.03.2022 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Karur, in C.C.No.76 of 2019 and the judgment dated 23.12.2022 in C.A.No.55 of 2022 passed by the learned Principal District Judge, Karur, confirming the same, are hereby set aside.

(ii)The matter is remanded back to the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Karur, for fresh disposal in accordance with law, after affording the accused an opportunity to cross-examine P.W.1 and adduce evidence in defence. The learned Trial Court shall take appropriate steps to ensure that the accused is legally represented either through private counsel or through legal aid if



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necessary.

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(iii)The learned Trial Court shall endeavour to complete the trial within a period of three months from the date of receipt of a copy of this order.

(iv)The revision petitioner shall appear before the learned Trial Court within two weeks from the date of receipt of copy of this order and cooperate for the expeditious disposal of the case.

15.Accordingly, this Criminal Revision Case is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2025

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

Note : The Registry is directed to send back the records, if any to the Courts below.

To

- 1.The Principal District Judge, Karur.
- 2.The Judicial Magistrate, Fast Track Court (Magistrate Level), Karur.



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L.VICTORIA GOWRI, J.

Mrn

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