BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.801 of 2023

Syed Sulaiman ... Petitioner /Appellant / Accused

Vs.

A.Hakkim ... Respondent /Respondent / Complainant

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records setting aside the order of conviction and sentenced to undergo one year simple imprisonment for the offence U/s. 138 of Negotiable Instruments Act and to pay the cheque amount of Rs.48,00,000/- (Rupees Forty Eight Lakhs only) as compensation to the complainant within one month from today in default to undergo three months of simple imprisonment by the learned Judicial Magistrate, Tenkasi, Tenkasi District, dated 29.06.2022 as made in S.T.C.No.327 of 2020 and subsequently as confirmed by the Additional District and Sessions Judge (Fast Track Court), Tenkasi, Tenkasi District, dated 03.07.2023 made in C.A.No.35 of 2022 forthwith.

For Petitioner : Mr.J.Jeevin

For Respondent : Mr.D.Venkatesh

ORDER

This criminal revision case is filed against the order of conviction and sentence to undergo one year simple imprisonment for the offence under Section 138 of the Negotiable Instruments Act, and to pay the cheque amount of Rs.48,00,000/- (Rupees Forty Eight Lakhs only) as compensation to the complainant within one month from 29.06.2022, and in default to undergo three months simple imprisonment, passed by the learned Judicial Magistrate, Tenkasi, Tenkasi District, dated 29.06.2022, in S.T.C. No. 327 of 2020. The same order was subsequently confirmed by the Additional District and Sessions Judge, Fast Track Court, Tenkasi District, in Criminal Appeal No. 35 of 2022 dated 03.07.2023.

2. For convenience, the parties are referred to as per their ranking before the learned trial court. The complainant and the accused are related by marriage (the accused being related to the complainant through his wife). The accused carries on real estate and construction business in Tenkasi, while the complainant was doing business in Dubai.

3.Facts of the Case:

3.1. On 16.07.2019, the accused approached the complainant and obtained a loan of 48 lakhs. Relying on the accused's promise that repayment would be made through his bank account at SBI, Tenkasi branch, the complainant advanced the sum. Thereafter, the accused issued a cheque bearing No. 810420 dated 18.03.2020, drawn on SBI, Tenkasi Branch, for 48 lakhs. The accused instructed the complainant to deposit the cheque. Accordingly, the complainant presented it in his SBI account (No. 30393955482) on 18.03.2020, but it was returned unpaid on the same day with the endorsement 'funds insufficient' (Exhibit P-2).

3.2. When the accused failed to make payment, the complainant's counsel issued a statutory demand notice on 23.03.2020 (Exhibit P-3), requiring payment within 15 days. Although postal records show that the notice was delivered to the relevant post office, and intimation in this regard was also given to the accused, it was returned unclaimed (Exhibit P-4). The accused did not reply to the notice or make payment. Consequently, the complainant filed a private complaint under Section 200 of the Code of Criminal Procedure before the learned Judicial Magistrate, Tenkasi.

3.3. Before the trial court, the complainant was examined as P.W. 1, and Exhibits P-1 to P-4 were marked. The accused was questioned under Section 313 Cr.P.C. regarding the incriminating evidence but denied the same as false. He did not examine any defence witnesses, but four documents Ex-D1 to D-4 were marked through the complainant who was examined as PW1 while cross examination.

4. Judgment of the Trial Court:

After considering the oral and documentary evidence, the learned Judicial Magistrate found that all the ingredients of Section 138 N.I. Act were established:

1.The cheque was drawn by the accused on his bank account for payment of 48 lakhs to the complainant (Exhibit P-1).

2.The cheque was issued for discharge of a debt.

3.The cheque was returned unpaid for 'funds insufficient' (Exhibit P-2).

4.The cheque was presented within its validity period on 18.03.2020.

5.Demand notice was given within 30 days of the return (Exhibit P-3).

6.The drawer failed to pay the amount within 15 days of the notice (Exhibit P-4).

Accordingly, the accused was convicted under Section 138 N.I. Act and sentenced to one year simple imprisonment and directed to pay 48 lakhs as compensation within one month, failing which he would undergo three months' simple imprisonment.

5. Judgment of the Appellate Court:

The Additional District and Sessions Judge, Fast Track Court, Tenkasi, dismissed the accused's appeal on 03.07.2023. The appellate court noted that during cross-examination P.W. 1 admitted having lent only 2 lakhs on 03.12.2016 by way of an unfilled cheque, and the accused had suggested a loan of 8 lakhs with accumulated interest of 28,34,301. Nevertheless, the court held that admission of the cheque's issue and the debt transaction was sufficient to sustain the presumption under Section 139 N.I. Act. The defence of lack of financial capacity on the part of the complainant was held to be neither pleaded in reply to the statutory notice nor proved by independent evidence. The appellate court therefore confirmed the trial court's judgment.

6. Grounds in This Revision Petition:

The accused challenges both judgments on the following grounds:

i) The complainant never had any legally enforceable debt against the accused, and failed to prove the existence of an enforceable debt by producing appropriate documents.

ii) Neither court appreciated that the complainant had no financial background to advance 48 lakhs.

iii) The complainant did not own any residential property, demonstrating lack of resources for lending such a large loan.

iv) The complainant failed to prove his financial capacity by producing bank statements.

7. Arguments:

7.1. The learned counsel for the petitioner contended that under Section 269T of the Income-tax Act, transactions exceeding 2 lakhs must normally be made through banking channels. In absence of bank statements, the trial court should not have convicted the accused. He further pointed out that the statutory notice remained unclaimed.

7.2. The learned counsel for the complainant submitted that financial capacity of the complainant need not be proved in the first instance (Section 139 N.I. Act presumption), and that burden shifted to the accused to rebut presumption which he failed to do.

8. Issues for Consideration:

i) Whether the ingredients of Section 138 N.I. Act are established.

ii) Whether, having invoked Section 139 N.I. Act, the complainant was obliged to prove financial capacity.

iii) Whether non-production of bank statements and the unclaimed notice vitiate the conviction.

9. Analysis:

Ingredients of Section 138 N.I. Act:

Cheque issued for debt: Exhibit P-1 shows issuance of the cheque for 48 lakhs.

Presentation and return: Exhibit P-2 evidences presentation within validity and return for “funds insufficient.”

Demand notice: Issued within 30 days (Exhibit P-3) and returned unclaimed (Exhibit P-4).

Failure to pay: No payment or reply within 15 days. All statutory ingredients are clearly established.

10. Presumption under Section 139 N.I. Act:

Once the complainant proves the above, Section 139 N.I. Act raises a statutory presumption that the cheque was drawn for discharge of debt. The onus shifts to the drawer to rebut this presumption by leading evidence to the contrary. Mere suggestions in cross-examination regarding the complainant's financial status or non-production of bank statements do not suffice. In **Rohitbhai Jeevanlal Patel v. State of Gujarat** (2019 SCC Online SC 389) and **Tedi Singh v. N. Nardas Mahant**(Criminal Appeal No. 362 of 2022), it was held that independent evidence must be adduced to displace the presumption.

11. Transaction through Banking Channels:

Section 269T of the Income-tax Act prescribes that transactions above 2 lakhs "shall" be through banking channels. However, non-compliance with that provision does not render the debt unlawful or unenforceable under the N.I. Act. It may attract penal consequences under the Income-tax Act, but does not exculpate a dishonour under Section 138.

12. Unclaimed Demand Notice:

Return of the demand notice unclaimed does not invalidate the demand; the complainant is deemed to have exercised due diligence by dispatching the notice within time. The courts below rightly held that the statutory requirement of notice was complied with.

13. Conclusion:

13.1. The trial court and the appellate court have correctly applied the law. The ingredients of Section 138 N.I. Act are established, and the accused failed to rebut the statutory presumption under Section 139. The additional grounds on financial capacity and procedural niceties do not warrant interference.

13.2. The Criminal Revision case is dismissed. The conviction, sentence and compensatory decree for 48 lakhs, as ordered by the Trial Court and confirmed on appeal, shall stand. Parties shall bear their own costs.

03.07.2025

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

To

1.The Judicial Magistrate,
Tenkasi.

2.The Additional District and Sessions
Judge (Fast Track Court), Tenkasi.

L.VICTORIA GOWRI, J.,

Sml

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