IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-12-2025

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL RC No. 453 of 2022

K.Eswaran
S/o Kaliannan,
Sakthivel Illam,
Sakthinaickenpalayam,
Tiruchengode Taluk,
Namakkal District.

Petitioner(s)

Vs

P.Kandasamy
S/o Ponnusamy,
1/4, Privu Road,
Kumaramangalam Post,
Tiruchengode Taluk,
Namakkal District.

Respondent(s)

For Petitioner(s): Mr. N.Manoharan

For Respondent(s): Ms.Vrindha
LEGAL AID COUNSEL
FOR RESPONDENT (VIDE
ORDER DATED 16.10.2025)

ORDER

The petitioner/accused was convicted by the trial Court on a complaint filed by the respondent/complainant under Section 138 of NI Act in STC No.105 of 2014 and sentenced to undergo six months' simple imprisonment and directed to pay the cheque amount of Rs.5,00,000/- as compensation. Aggrieved against the same, the petitioner preferred appeal in C.A.No.43 of 2021. The learned Sessions Judge, by judgment dated 25.02.2022, dismissed the appeal, confirming the conviction and sentence of the trial Court.

2.The gist of the case is that the petitioner/accused and the respondent /complainant both relatives and friends. The petitioner doing textile business in the name of K.S.Tex. On 19.03.2014, the petitioner borrowed a sum of Rs.5,00,000/- from the respondent as hand loan for his family and business expenses. In discharge of the said liability, the petitioner issued a post-dated cheque dated 19.04.2014 drawn on City Union Bank for Rs.5,00,000/-. When the cheque was presented with the respondent's bank Punjab National Bank, on 19.04.2014, it was returned on 22.04.2014 for the reason funds insufficient. Thereafter, statutory notice issued to the petitioner on 05.05.2014 and the same returned on 07.05.2014 with endorsement "refused". Subsequently, the complaint filed on 03.07.20214 before the trial Court.

3.The respondent examined himself as PW1 and marked Exs.P1 to P4. The petitioner not examined any witnesses but marked one document Ex.D1. The trial Court finding the case proved against the petitioner convicted him. The appellate Court confirmed the conviction and sentence of the trial Court.

4.The learned counsel for the petitioner submitted that the petitioner and the respondent both relatives and friends. The petitioner used to borrow money from the complainant from the year 2003 to 2013 for his weaving business. During the said period, several cheques were discounted and amounts were collected. They were having regular money transactions. The respondent started demanding huge amount as interest, which was refused. Using a cheque issued for an earlier chit transaction, the respondent filled the cheque, misused the same and filed the present complaint. The cheque Ex.P1 was not issued in discharge of any liability.

5.The respondent/complainant admit long relationship with the petitioner. Further, he admits receiving Rs.90,000/- towards interest, confirmed by Ex.D1. He further submitted that during the period from October to December, 2013 i.e. cheque Nos.001632 to 001637 were utilised after 2013, there was no bank transactions. The cheque in this case Ex.P1 bearing cheque No.001528 dated 22.04.2014 relates to a later period, thus Ex.D1 clearly establishes that cheques issued during 2013 transactions completed earlier, and Ex.P1 a earlier cheque is presented in the year 2014, which defies the normal business conduct.

6.It is further submitted that the complainant admit that he is not an income -tax assessee and that his yearly income is less than Rs.3,00,000/-. Hence, he could not have given a loan of Rs.5,00,000/-. This fact not considered by both the Courts below.

7.The learned counsel appearing for the respondent/complainant submitted that in this case, the petitioner and the respondent both relatives and friends is not denied. According to the petitioner, he had borrowed money from the respondent during the period from 2003 to 2013 and had also repaid the loans. Though several suggestions were put forth to project that the security cheque was misused and a case was filed, both the Courts found that the petitioner failed to probabilise his defence and complaint proved his case and convicted the petitioner.

8.Further, found that the petitioner not denied issuance of the cheque Ex.P1 or his signature. Even at the initial stage when questioned under Section 251 or after the evidence at the stage of 313 Cr.P.C, the petitioner not denied the issuance of cheque and his signature. The statutory presumption under Sections 118 &139 proved and it is for the petitioner/accused to probalise his defence to show cheque was not for discharge of any liabilities in this case respondent failed.

9.Though elaborate cross examination conducted by the petitioner and several suggestions put forth but all were denied. The petitioner was unable to probabilise his defence. The trial Court, found that the respondent/complainant proved his case beyond reasonable doubt, convicted the petitioner and the lower appellate Court confirmed the same.

10.In support of his contention, the learned counsel for the respondent relied upon the decision of the apex Court in ***Rajesh Jain Vs. Ajay Singh*** reported in ***2023 LivelLaw (SC) 866,*** more particularly to paragraph No. 54, wherein the apex Court had clearly held that when the case of the complainant has been consistent and when there is no denial of signature and issuance of the cheque, the statutory presumption comes to his favour and once the ingredients have been proved, the Courts below have no other option except to convict the petitioner. He further submitted that in this case, the statutory notice was received by the petitioner but he failed to send any reply. Thus, the Courts below rightly convicted.

11.At this stage, the counsel for the petitioner submitted that at the time of admission of the revision, the petitioner had filed suspension of sentence and exemption from surrender in Crl.M.P.Nos.4705 and 4706 of 2022 and this Court, by order dated 07.04.2022, granted exemption from surrender and directed the petitioner to deposit 50% of the cheque amount I.e. Rs.2.50,000/- to the credit of the account before trial Court in STC No.105 of 2014.

12.The learned counsel for the petitioner seeks small accommodation to verify whether the petitioner had paid 50% of the cheque amount and to report about the same and also with regard to the balance amount.

13.List the matter under the caption “for orders” on 19.12.2025.

15-12-2025

sms
To

1.P.Kandasamy
S/o Ponnusamy, 1/4, Privu Road,
Kumaramangalam Post, Tiruchengode
Taluk, Namakkal District.

M.NIRMAL KUMAR J.

sms

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