IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2026

CORAM:

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

Crl.O.P.No.8206 of 2023 and
Crl.MP.No.5219 of 2023

R.S.Aarthy ... Petitioner

Vs.

S.R.Radhakrishnan ... Respondent

Prayer:

Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the records relating to STC.No.1322 of 2022 pending on the file of the learned Judicial Magistrate, Dharapuram and quash the same.

For Petitioner : Mr.Mohan
for Mr.P.Dhanasekaran

For Respondent : Mr.M.Guruprasad

ORDER

This criminal original petition has been filed praying to quash the proceedings in STC.No.1322 of 2022 pending on the file of the learned Judicial Magistrate, Dharapuram.

2. The petitioner is the third accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act on the allegation that the second accused borrowed a sum of Rs.7,00,000/- from the respondent on 10.01.2021 for the purpose of the business of the first accused and had also executed promissory notes to the said sum and also agreed to pay the said sum with interest at the rate of 12% p.a. On 24.07.2022, when the respondent demanded to pay the loan amount, the second accused had issued a cheque for the said sum and the same was presented for collection. However, it was returned dishonoured for the reason 'kindly contact drawer drawee bank and please present again'. After causing statutory notice, the respondent lodged complaint and the same was taken cognizance by the trial court.

3. The learned counsel for the petitioner raised ground that the second accused alone borrowed the loan amount. Except her relationship as daughter of the second accused, she has nothing to do with the A1's partnership firm as alleged by the respondent. She is only a sleeping partner and she did not involve in the day to day affairs of the first accused partnership firm. She is neither signatory of the cheque nor she actively participated in the day to day affairs of the first accused partnership firm. Further, on perusal of the records and also on the

submissions made by the learned counsel for the respondent, it is revealed that the cheque was returned for the reason ‘kindly contact drawer drawee bank and please present again’. Whether it attracts the offence under Section 138 of NI Act, to be considered in this case.

4. The cheque was not returned dishonoured for the reason ‘insufficient funds’, whereas the cheque was returned directing the respondent to contact drawer of the cheque and drawee bank and to present again. Further, the respondent did not even contact the drawer and the bank and straight away caused statutory notice and lodged complaint. It is relevant to rely upon the provisions under Section 138 of NI Act, that reads as follows:

> ***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 provisions of this*

Act, be punished with imprisonment for a term which may be extended to two years, 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 thirty 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.

5. It is relevant to rely upon the order of this Court passed in Crl.O.P.No.10406 of 2019 dated 24.07.2019 in the case of ***Sathiyamurthi Vs. Kesava Narayanan*** and relevant paragraphs are extracted hereunder:-

"5. The only ground that has been raised by the learned counsel for the petitioner is that, the cheque has been returned by the bank by requesting the respondent to contact the Drawer - Drawee Bank and present it again. The respondent without complying with the requisite has proceeded to file the complaint for an offence under Section 138 of the Negotiable Instrument Act. It is true that the Hon'ble Supreme Court of India has held that, for whatever reasons a cheque is returned, a complaint can be maintained under Section 138 of the Negotiable Instruments Act and if such a purposeful interpretation is not given to the provision, it will defeat the beneficial legislation which wants to penalize the persons who fail to honour a cheque, after issuing the same.

6. However, in the facts of the present case, the concerned bank has not returned the cheque on the ground of defect. It has been returned by directing the respondent to contact a concerned bank and present it again. In short, this endorsement cannot be held to be dishonour of cheque. In the considered view of this Court, the respondent without complying with the requirements of the bank, ought not to have proceeded to file a complaint under Section 138 of the Negotiable Instruments Act. The Court below went wrong in taking cognizance of the complaint."

6. Thus it is clear that a cheque 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 under Section 138 of NI Act. In the case on hand, the cheque was returned for the reason 'kindly contact drawer, drawee bank and present again'. In fact the respondent also did not approach the accused and failed to re-present the same. Further, why the bank directed the respondent to contact drawer bank, there is absolutely no reason. Further, the second limb of the return says the respondent was directed to re-present again. Therefore, the offence under Section 138 of NI Act is not made out as against not only the petitioner and also the other accused persons. Though the other accused persons did not file any quash petition, in order to meet the ends of of justice, this Court is inclined to quash the entire proceedings since no offence is made out under Section 138 of NI Act against any of the accused persons.

7. Therefore, the entire proceedings in STC.No.1322 of 2022 pending on the file of the learned Judicial Magistrate, Dharapuram, is quashed in respect of all the accused persons and this criminal original

petition stands allowed. Consequently, connected miscellaneous petition is closed.

26.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The learned Judicial Magistrate, Dharapuram

Crl.O.P.No.8206 of 2023

26.03.2026