BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.12.2025

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THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

CRL OP(MD). No.3807 of 2024
and
Crl.M.P.(MD).Nos.2999 and 3001 of 2024

L.Vijaykumar ... Petitioner

Vs.

M.Senthil Murugan ... Respondent

PRAYER :- This Petition is filed under Section 528 BNSS, to call for the records pertaining to the C.C.No.377 of 2022 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same.

For Petitioner : Mr.V.Chandrapandi

For Respondent : No appearance

ORDER

This petition is filed to quash the proceedings in C.C.No.377 of 2022 on the file of the learned Judicial Magistrate No.II, Dindigul, which was registered for the offences under Section 138 of Negotiable Instruments Act.

2.Even though notice was served to the respondent and his name printed in the cause list, neither the respondent appeared in person nor engaged a counsel to represent him.

3.According to the prosecution, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act stating that the petitioner had borrowed a sum of Rs.2,00,000/- (Rupees two Lakhs only) as a loan for his urgent family expenses and to repay some debts. To settle the same, the petitioner issued the post dated cheque bearing No. 241028 dated 30.11.2020 drawn on State Bank of India, Nehuru Ji Nagar Branch, Dindigul. The respondent presented the cheque before the bank and the same was returned with endorsement “Kindly contact Drawer/Drawee Bank and present again” on 30.11.2020. The same was informed to the petitioner and the petitioner requested the respondent to represent the same after 15 days. Thereafter, the respondent represented the same on 16.12.2020 and the same was returned with the same endorsement by memo dated 17.12.2020. Thereafter, the respondent issued a legal notice as per the Act, on 13.01.2021 to the petitioner, through the registered post and the petitioner failed to repay the cheque amount. Thereafter, he filed a complaint under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate has taken the case on file in C.C.No.377 of 2022.

4.The learned counsel appearing for the petitioner questioned the maintainability of the case pending before the learned trial Court under Section 138 of the Negotiable Instruments Act, on the ground that the reasons given by the banker while returning the cheque do not conform to the twin conditions contemplated under Section 138 of the Negotiable Instruments Act. For prosecuting the drawer of the cheque, the following conditions mandated in Section 138 of the Negotiable Instruments Act should be satisfied and the same is extracted as follows:

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account.— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another*

person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) thecheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the

drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

5.An offence under Section 138 of the Negotiable Instruments Act would be made out only if the amount of money standing to the credit of the account is insufficient to honour the cheque, or if it exceeds the amount arranged to be paid from that account by an agreement made with the bank. However, in the instant case, the reason for return is nothing but "Kindly contact drawer/drawee bank and present again." The Hon'ble Supreme Court has also held that, apart from the two conditions mentioned above, cases where the cheque is returned due to closure of the account or payment being stopped by the drawer can also be prosecuted under Section 138 of the Negotiable Instruments Act. The High Court of the State of Telangana at Hyderabad has dealt with a similar case in Crl.O.P.No.3492 of 2020, vide order dated 13.12.2022, allowed the same and the relevant portion of the same are extracted hereunder:

> *3. Under Section 138 of the Negotiable Instruments Act, prosecution can be launched if the cheque is returned unpaid 4 for the reason of 'insufficient funds' or 'it exceeds arrangement to be paid'. The Hon'ble Supreme Court held that apart from two reasons, if the reasons are 'account closed' and 'payment stopped' by the drawer' are also liable under Section 138 of the Negotiable Instruments Act.*
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> *4. As seen from the cheque, it was printed in the year 2008. The Bank has returned the cheque by specifically mentioning reason of 'kindly contact drawer/drawee bank and please present again' which is in the handwriting of the banker stating that drawer or drawee bank has to be contacted and then present the cheque.*

5.As stated in the complaint, the question of returning the cheque for 'insufficient funds' does not arise. As seen from the cheque return memo, the reason of 'funds insufficient' is number 6.The Bank has returned twice for the reason 19 stating 'kindly contact drawer/drawee bank and please present again' which was handwritten. When the reason for returning the cheque does not conform to the twin requirements mentioned under Section 138 of the Negotiable Instruments Act or if the account is closed and payment stopped by drawer as stated by the Hon'ble Supreme Court, 5 the reason mentioned by the Banker to contact the drawer or drawee bank and present again will not amount to a reason for which, the prosecution under Section 138 of the Negotiable Instruments Act can be launched.

6. If the complainant is aggrieved and in the facts of the case if an offence of cheating as defined under Section 415 of IPC is made out, complainant is at liberty to prosecute accordingly. Since there are no ingredients to launch prosecution under Section 138 of the

Negotiable Instruments Act, the proceedings against the petitioner are liable to be quashed.

6.Fully fortified by the same, the proceedings against the petitioner in C.C.No.377 of 2022 on the file of the learned Judicial Magistrate No.II, Dindigul, is hereby quashed.

7.Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

09.12.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
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TO

1. Judicial Magistrate No.II, Dindigul

L.VICTORIA GOWRI,J.,

vsg

CRL OP(MD) No.3807 of 2024

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