BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.08.2025

PRONOUNCED ON : 31.10.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.732 of 2024

M.Mohamed Ismail ... Petitioner

Vs.

Chidambaram ...Respondent

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records in Crl.A.No.56/2023 before the learned Principal District Judge, Tirunelveli, dated 23.07.2024 confirming the learned Trial Court judgment in C.C.No.389/2014 on the file of the learned Judicial Magistrate, Shencottai and set aside the conviction and sentence by allowing this Criminal Revision Petition.

For Petitioner : Mr.Subash Babu,
Senior counsel,
For Mr.R.Anandaraj

For Respondent : Mr.C.Kishore

ORDER

This Criminal Revision Case is filed challenging the judgment and order passed by the learned Principal District and Sessions Judge, Tirunelveli, in Criminal Appeal No.56 of 2023 dated 23.07.2024, confirming the conviction and sentence passed by the learned Judicial Magistrate, Sengottai, in C.C. No.389 of 2014 dated 06.04.2023, in and by which the revision petitioner was found guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881, and convicted and sentenced to undergo simple imprisonment for a period of two years, and further directed to pay Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation under Section 357(3) Cr.P.C., 1973, in default to undergo eight months simple imprisonment.

2. The revision petitioner is the accused before the learned trial Court. The respondent is the complainant.

II. ***Factual Background:***

3. The complainant, his father, and his wife are practising dentists at Tenkasi. The accused/revision petitioner is an advocate at Tenkasi.

4. ***Genesis of Complaint:***

The accused had been running an auction chit scheme at Tenkasi. The complainant joined the chit in 2011. Since the accused was in need of money to run the chit fund scheme, he approached the complainant for a loan. In response, the complainant paid (i) Rs. 3,00,000/- (Rupees Three Lakhs only) on 03.10.2011 and (ii) Rs. 3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) on 14.12.2011 by pledging the jewels of his wife and his father. Thereafter, the accused received a loan of Rs.3,25,000/- (Rupees Three Lakhs and Twenty Five Thousand only) through self-cheques of the complainant's father and wife. In such sequence, during 03.10.2011 to 2013, the accused borrowed a total of Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only) from the complainant.

5. A dispute arose in May 2014 regarding repayment of the matured chit amount. On the complainant's police complaint, the accused paid Rs.2,00,000/- (Rupees Two Lakhs only) and agreed to pay the balance within three months, but defaulted. On demand for repayment of Rs.10,50,000/-(Rupees Ten Lakhs and Fifty Thousand only), the accused issued Cheque No.001182 dated 01.07.2014 for Rs. 10,00,000/- (Rupees Ten Lakhs only) drawn on Axis Bank, Ilanji

Branch, Tenkasi, in favour of the complainant. As instructed by the accused, the complainant presented the cheque during the first week of August 2014 through his banker HDFC Bank, Tenkasi, on 05.08.2014. The cheque was returned on 09.08.2014 with the endorsement "payment stopped by drawer". Debit advice was received on 12.08.2014.

6. A statutory notice was issued on 01.09.2014, followed by a rejoinder on 04.09.2014. Despite service/acknowledgment, the accused neither replied nor paid. Alleging issuance of cheque without sufficient funds and commission of offence under Section 138 NI Act, 1881, the private complaint was filed.

III. ***Proceedings Before Trial Court:***

7. ***Cognizance and Trial:***

The learned District Munsif-cum-Judicial Magistrate, Shencottai, took the complaint on file after recording sworn statement and issued summons. On appearance, copies were furnished under Section 207 Cr.P.C., 1973. The accused pleaded not guilty and the matter proceeded to trial. Complainant examined P.W.1 to P.W.5 and marked Exs.P1 to P35. After complainant side evidence, the accused was examined under

Section 313(b) Cr.P.C. 1973; he denied incriminating circumstances and opted to lead defence evidence. He examined himself as D.W.1 and marked Exs.R1 to R18.

8. ***Defence Version:***

The accused denied conducting any auction chit scheme. He maintained SB A/c No.623010100002349 with Axis Bank, Ilanji Branch. On 02.07.2014, he allegedly travelled to the Madras High Court, Madurai Bench, to meet an advocate regarding a family case, carrying cheque leaves Nos.001182 to 001190 in a polythene cover, three of which (Nos.001182 to 00184) were signed, but otherwise blank. After alighting at the Bench from a town bus, he found the polythene cover missing. He lodged a complaint at Othakadai Police Station (CSR produced) and later issued stop-payment instructions; he also made a paper publication and sent complaints by registered post to Tenkasi Police and to the Superintendent of Police, Tenkasi. On receiving the complainant's legal notice dated 01.09.2014, he claimed to have realised that a missing cheque was misused. He asserted that no cheque was issued to the complainant and that no legally enforceable debt subsisted.

Trial Court's Findings:

9. The trial Court framed these points: (i) entitlement to presumptions under Sections 118 and 139 NI Act, 1881; (ii) whether such presumptions stood rebutted; (iii) if not, whether offence under Section 138 NI Act, 1881, stood proved beyond reasonable doubt.

10. Ex.P1 is the cheque dated 01.07.2014 drawn on Axis Bank, Ilanji Branch (SB A/c No.623010100002349). The cheque was presented on 05.08.2014 (Ex.P2) and returned on 09.08.2014 with endorsement "payment stopped by drawer" (Ex.P3), with covering documents (Ex.P4). FIR in Crime No.271 of 2014 dated 04.07.2014 was marked as Ex.P5. Statutory notices were Ex.P8 (dated 01.09.2014) with acknowledgment Ex.P9; rejoinder Ex.P10 with acknowledgment Ex.P11; reply dated 12.09.2014 was Ex.P12. The learned Trial Court recorded that the cheque and the signature thereon were not denied by the accused.

11. The defence of loss of signed cheque leaves during travel, supported by Exs.R4 to R13 (police complaint/CSR, stop-payment letter/confirmation, paper publication, complaints by post), was

considered improbable *inter alia* because: (a) being a lawyer of 20 years, carrying signed blank cheques in public transport was against prudence; (b) only the inner polythene cover allegedly went missing while the outer bag with case records remained; (c) bank statement Ex.P34 (through P.W.5) showed balance seldom exceeding Rs.3,000/- (Rupees Three Thousand only) during 01.01.2014 and 31.12.2017 and stop-payment on most leaves, indicating non-usage of cheques; (d) evasive answers in cross-examination undermined credibility.

12. On financial dealings, Exs.P17, P19, P20, P21 (self-cheques by complainant's wife/father), corresponding statements Exs.P22, P23, and jewel loan receipts Exs.P15, P26, P27, P28 corroborated lending. Documents Exs.P13, P14 evidenced prior self-cheques from Tenkasi District Co-operative Bank; account entry dated 25.01.2010 of Rs. 1,56,823/- (Rupees One Lakh Fifty Six Thousand Eight Hundred and Twenty Three only) supported capacity.

13. Attendance-register based defence (Exs.D16, D17) was outweighed by Court B-Diary (Ex.P31) and bank witnesses; P.W.1 admitted he was only part-time faculty. The learned Trial Court relied

on Section 20 NI Act, 1881, and ***Bir Singh v. Mukesh Kumar***[1], to hold that the holder could fill up the cheque. Presumptions under Sections 118 and 139 NI Act, 1881, were held available and unrebutted. Conviction and sentence followed. Hence, the learned Trial Court proceeded to convict and sentence the accused.

IV. ***Appellate Court's Judgment:***

14. The learned Principal District and Sessions Judge framed: (i) whether conviction and sentence are legally sustainable; (ii) whether the trial judgment dated 06.04.2023 in C.C. No.389 of 2014 warrants interference.

15. Ex.P1 (Cheque No.001182 dated 17.07.2014 for Rs. 10,00,000/-), Ex.P2 (presentation on 05.08.2014), Ex.P3 (return on 09.08.2014 as "payment stopped by drawer"), Ex.P34 (Axis Bank statement 21.05.2008–16.01.2023) read with Ex.R7 (bank reply on stop-payment) established insufficiency of funds as on the cheque date and thereafter (till 31.12.2017). The accused admitted signature and ownership of the cheque.

1 (2019) 4 SCC 197

16. Applying ***Kalamani Tex v. P. Balasubramanian***[2], and ***Rajesh Jain Vs Ajay Singh***[3], the appellate Court held that presumptions under Sections 118 and 139 NI Act, 1881, operate once signature is admitted, shifting the evidentiary burden to the accused. The "loss of cheque" theory was found unproved and implausible. The plea on different inks and quantum was rejected in view of Section 20 NI Act, 1881, and the complainant's case that total borrowing was Rs. 10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only) while the cheque was for Rs.10,00,000/- (Rupees Ten Lakhs only) was found convincing. Other rulings cited by the accused were held inapplicable. The appeal was dismissed; conviction, sentence, and compensation awarded by the learned Trial Court were confirmed. The learned Principal District and Sessions Judge, Tirunelveli, in C.A. No.56 of 2023, confirmed the conviction and sentence, applying ***Kalamani Tex v. P. Balasubramanian***[4] and ***Rajesh Jain Vs. Ajay Singh***[5]. It confirmed two years imprisonment and Rs.20,00,000/- (Rupees Twenty Lakhs only) compensation.

2 2021 SCC OnLine SC 75 : (2021) 5 SCC 283
3 (2023) SAR(Cri.) 1068
4 supra 2
5 Supra 3

V. ***Grounds urged in Revision:***

17. The revision memorandum asserts, *inter alia*, that: (a) the Courts below misread evidence; (b) Ex.P1 was not issued towards any legally enforceable debt; (c) monies were allegedly received via self-cheques of the complainant's wife/father and not from the complainant; (d) the learned Trial Court adopted an erroneous approach by first disbelieving the defence; (e) the defence of loss/stop-payment/paper publication/complaints (Exs.D4–D13) was not properly appreciated; (f) inferences from Ex.P34 and cheque usage were unwarranted; (g) reliance on B-Diary over attendance registers was misplaced and, if genuine, should have led to perjury proceedings; (h) Section 157 Evidence Act was misapplied (cited as Section 140 in submissions); and (i) precedents tendered under Section 314 Cr.P.C., 1973, were not duly considered.

VI. ***Submissions of the learned counsel for the Revision Petitioner/Accused:***

18. ***Challenge to concurrent findings and sentencing:***

18.1. Assailed the concurrent findings of the learned Trial Court (C.C.No.389 of 2014, judgment dated (06.04.2023) and the First Appellate Court (C.A. No.56 of 2023, judgment dated 23.07.2024) as perverse and contrary to law and evidence.

18.2.Highlighted that the sentence of two years simple imprisonment and compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only) under Section 357(3) Cr.P.C. is disproportionate, being twice the cheque amount of Rs.10,00,000/- (Rupees Ten Lakhs only).

18.3.Pointed out that the revision petitioner is a practising advocate; the complainant (Dr. Chidambaram) is a dentist; both were family friends, which explained the informal nature of transactions.

19.***Genesis of Transactions; Quantum and Break-up:***

19.1.According to the complainant, monies were advanced to help the petitioner meet chit liabilities: Rs.3,00,000/- (Rupees Three Lakhs only) said to have been paid by the respondent himself (by pledging his wife's jewels) on 03.10.2011. Rs.3,00,000/- (Rupees Three Lakhs only) said to have been paid (by pledging the respondent's father's jewels) on 14.10.2011. Thereafter, by self-cheques of the respondent's wife/father and by other small sums (including Rs.25,000/- [Rupees Twenty Five

Thousand only] each on three occasions in 2013), the cumulative total stated is Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only). However, the cheque sued upon is only for Rs.10,00,000/- (Rupees Ten Lakhs only), dated 01.07.2014, presented 05.08.2014, returned 09.08.2014 with the endorsement "payment stopped by drawer"; statutory notice issued on 01.09.2014, received 02.09.2014; rejoinder dated 04.09.2014; reply dated 12.09.2014.

20. ***Limitation/Validity of Presentation under Section 138:***

20.1.The petitioner urges a statutory bar under Section 138 (read with the proviso referring to presentation within "six months or within the period of its validity, whichever is earlier"), contending that the complainant admitted in cross-examination that the cheque was issued/received in August 2013, whereas it was presented only on 05.08.2014.

20.2.Argued that "validity" (as per banking rules) is three months, and thus presentation after a year is fatal even if the banker returned only on the basis of the printed date. Submitted that a pure question of law can be raised even at the revision stage.

21. ***Defence of "Lost Cheque/Madurai Theory":***

21.1. Contended that the cheque book containing three pre-signed blank leaves was lost at Madurai on 02.07.2014 while travelling to the Madurai Bench to consult an advocate regarding a family case; and that he immediately lodged a police complaint at Othakadai (CSR produced Ex.D5), issued stop payment to the bank on 04.07.2014, made paper publication on 05.07.2014 (Ex.D8). Relied on these to assert that the cheque was not issued to the complainant, and that the entire body was filled by the complainant; fairly conceded Section 20 NI Act, 1881, permits the holder to complete particulars on a signed instrument, but stressed the foundational issuance itself is disputed.

22. ***Place of Transaction and Attendance Records:***

22.1.Urged that on 01.07.2014 and on other relevant dates, the complainant was working at Raja Muthiah Dental College, Chidambaram (Cuddalore) and also at BEST Dental College, Madurai; attendance registers have been marked to demonstrate he was not at Tenkasi, the alleged place of transaction.

22.2.Emphasised that the complainant admitted his employment and that the registers belie the claim of presence at Tenkasi.

23.***Contradictions; Non-Examination of material witness; Financial capacity:***

23.1.Pointed to material inconsistencies between notice, complaint, evidence particularly in cross examination as to whether the respondent or his father/wife paid; absence of any authorisation from the father/wife if their funds are sued upon; and IT returns not reflecting the alleged lending.

23.2.Alleged non-examination of a cited eye-witness Alagu Murugan (said to have witnessed payment of Rs.75,000/- (Rupees Seventy Five Thousand only)), despite issuance and recall of warrant and insisted that the same would undermine the prosecution version.

23.3.Relied on contemporaneous Bar Council complaint (Ex.R3) allegedly initiated as early as 2010, to argue that no prudent man would continue lending in 2011–2014 if disputes existed; contended the present case is a misuse of a lost cheque.

24. ***Law Relied on by Petitioner / Accused:***

24.1.Cited ***Sri Data Ra v. Sharanapa***[6], for the following

6 Crl.A. No.32257 of 2024 @ SLP (Crl) No.13179 of 2023, dated 07.08.2024

propositions:

Section 139 NI Act embodies a reverse onus clause to advance the object of enhancing cheque credibility; however, the standard of rebuttal for the accused is preponderance of probabilities, not proof beyond reasonable doubt; the accused may rely on materials of the complainant (complaint, demand notice, cross-examination, reply notice, Section 313 statement) to cast a reasonable doubt. Where the complainant's financial capacity is specifically questioned and contradictions attend the time/mode of presentation and purpose of issuance, Courts have accepted rebuttal when a shadow of doubt is raised. Invokes Section 58 Evidence Act, 1872, (facts admitted need not be proved), referring to alleged admissions in cross examination. He insisted that the compensation being twice the cheque amount is punitive and merits interference.

Submissions of the learned Counsel for the Respondent/Complainant:

25. ***Relationship, course of dealings and cheque issuance:***

25.1.Accepted the longstanding personal and financial relationship (2010–2014) between the parties (dentist–advocate; close friends), under which the respondent repeatedly advanced monies. The relationship soured only in 2014.

25.2.Affirmed that the cheque for Rs.10,00,000/- (Rupees Ten Lakhs only) bears the accused's signature and amount in his handwriting; upon instructions from the accused, the date 01.07.2014 was filled and the cheque was presented on 05.08.2014.

25.3.Clarified that Section 20 NI Act, 1881, authorised completion of an incomplete instrument; therefore, the act of filling the date does not impeach the instrument.

26. ***Presentation Within Time; 'Bill of Exchange' v. 'Cheque' :***

26.1.***On limitation/validity:*** submitted that a post-dated instrument is only a bill of exchange until the date on the face of the instrument arrives, whereupon it becomes a cheque. Hence, 01.07.2014 is the operative date for Section 138 computation and reiterated that presentation on 05.08.2014 is within time.

26.2.Relied on Supreme Court full bench pronouncement in ***Ashok Yeshwan Badave v. Surendra Madavrao Nigojkar &***

another[7] and the relevant portion of the same is extracted as follows:

> *"Prosecution of the appellant for the offence under Section 138 of the Act has been assailed on the sole ground that even if the facts disclosed. In the complaint are taken at their face value and accepted in entirety, no offence at all much less the offence under Section 138 of the Act is made out as one of the conditions precedent for its applicability is that cheque must be presented to the bank within a period of six months from the date on which it was drawn or within the period of its validity whichever is earlier, but in the case on hand the cheque was presented before the banker for encashment after expiry of six months from the date it was made over by the accused to the complainant, though within a period of six months from the date mentioned on the cheque. As such, the question which arises for our consideration is:*
>
> *"Whether period of six months for presentation of cheque to the banker, as required under proviso (a) to Section 138 of the Act, should be reckoned from the date mentioned on the face of the cheque or a date previous to that when it was made over by the drawer to the drawee."*

26.3. Further relied on ***Subanamma Ninan and others Review***

7 2001 MLJ (Cri) 1 p.534

Petitioners. v.George Veeran[8], and the relevant portion of the same is extracted as follows:

> *"9. The above period of six months was later scaled down to three months with effect from 01.04.2012 by virtue of a notification issued by the Central Government. As per the aforesaid proviso, the stipulated period for presentation is to commence only from the date on which the cheque is drawn. The date on which a cheque is drawn may not be confused with date of issue but must be understood as the date mentioned on the face of the document. The relevant date which makes a postdated cheque payable is the date which the cheque bears as held by the Honourable Apex Court long back in* ***Anil Kumar Sawhney v. Gulshan Rai. [1994 KHC 41 (SC)]****. It is therefore imperative that the reasonable period stipulated in Sections 84(1) and (2) of the NI Act shall be read harmoniously with the time prescribed in proviso (a) to Section 138. If so read, what determines the time of commencement of period of presentation is the date of the cheque and not the date of delivery of the cheque.*
>
> *10. The legislature cannot be understood to have intended to give effect to the date of issue of cheque in all cases invariably*

8 2020 SCC ONLINE KER 4151

and discard the date of cheque as irrelevant. If the date of delivery of cheque is to determine the period of presentation, distinct from or in preference to the date of the cheque as explained above, it is sure to bring about anomalous situation and defeat the underlying object of the NI Act.. Such an interpretation will cause to prevent a drawer from delivering the cheque postdated for a period longer than three months of the date of issue. This, however, does not mean that Sections 84 and 138 come into conflict with each other. The date of issue of cheque mentioned in Section 84(1) is not irrelevant and capable of rejection in cases where the date of cheque appearing on its face and the date of issue are one and the same."

27.***'Madurai Loss' Defence is Implausible; No Probable Rebuttal:***

27.1.The Madurai theory is assailed as concocted: the accused claims the polythene cover alone went missing from inside his bag; he is a seasoned NI Act practitioner; yet he produced only a CSR and stop-payment advice (Ex.R7) showing a balance of merely Rs.2,914/- (Rupees Two Thousand Nine Hundred and Fourteen only); he neither pursued the complaint to obtain non-traceable certificate nor linked how a cheque allegedly lost at Madurai surfaced at Tenkasi.

27.2.Both Courts have concurrently rejected this defence after a granular discussion, noting the absence of independent corroboration and the improbability of carrying pre-signed blanks in public transport.

28. ***Place of Transaction and Attendance Records :***

As to presence at Tenkasi on relevant dates: the respondent explained his work as part-time faculty; produced B-Diary extract (Ex.P31) evidencing his Court presence at Tenkasi contemporaneously; produced bank managers (P.W.2 & P.W.3) and IOB records (Ex.P15, P26–P28) corroborating pledge/withdrawals; the attendance registers (Ex.R16/R17) were not proved through custodian and lacked college seal; hence rightly treated as of little evidentiary value by both Courts.

29.***Alleged Contradictions; Financial Capacity; Non-Examination of Witness:***

29.1.Minor variances as to whether amounts were routed via self-cheques of wife/father or directly by the respondent are immaterial when the accused admits signature and cheque ownership; in any event, authorisation questions do not arise at the stage of Section 138 when the instrument is the accused’s.

29.2.Alagu Murugan not being examined does not dent the core case given the documentary trail (Ex.P1–P35) and banking proof. Moreover, financial capacity stood shown through IOB jewel loan receipts and bank statements; income-tax entries are not the sole touchstone.

30. ***Presumptions under Sections 118 & 139 NI Act, 1881; Burden not Discharged:***

30.1.Stressed that once signature is admitted, presumptions under Sections 118 and 139 spring into operation; the reverse onus is on the accused to raise a probable defence. Here, beyond a bald plea of loss and a CSR, the accused produced no convincing material.

30.2.Submitted that both Courts rendered detailed concurrent findings that the defence did not probabilise rebuttal.

31. ***Case Law relied on by respondent:***

Rajesh Jain v. Ajay Jain[9], once signature is admitted,

9 Supra 3

presumption under Section 139 attaches; evidential burden shifts to the accused; mere assertions are insufficient.

Kalamani Tex & another v. P. Balasubramanian[10], reiterates the reverse onus and scope of rebuttal under Sections 118 & 139.

Bir Singh v. Mukesh Kumar[11], holder in due course can fill in blanks on a signed instrument; such filling does not invalidate the instrument.

Ashok Yeshwan Badave v. Surendra Madavrao Nigojkar & another[12], cited for general NI Act principles supportive of complainant's case.

32.***Quantum of Compensation and Sentence:***

On sentence/compensation: with a Rs.10,00,000/- (Rupees Ten Lakhs only) cheque and proven default, the two years simple imprisonment and Rs.20,00,000/- (Rupees Twenty Lakhs only) compensation under Section 357(3) Cr.P.C., 1973, have been affirmed by the Appellate Court; nothing warrants interference in revision.

10Supra 2
11 Supra 1

12 Supra 7

VII. ***Analysis:***

33.***Validity of Cheque Presentation:***

33.1. The accused's plea that the cheque was issued in 2013 and presented after a year cannot be accepted. The relevant portion of Section 5 and the provisions of Sections 6,19,138,139 and 140 of the Negotiable Instruments Act,1881 is extracted hereunder:

> *"S.5. Bill of exchange.- 'Bill of Exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument........."*

> *"S.6. Cheque. - A 'cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."*

> *"S.19. Instruments payable on demand.- A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand."*

> *"S.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 a term which may extend to one year, 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) the cheque 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, within fifteen 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 or other liability' means a legally enforceable debt or other liability.

(emphasis added)"

"S.139. Presumption in favour of holder. - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

S.140. Defence which may not be allowed in any prosecution under Section 138. It shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.''

33.2.No doubt in terms of Section 5 and 6 of the Act, a bill of exchange is a negotiable instrument in writing directing a third party to pay a specific sum of money on a particular date or on demand. Like wise a cheque is a bill of exchange drawn by the holder on his bank, expressly specifying to be payable only on demand. Thus, a bill of exchange even if drawn on a bank cannot be a cheque, if it is not payable on demand. Hence a 'post dated cheque' becomes a cheque only on the dawn of the date mentioned in it and until then, it remains only a bill of exchange.

33.3. In the instant case,the cheque bears the date 01.07.2014. Until that date, it was only a bill of exchange; it became a cheque only from 01.07.2014. Presentation on 05.08.2014 was well within validity.

34. ***Lost Cheque Defence:***

The defence of lost cheque lacks probability. Carrying pre-signed blank cheques in public transport by an experienced lawyer is improbable. The accused only produced a CSR, without pursuing the matter further. The malafide design of the revision petitioner is evident from him taking no further steps with Othakadai police to proceed with the investigation in his lost cheque book issue. His conduct in not communicating the receipt of legal notice disclosing the presence of the alleged missing cheque leaves with the complainant to the Othakadai Police for proper investigation would suffice to prove the falsified nature of the defence concocted by the accused. Hence I don't find any perversity with both Courts having concurrently rejected this defence.

35.***Contradictions and Financial Capacity:***

Minor inconsistencies as to whether the complainant routed money through his wife or father are not fatal. The cheque admittedly signed by the accused is sufficient to attract presumption under Sections 118 and 139 NI Act, 1881. Financial capacity is supported by jewel loan receipts and bank entries.

36.***Attendance Registers:***

The defence relied on Ex.R16 and R17 (attendance registers). These were not proved through competent witnesses and lacked authentication. Conversely, Ex.P31 (Court B-Diary) corroborated complainant's presence. Both the Trial and Appellate Courts rightly rejected the registers.

37.***Quantum of Sentence and Compensation:***

The revision petitioner emphasises that the compensation of Rs. 20,00,000/- (Rupees Twenty Lakhs only) is twice the cheque amount of Rs.10,00,000/- (Rupees Ten Lakhs only). Section 357(3) Cr.P.C., 1973, empowers the Court to award just compensation. However, awarding compensation far exceeding the cheque amount requires cogent reasons. In this case, while two years simple imprisonment is not disproportionate, directing payment of double the cheque amount as compensation is excessive.

38.Accordingly, this Court finds:

The conviction under Section 138 NI Act is based on proper appreciation of evidence. The presumption under Sections 118 and 139 NI Act was not rebutted. The plea of lost cheque is untenable. However, the quantum of compensation requires modification.

39.In fine, this Criminal Revision Case is partly allowed:

The conviction of the revision petitioner/accused for offence under Section 138 of the NI Act is confirmed. The sentence of two years simple imprisonment is upheld. The direction to pay Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation under Section 357(3) Cr.P.C. is modified to Rs.10,00,000/- (Rupees Ten Lakhs only), being the cheque amount. In default of payment of the said compensation within three months, the accused shall undergo simple imprisonment for four months. No costs.

31.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

1.The Principal District Judge,
Tirunelveli.

2.The Judicial Magistrate,
Shencottai.

L.VICTORIA GOWRI, J.,

Sml

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