IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.634 of 2023 and
Crl.MP.No.4864 of 2023

P.Elango ... Petitioner

Vs.

S.Balaji ... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C. to allow this criminal revision petition and to set aside the order passed in criminal appeal No.42 of 2021 on the file of the Additional District Sessions Court, Namakkal dated 13.06.2022 and confirming the judgment passed in STC.No.579 of 2017 dated 18.02.2021 on the file of the Fast Track Judge (Judicial Magistrate), Tiruchengode, Namakkal

For Petitioner : Mr.G.Veerapathiran

For Respondent : Mr.M.R.Thangavel
for Mr.V.Balamurugan

ORDER

This criminal revision case has been filed praying to set aside the judgment passed in criminal appeal No.42 of 2021 on the file of the Additional District Sessions Court, Namakkal dated 13.06.2022 confirming the judgment passed in STC.No.579 of 2017 dated

18.02.2021 on the file of the Fast Track Judge (Judicial Magistrate), Tiruchengode, Namakkal, thereby the petitioner was convicted under Section 138 of NI Act and sentenced to undergo one year simple imprisonment with order to pay compensation of Rs.10,00,000/-

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner and the respondent are well known to each other for the past several years. The petitioner had borrowed a sum of Rs.10,00,000/- as hand loan from the respondent on 26.08.2017 in the house of the respondent for his urgent business and family expenses. On that day itself, in order to discharge the said amount, the petitioner had issued cheque dated 26.09.2017 for the said amount in favour of the respondent. On the request made by the petitioner, the respondent presented the cheque for collection on 26.09.2017 and the same was returned dishonoured for the reason ‘account closed’. After causing statutory notice, the respondent lodged complaint.

3. In order to prove the complaint, the respondent examined himself as PW1 and marked Ex.P1 to Ex.P5. On the side of the petitioner, no one was examined and no documents were marked. On perusal of oral

and documentary evidences, the trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo one year simple imprisonment. He was also directed to pay a sum of Rs.10,00,000/- as compensation, being the cheque amount, to the respondent within one month. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and the order of conviction and sentence imposed by the trial court was confirmed. Hence, the present criminal revision case has been filed by the accused.

4. The learned counsel for the petitioner would submit that the petitioner is the employer and the respondent is the Manager. The respondent did not properly maintain accounts and as such his employment was terminated. While he was going out from the employment, he had stolen one signed cheque and presented the same for collection. The petitioner, being a rich person, he had no need for borrowal of any loan, that too, from his own employee. Though the petitioner failed to reply for the statutory notice, during the cross examination of PW1, he elicited that he had no source of income to lend such huge amount of Rs.10,00,000/-. The respondent did not even secure any other document while lending such huge amount as loan from the petitioner except the cheque. When the petitioner clearly rebutted the

presumption, the burden shifted to the shoulder of the respondent. Even then, the respondent failed to prove that he had financial capacity to lend such a huge amount as loan. He further submitted that though the post dated cheque was issued on the date of borrowal, it was presented within a period of one month, that too the bank account was closed long back. In support of his contention, he also relied upon the judgments of the Hon'ble Supreme Court of India in the case of ***Basalingappa Vs. Mudibasappa*** reported in ***2019 (5) SCC 418*** and in the case of ***APS Forex Services Private Limited Vs. Shakti International Fashion Linkers and Others*** reported in ***AIR 2020 SC 945.***

5. Per contra, the learned counsel for the respondent submitted that even after receipt of statutory notice, the petitioner failed to reply to rebut the initial presumption raised by the respondent. Further, during cross examination, merely putting suggestion by the petitioner would not amount to rebutting the presumption. That apart, the petitioner specifically alleged that the cheque was stolen by the respondent, however no complaint was lodged by the petitioner even after receipt of statutory notice. In fact, the petitioner also failed to let in any evidence and also failed to produce any document to show that the cheque was stolen by the respondent while working under the petitioner. Therefore,

the trial court as well as the appellate court rightly convicted the petitioner and the orders of the courts below do not warrant any interference by this Court.

6. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

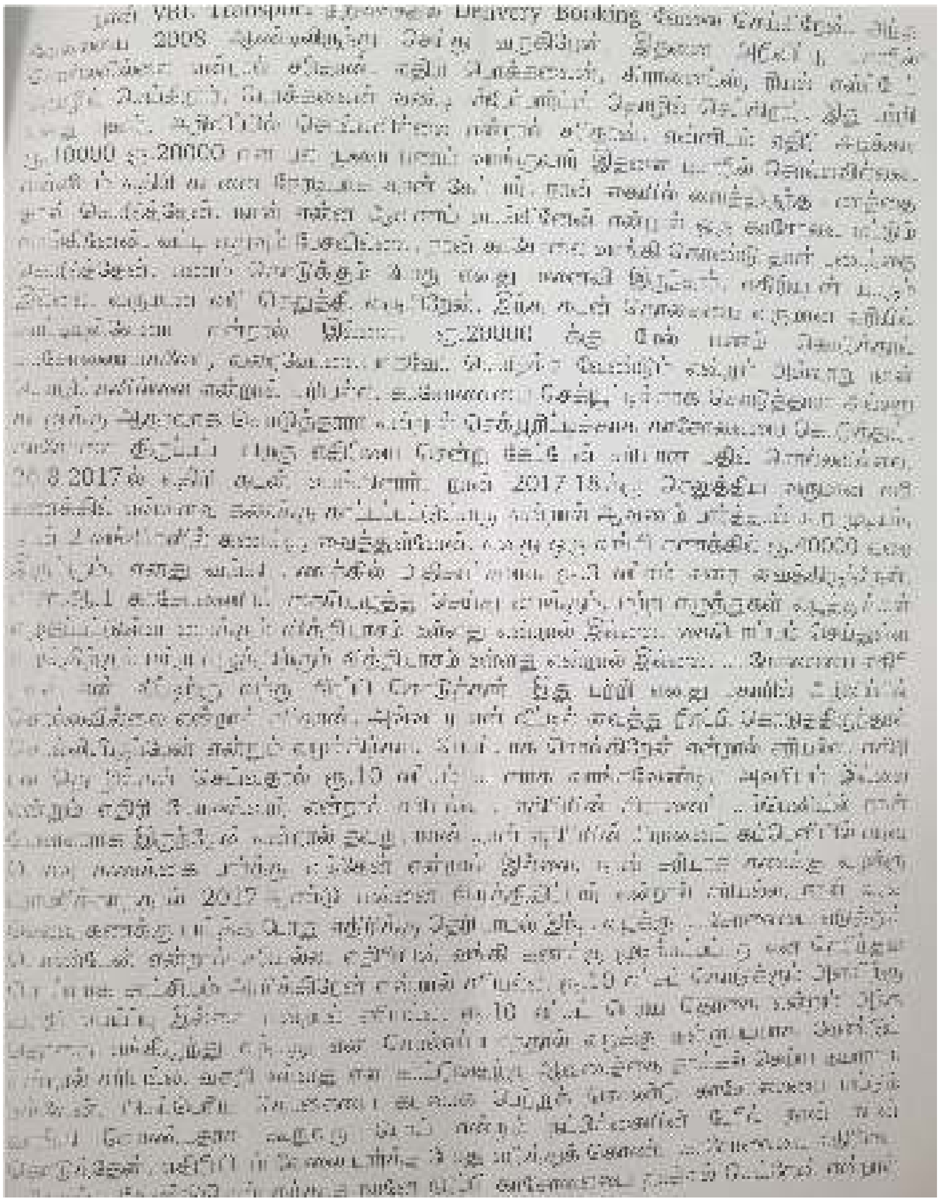
7. On perusal of the records and also on the submissions of the learned counsel appearing on either side, the following points arise for consideration:

(i) whether the cheque was issued for any legally enforceable debt?

(ii) whether the respondent had financial capacity to lend such huge sum of Rs.10,00,000/-, that too without any other document for security.

8. According to the respondent, the respondent and the petitioner had been acquainted with each other for the past several years. Therefore, the petitioner had borrowed a sum of Rs.10,00,000/- as hand loan from the respondent on 26.08.2017 at the respondent's house for his urgent business and family expenses. On the same day, to discharge the said borrowed amount, the petitioner had issued a post dated cheque

dated 26.09.2017 for a sum of Rs.10,00,000/-. However, except the cheque, the respondent did not obtain any other document for security purpose while lending such a huge amount of Rs.10,00,000/-. That apart, the respondent had lent a sum of Rs.10,00,000/- by cash. The respondent also did not even whisper that how the petitioner had been acquainted with the respondent to lend such huge sum of Rs.10,00,000/-, that too without any security. The respondent had examined himself as PW1. During the cross examination, he was categorically cross examined by the petitioner that he had no financial capacity to lend such a huge sum of Rs.10,00,000/-. Further, the respondent categorically admitted that at the time of lending loan, he was working as a delivery booking person in M/s.VRL Transport. Further, he also admitted that the petitioner owned granites, possessed poclain and was also doing real estate business. That apart, the petitioner is also dealing with the spare parts for poclain. Though, at the time of the alleged borrowal of loan, his wife was also very much present, the respondent did not examine his wife to prove that the petitioner had borrowed a sum of Rs.10 lakhs on 26.08.2017. The amount which was allegedly lent to the petitioner was also not accounted to the income tax. Though the respondent stated that only after seeing the account, he can answer that whether the loan amount was accounted or not, he did not even produce any document to show that he had financial capacity to lend such huge amount. He also admitted that he is maintaining balance from Rs.40,000/- to Rs.3 lakhs in his bank account. The relevant portion of the cross examination as follows:



9. He further stated as follows:

எதிரி கோடீஸ்வரர் என்றும் அவரை ஏமாற்றி துர்லாபம் அடைவதற்காக வழக்கு தாக்கல் செய்துள்ளேன் என்றால்

சரியல்ல. வழக்கு காசோலைக்கு எந்த ஒரு மறு பயனும் இல்லை என்றால் சரியல்ல. நான் சொன்ன நேரத்தில் சொன்ன இடத்தில் கடன் கொடுக்கவில்லை என்றும் எதிரி காசோலை கொடுக்கவில்லை என்றால் தவறு.

10. Thus it is clear that during the cross examination, petitioner categorically rebutted the presumption and also questioned the financial capacity of the respondent at the time of lending such huge amount of money to the petitioner. Even then, the respondent failed to prove that he had financial capacity and source of income to lend such huge amount as loan to the petitioner. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Basalingappa Vs. Mudibasappa*** reported in ***2019 (5) SCC 418.*** It is very much required to note the legal principles regarding nature of presumptions to be drawn under Section 139 of NI Act and the manner in which it can be rebutted by an accused. It is relevant to extract the provisions under Section 118 (a) and (b) of NI Act hereunder:

> 118. Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—
>
> *(a) of consideration —that every negotiable instrument was made or drawn for consideration, and*

that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

11. It is also relevant to extract the provision under Section 139 of NI Act hereunder:

"*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.

12. Thus it is clear that the respondent being holder of the cheque and the signature on the cheque having not been denied by the petitioner, presumption shall be drawn that the cheque was issued for the discharge of any debt or other liabitlity. However, it is rebuttable in nature. In this regard, the Ho'ble Supreme Court of India held in the case of ***Kali Ram Vs. State of Himachal Pradesh*** reported in ***(1973) 2 SCC 808*** as follows:

"23. …… One of the cardinal principles which has always to be kept in view in our system of administration

of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

13. The Hon'ble Supreme Court of India in the case of ***Basalingappa Vs. Mudibasappa*** reported in ***2019 (5) SCC 418***, noticing the ratio laid down on Sections 118(a) and 139 of NI Act, summarised the principles in the following manner:

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.

14. By applying the above proposition of law, in the present case, it is clear that the signature of the cheque has been admitted and the presumption shall be raised under Section 139 of NI Act that the cheque was issued in discharge of debt or liability. The question to be looked into is whether any probable defence was raised by the petitioner. In cross

examination of the respondent who deposed as PW1, specific question was put that the cheque allegedly presented for collection was stolen by the respondent, the petitioner is rich person and doing several business in which the respondent was working as Manager, while he was working as manager, he failed to maintain accounts properly and as such, he was removed from his employment. Further, the petitioner specifically suggested that the respondent had no source of income to lend such a huge amount of loan of Rs.10 lakhs as hand loan, that too without any security. Thus it is a probable defence on the side of the petitioner and as such he shifted the burden on the respondent to prove his financial capacity. However, the respondent failed to prove his financial capacity to lend such huge amount of loan to the petitioner. He also failed to explain that when the loan was lent to the petitioner and except the cheque, no other document was received as security. No prudent person would lend such a huge money, that too by cash without receiving any security document, though the petitioner was closely acquainted with him. During the cross examination, he also did not whisper about the relationship that he continued during his employment under the petitioner.

15. Thus it is clear that the respondent failed to answer the question raised by the petitioner in a satisfactory manner. As per the

principles laid down by the Hon'ble Supreme Court of India, it is not necessary for the accused to go in the witness box in support of his contention and as such, Section 139 imposed an evidenciary burden and not a persuasive burden. Therefore, the petitioner categorically rebutted the presumption as contemplated under Sections 118(a) and 139 of NI Act. When the respondent was specifically questioned about the financial capacity to lend such a huge amount as hand loan, that too by cash, thereafter onus is on the respondent to prove his financial capacity and in that stage, the respondent is required to rebut the presumption to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of cheque, that too without any security document. Therefore, the respondent failed to prove his complaint in accordance with law and the petitioner is not liable to be punished for the offence under Section 138 of NI Act.

16. In view of the above discussion, the judgment passed in criminal appeal No.42 of 2021 on the file of the Additional District Sessions Court, Namakkal dated 13.06.2022 and the judgment passed in STC.No.579 of 2017 dated 18.02.2021 on the file of the Fast Track Judge (Judicial Magistrate), Tiruchengode, Namakkal, are set aside and this Criminal Revision Case stands allowed. The petitioner is acquitted of all

the charges under Section 138 of NI Act. The petitioner is directed to be set at liberty forthwith. Consequently, connected miscellaneous petition is closed.

05.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
lok

To

1.Additional District Sessions Court, Namakkal

2.The Fast Track Judge (Judicial Magistrate), Tiruchengode, Namakkal

<u>G.K.ILANTHIRAIYAN, J.</u>

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