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Crl.R.C.No.177 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2025
PRONOUNCED ON : 19.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.177 of 2021 and
Crl.M.P.No.4204 of 2021

V.Satheesh

... Petitioner

Vs.

Ashraf

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the entire records in respect of the judgment passed by the learned Principal Sessions Judge, Vellore dated made in C.A.No.53 of 2018 dated 25.09.2019 and set aside the same and acquit the appellant by allowing the above criminal revision.

For Petitioner : Ms.T.Sreelekha

For Respondent : Ms.K.Meena, Legal Aid Counsel



ORDER

The respondent as complainant filed a private complaint against the petitioner/accused for offence under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.676 of 2011 before the learned Judicial Magistrate, Fast Track Court, Vellore (trial Court). The trial Court by judgment dated 26.12.2011 dismissed the complaint and acquitted the petitioner/accused. Challenging the same, the respondent/complainant preferred an appeal before the learned Principal Sessions Judge, Vellore (lower appellate Court) in Crl.A.No.53 of 2018 and the same was allowed on 25.09.2019 setting aside the judgment of the trial Court and convicted the petitioner for offence under Section 138 of Negotiable Instruments Act, 1881 and directed to pay twice the cheque amount of Rs.5,00,000/- to the respondent/complainant in default to undergo Simple Imprisonment for three months. Against which, the present criminal revision case filed by the petitioner/accused.

2.Despite service of notice and the respondent's name printed in the cause list, no representation for the respondent either in person or by any counsel. Hence, this Court by order dated 30.08.2024 appointed Ms.K.Meena as Legal Aid Counsel for the respondent.



3. Gist of the case is that on 20.03.2009 the petitioner borrowed a sum of Rs.2,50,000/- on the promise that the same will be returned within a period of two months with interest @ 24%. At that time, the petitioner issued a cheque (Ex.P1) bearing No.478872 dated 20.05.2009 drawn on ICICI Bank, Vellore Branch for a sum of Rs.2,50,000/-. When the cheque presented for collection on 06.06.2009, the same returned with an endorsement 'Insufficient Funds'. Thereafter, legal notice issued on 15.06.2009 but the petitioner neither paid the cheque amount nor sent any reply. Following the statutory provisions the respondent/complainant filed a private complaint before the Trial Court under Section 138 of Negotiable Instruments Act, 1881. During trial, the complainant examined himself as PW1 and marked Exs.P1 to P5. The petitioner/accused examined two witnesses DW1 and DW2 and marked Exs.D1 & D2. The Trial Court after full fledged trial finding that the complainant failed to prove the case against the accused acquitted the petitioner/accused from the above case. Against the acquittal, the respondent/complainant filed an appeal and the Lower Appellate Court reversed the acquittal and convicted the petitioner/accused as stated above. Against which, the present revision is filed.



4.The contention of the petitioner is that the petitioner never borrowed any amount from the respondent/complainant and the petitioner earlier availed vehicle loan from Dhanalakshmi Finance, at that time, he gave the cheque (Ex.P1) as security for the vehicle loan. The petitioner defaulted in making payment for the vehicle loan and the vehicle was seized and recovered by the Financier. Thereafter, the cheque, which was given as security, misused by the respondent, who is a stranger to the petitioner and projected false case. During cross examination of PW1, the same elicited. The Trial Court considering the same rightly acquitted the petitioner. But the Lower Appellate Court failed to look into the fact that it is for the complainant to prove *prima facie* case and thereafter, it is for the accused to rebut the presumption. On the contrary, the lower appellate Court held that the accused failed to rebut the statutory presumption of Sections 118 and 139 of Negotiable Instruments Act, 1881 and convicted the petitioner.

5.Learned counsel for the petitioner further submitted that the respondent admits that on 20.03.2009 he gave hand loan of Rs.2,50,000/- to the petitioner on agreement that within two months the petitioner would repay the loan with interest. After two months, the petitioner failed to pay



the interest and principal, hence, on 20.05.2009 the petitioner had gone to the respondent's house and issued the cheque (Ex.P1). The respondent admits that he was running a fancy shop in Bazar Road, Vellore and the petitioner was a computer service engineer. Though the respondent claims that he had income of Rs.1 lakhs in the year 2009 and Rs.80,000/- in the year 2010, further he pledged his sister's jewels and gave loan to the petitioner, this explanation given by the respondent for the first time before the trial Court that to during cross examination. Nowhere in the statutory notice (Ex.P3), complaint or evidence, the respondent stated about his wherewithal that he had sufficient source of income to lend money to the petitioner. The respondent admits that the petitioner gave a complaint with North Police Station, Vellore on 16.06.2009 stating the respondent forcibly seized the petitioner's car along with one Sampath Pandian of Dhanalakshmi Finance. The respondent further admits that he gave undertaking to the Police that he would proceed against the respondent in a Court of law. The trial Court found that the cheque got dishonoured on 06.06.2009 but the statutory notice not issued till the Police complaint lodged by the petitioner on 16.06.2009. Further it was also brought to the notice of the trial Court that the petitioner is having another case in C.C.No.142 of 2011 in respect of



another cheque bearing No.478867 and the borrowal date is one and the same. Further it has been shown that on the same day, the petitioner borrowed around Rs.4 lakhs but with two different persons and the same counsel is prosecuting both cases. Hence, the trial Court took judicial notice of the same. Further, it is seen that the petitioner denied the relationship and transaction with the respondent and the respondent is a total stranger to him. The respondent is known to Dhanalakshmi Finance and he is a name lender. Considering these aspects, the trial Court rightly acquitted the petitioner. But the lower appellate Court not considering the evidence and materials in its entirety gave a finding that the petitioner not denied the issuance of cheque and its signature and statutory presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881 comes into play and the petitioner failed to get into the box to dislodge the statutory presumption, had convicted the petitioner is not proper.

6.Learned counsel further submitted that the petitioner examined two witnesses viz., Bank Managers and marked two documents *i.e.*, the bank statement of the petitioner and respondent (Exs.D1 & D2) to show that the respondent had no wherewithal at any point of time, he had no bank balance



of more than Rs.20,000/-. Such being the position, the lower appellate Court finding that merely because the respondent has no bank balance, it does not mean he could not give loan of Rs.2,50,000/- to the petitioner and setting aside the acquittal and convicting the petitioner, is not proper. In view of the above, the conviction to be set aside and the revision to be allowed.

7.Learned counsel for the respondent/complainant submitted that the petitioner approached the respondent on 20.03.2009 and obtained hand loan of Rs.2,50,000/- for his urgent requirement and promised to pay 25% interest and to return back the principal within two months. Since the petitioner failed to pay the interest, the respondent requested the petitioner to repay the entire loan amount. On 20.05.2009, the petitioner issued a cheque drawn on ICICI Bank for Rs.2,50,000/-. When the said cheque presented for collection, the same returned for the reason “funds insufficient” through bank memo (Ex.P2) dated 06.06.2009, thereafter, statutory notice (Ex.P3) issued and the same was received by the petitioner (Ex.P5). Learned counsel further submitted that the petitioner examined two witnesses *viz.*, Bank Managers and marked two exhibits *i.e.*, statement of bank account of petitioner and respondent. Though a detailed cross examination was done



by the petitioner projecting a case that the respondent in support of Dhanalakshmi Finance seized the petitioner's vehicle and Police complaint lodged, thereafter, the cheque which was given to Dhanalakshmi Finance, misused by the respondent and false complaint lodged, but this line of cross examination would confirm that the petitioner was a defaulter not only failed to pay the respondent, but also to Dhanalakshmi Finance. In this case, the petitioner not denied the issuance of cheque (Ex.P1) and his signature. The trial Court on wrong appraisal of evidence and materials, acquitted the petitioner. But the lower appellate Court on proper analysis of evidence and materials rightly held that the petitioner not denied the cheque (Ex.P1) and the signature and statutory presumption under Section 118 & 139 of Negotiable Instruments Act, 1881 comes to play and further held that the trial Court heavily relied on the suggestions put to the witnesses not considering the evidence in its entirety along with statutory presumption. Though the Bank Manager/DW2 stated that there was no sufficient balance, but the specific case of the respondent is that he had money with him in cash and the respondent pledged his sister's jewels and gave loan to the petitioner with interest and there was no bank withdrawal. Considering all these aspects, the lower appellate Court rightly convicted the petitioner. Hence,



the revision is liable to be dismissed.

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8.Considering the submissions and on perusal of the materials, it is seen that it is projected that on 20.03.2009 the petitioner borrowed a sum of Rs.2,50,000/- on the promise that the same would be returned within a period of two months with interest @ 24%, in discharge of liability, the petitioner issued a cheque (Ex.P1) bearing No.478872 dated 20.05.2009 drawn on ICICI Bank, Vellore Branch for a sum of Rs.2,50,000/-. It is strange to see that at the time of loan, no document or any cheque collected and the cheque (Ex.P1) was handed over by the petitioner three months thereafter is highly doubtful. The respondent admits that on 16.06.2009 the petitioner gave a complaint to North Police Station, Vellore complaining that his car seized by the respondent and one Sampath Pandian of Dhanalakshmi Finance since the petitioner defaulted to Dhanalakshmi Finance. The respondent further admits that he gave undertaking to the Police he would proceed against the petitioner in 138 case and returned the car to the petitioner.



9.The specific case of the petitioner is that the respondent is a total stranger and he took loan only from Dhanakshmi Finance and the cheque (Ex.P1) which was given to Dhanalakshmi Finance, misused by the respondent and at no point of time, the petitioner obtained any hand loan from the respondent. The trial Court took a judicial notice with regard to another loan taken on the same day and pendency of the case against the petitioner on similar grounds in C.C.No.142 of 2011.

10.The trial Court considered the evidence and materials in detail and found that the respondent had no wherewithal and not produced any contemporary documents to show he had sufficient amount and by pledging his sister's jewels gave loan of Rs.2,50,000/- to the petitioner. The respondent's sister not examined and no document produced to show pledging of jewels and accumulating a sum of Rs.2,50,000/-. Thus, the petitioner rebutted the presumption and also probablized his defence. But the appellant failed to take any steps to prove the case beyond all reasonable doubt.



11.In the case of ***Kumar Exports v. Sharma Carpets*** reported in (2009) 2 SCC 513, the Hon'ble Apex Court in paragraph No.21 held as follows:

“21.The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

12.In view of the above, this Court finds that the petitioner by examining defence witnesses, marking exhibits and cross examining the respondent, rebutted the presumption and probablized his defence. Once such rebuttal evidence is adduced and considered by the Court, the evidential burden shifts back to the complainant and thereafter, the presumptions under Sections 118 & 139 of Negotiable Instruments Act,



1881 will not again come to the complainant's rescue.

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13.The Hon'ble Apex Court as well as this Court time and again held that when two views possible unless there is perversity and gross miscarriage of justice, the judgment of acquittal not to be disturbed. On proper appreciation of evidence and materials, the trial Court rightly acquitted the petitioner and dismissed the complaint, which needs no interference of this Court. The lower appellant Court had merely gone on the statutory presumption, but not considered the evidence and materials in totality.

14.In view of the above, this Criminal Revision Case stands allowed. The judgment dated 25.09.2019 in Crl.A.No.53 of 2018 passed by the learned Principal Sessions Judge, Vellore is set aside and the judgment of acquittal dated 26.12.2011 in C.C.No.676 of 2011 passed by the learned Judicial Magistrate, Fast Track Court, Vellore is restored and confirmed. The petitioner is acquitted from all charges. Consequently, connected miscellaneous petition is closed.



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15.This Court appreciates Ms.K.Meena, Legal Aid Counsel for the respondent for her meticulous arguments. The State Legal Services Authority is directed to pay the necessary fee to the Legal Aid Counsel.

19.02.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Principal Sessions Judge,
Vellore.
- 2.The Judicial Magistrate,
Fast Track Court, Vellore.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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