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CrI.R.C.No.805 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2026
PRONOUNCED ON : 10.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.805 of 2022

A.Gopal

... Petitioner

Vs.

1.R.Thangapandi

2.State rep. by
The Public Prosecutor,
Coimbatore District – 641 018.

... Respondents

Prayer: Criminal Revision filed under Sections 397 and 401 of Cr.P.C., to set aside the order passed in CrI.A.No.95 of 2019 dated 25.04.2022 by the IV Additional District and Sessions Judge at Coimbatore confirming the conviction and sentence of the petitioner to undergo simple imprisonment for a period of six months and also to pay a compensation of Rs.5,00,000/- with interest at 6% per annum in default to undergo a sentence of simple imprisonment for three months passed in C.C.No.265 of 2014 dated



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13.02.2019 by the Judicial Magistrate, Fast Track No.2 at Magisterial Level,
Coimbatore and to set aside the same.

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For Petitioner : Mr.T.Sundaravadanam
For R1 : Mr.S.T.Raja
for M/s.Omsairam Advocates
For R2 : Mr.S.Udayakumar
Government Advocate (Crl. Side)

ORDER

The petitioner/accused on a complaint filed by the respondent/complainant under Section 138 of Negotiable Instruments Act (NI Act) faced trial in C.C.No.265 of 2014. The Trial Court by judgment dated 13.02.2019 convicted the petitioner and sentenced to undergo six months simple imprisonment and to pay the cheque amount of Rs.5,00,000/- with 6% interest as compensation, in default, to undergo, three months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal in C.A.No.95 of 2019. The Lower Appellate Court by judgment dated 25.04.2022 dismissed the appeal confirming the conviction and sentence of the Trial Court. Against which, the present revision filed.



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2.For the sake of convenience, the parties are referred to as complainant and the accused.

3.The accused is known to the complainant. The accused approached the complainant and requested hand loan of Rs.5,00,000/- for his urgent requirement and promised that the said amount will be repaid within a period of three months. On this assurance, Rs.5,00,000/- hand loan was given on 12.04.2013. Thereafter, in discharge of the said liability, a cheque bearing No.025127 dated 27.08.2013 drawn on HDFC Bank, Vadavalli Branch for Rs.5,00,000/- was issued by the petitioner. This cheque was deposited by the respondent in his bank viz., Indian Overseas Bank, Vadavalli Branch on 27.08.2013 and it was returned for the reason “Insufficient funds”. Thereafter, statutory notice issued on 14.09.2013 received by the petitioner on 20.09.2013. The petitioner neither paid the cheque amount nor sent any reply. Thereafter, complaint filed. The complainant examined himself as PW1 and marked four documents, Ex.P1 to Ex.P4. Ex.P1 is the cheque, Ex.P2 is the bank memo, Ex.P3 is the statutory notice and Ex.P4 is the postal acknowledgment card. The accused



examined two witnesses, DW1/father of the accused and the accused himself as DW2, but not marked any documents. On conclusion of trial, the Trial Court convicted the petitioner, confirmed by the Lower Appellate Court.

4.The contention of the learned counsel for the petitioner is that the respondent admits he is having a cellphone shop and when suggested he was into finance business, charging exorbitant interest and police complaint pending against him, he denied the same. According to the petitioner, the respondent is running finance business charging exorbitant interest. The respondent admits that Rs.5,00,000/- is a huge amount to him. Thus, how the respondent had mobilized Rs.5,00,000/- in cash and gave loan to the petitioner is highly doubtful. The respondent admits that neither in the statutory notice nor in the complaint or in his evidence he has given details of the date of loan, how he was having Rs.5,00,000/- cash in hand and when the demand for repayment of the loan was made, apart from the cheque/Ex.P1, there is no supporting document for such a huge loan. The respondent admits he has not filed any income tax returns for the particular period. Further, the specific defence of the petitioner is that the petitioner's father borrowed a sum of Rs.50,000/- from the respondent and since his



father had no bank account, he requested the petitioner to issue a cheque.

Hence, the petitioner gave a signed blank cheque which was misused and projected as though Rs.5,00,000/- borrowed. In fact, the petitioner's father repaid the loan within a period of 10 months and when requested for return of cheque, the respondent gave vague replies and finally filed the above case. To prove the same, the petitioner examined his father as DW1 and also examined himself as DW2 giving explanation that the cheque for Rs.50,000/- misused and this Rs.50,000/- loan repaid. The wherewithal of the respondent questioned but the Trial Court merely gone on the statutory presumption under Sections 118 and 139 of NI Act finding that the petitioner not denied the issuance of cheque and his signature and not considering the attendant facts of the above case.

5.In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Apex Court in the case of ***Sri Dattatraya vs. Sharanappa*** reported in ***2024 INSC 586*** for the point that the Trial Court has to see whether there was valid existence of legally recoverable debt and the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Further, when the



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accused was able to cast a shadow of doubt on the case presented by the complainant, would be sufficient to show that the accused successfully rebutted the presumption stipulated by Section 139 of NIA Act and further, when the financial capacity of the creditor is raised on behalf of the accused and thereafter, the same is to be discharged by the complainant by cogent evidence. He further relied upon the judgment of High Court of Manipur at Imphal in the case of *Shri.Manoj Kumar Jain vs. Shri.Mahendra Kumar Jain (Crl.A.No.24 of 2023 dated 17.10.2025)*.

6.The learned counsel for the first respondent strongly opposed the petitioner's contention and submitted that the petitioner suffered two concurrent convictions. He further submitted that during trial, the respondent examined himself as PW1 and marked four documents. The petitioner neither denied the cheque nor his signature, but takes a defence that the cheque issued by the petitioner's father, who was examined as DW1 for the loan of Rs.50,000/-, petitioner's father was not having any bank account and the petitioner handed over his signed blank cheque to the respondent and this cheque is misused. Though the petitioner examined his father as DW1 and himself as DW2 to probabilize his defense, in this case, the petitioner failed



to produce any iota of proof to show that Rs.50,000/- taken as loan was repaid, what was the mode of repayment and no contemporary documents produced, except for the oral suggestion that loan repaid with interest which is the only bald explanation without any materials. Further, the Trial Court found despite receipt of the statutory notice/Ex.P3, the petitioner not denied the transaction and sent any reply notice. Further, petitioner not informed his bank or lodged any police complaint for misuse of his cheque. The petitioner is running a mechanic shop, the respondent used to give his vehicle for service and they got acquainted. The petitioner requested loan for urgent needs and the respondent gave Rs.5,00,000/- as hand loan to the petitioner. The petitioner's defence considered by both Courts below and found to be unacceptable and found respondent proved the case beyond all reasonable doubt and the petitioner was rightly convicted.

7.In support of his contention, the learned counsel for the respondent relied upon the judgment of Apex Court in the case of ***Tedhi Singh vs. Narayan Dass Mahant*** reported in (2022) 6 SCC 735 for the point that it is the duty of the Trial Court to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in a given case the



accused had shown that the case of the complainant is in peril for the reason that the accused has established a probable defence. In this case, the accused failed to probable his defence.

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8.Considering the submissions made and on perusal of the materials, it is seen that in this case, Ex.P1/cheque was issued by the petitioner. The cheque and the signature not denied. Hence, statutory presumption under Sections 118 and 139 of NI Act come into play. The defence taken by the petitioner is that the petitioner's father DW1 taken a loan of Rs.50,000/- from the respondent and he repaid the loan after 10 months with interest, in total, Rs.70,000/-. Since his father had no bank account and petitioner gave his cheque as security. This cheque misused by the petitioner is the primary defence. DW1 and DW2 admit that both were together met the respondent at the time of taking the loan and handed over the cheque, hence issuance of cheque and signature not denied. Even after receipt of statutory notice, no steps taken to collect the security cheque. DW2 confirms that even after receipt of Statutory notice/Ex.P3, the petitioner not taken any steps to send reply notice denying the liability or the defence presently taken, informing the bank or lodging any police complaint for



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misuse of the cheque. The Trial Court considering all these aspects and finding that even for repayment of Rs.50,000/- loan except for suggestion, no materials produced to show that the amount of Rs.50,000/- with interest repaid. Thus, finding that the petitioner failed to probabalize his defence and the complainant proved the case, convicted the petitioner. The Lower Appellate Court on independent assessment had rightly confirmed the conviction. This court finds no reason to interfere with the judgment of both Courts below.

9.In the result, the Criminal Revision stands dismissed.

10.The Trial Court is directed to secure the petitioner for sufferance of sentence. In the event the petitioner comes forward to return the cheque amount and to compound the offence, the same can be entertained by the Trial Court and the case can be compounded.

10.04.2026

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

- 1.The IV Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track No.2 at Magisterial Level,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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