IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-03-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL RC No. 932 of 2022

Prasanth B.Choudhary
S/o. Balwant Vishnu Chaudhary,
Flat No.1, Malhar Residency,
Sector No.27, Plot No.303.
Nigdi Prahikaran, Pune 411044,
Maharashtra.

..Petitioner

Vs

G.R.Ashok
S/o. Mr.Rama Prasad.
Proprinter, Vinayak Traders,
No.140, Old No.947,
Poonamallee High Road,
Chennai 600084.

..Respondent

Prayer : Criminal Revision is filed under Section 397(1) read with 401 of Code of Criminal Procedure to set aside the conviction and sentence and compensation imposed by the Metropolitan Magistrate FTC I, Egmore at Allikulam, Chennai in C.C.No.1869 of 2012 dated 20.04.2021 and confirm by the V Additional Sessions Judge, (FAC) I Additional Sessions Court in C.A.No.133 of 2021 dated 29.03.2022.

For Petitioner: Mr.Arun Mathew.S.

For Respondent: Mr.K.P.Sathishkumar

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 29.03.2022 passed in C.A.No.133 of 2021 on the file of the V Additional Sessions Judge (FAC), I Additional Sessions Court, Chennai, thereby confirming the order of conviction and sentence imposed in C.C.No.1869 of 2012, dated 20.04.2021, on the file of the Metropolitan Magistrate, FTC-I, Egmore at Allikulam, Chennai, for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that a Clearing and Forwarding Agreement dated 28.04.2010 was entered into between the petitioner and the respondent. Pursuant to the said agreement, the petitioner obtained a sum of Rs.25,00,000/- as security deposit from the respondent by way of cheque, which was encashed by the petitioner. As per the agreement, the respondent discharged his duties by obtaining necessary licences and supplying the products shipped by the petitioner herein to various customers as per his mandate. While being so, to the shock and surprise of the respondent, he came to know that the petitioner was not a franchisee of M/s.Cipla and when he confronted the petitioner herein, the petitioner admitted that there existed a legal dispute with M/s.Cipla.

Therefore, the petitioner assured the respondent that the Clearing and Forwarding Agreement would be terminated and that the security deposit, along with commission and interest, would be returned. Accordingly, the agreement was terminated and the petitioner issued a cheque for a sum of Rs.25,00,000/- towards return of the security deposit and also promised to settled the remaining dues towards commission and interest within a period of one month. However, when the said cheque was presented for collection and the same was returned with an endorsement “Funds Insufficient”. After causing a statutory notice, the respondent filed the present complaint.

3. On the side of the respondent, he had examined P.W.1 and marked as Ex.P1 to P11. On the side of the petitioner, he had examined D.W.1 and marked Exs.D1 to D6.

4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay the cheque amount as compensation. Aggrieved by the same, the petitioner preferred an appeal. The Appellate Court, by order dated 29.03.2022, dismissed the appeal and confirmed the order of conviction and sentence imposed by the Trial Court. Hence, the present Criminal Revision Case has been filed.

5. The learned counsel appearing for the petitioner submitted that, after receipt of the statutory notice, the petitioner had sent a reply notice, wherein he had categorically denied any due from the petitioner. Therefore, according to the petitioner, the cheque was not issued for any legally enforceable debt and the same was issued only for security purpose. Though the petitioner had certain dues with M/s.Cipla, the same had no connection whatsoever with the respondent. Further, the respondent also categorically admitted that certain dues had already been settled, and despite the same, the respondent had proceeded to present the cheque without any subsisting liability. The cheque was issued only as a security purpose for the supply of goods and the same were misused by the respondent. He also submitted that the Trial Court awarded compensation to the tune of Rs.47,50,000/- without any proper justification.

6. Per contra, the learned counsel for the respondent submitted that though the petitioner had taken a specific stand that the goods, which were supplied by the petitioner, were still lying the respondent even before the expiry of the goods supplied by the petitioner. However, the respondent had sent a communication to the petitioner seeking instructions for returning the goods, especially after the termination of the Clearing and Forwarding Agreement. On receipt of such communication, the petitioner furnished an incorrect address, and as such, the respondent was not able to return the goods, even before the

medicines expired. Therefore, the contention of the petitioner that the cheque was issued only for security purposes is not tenable. The learned counsel further submitted that the cheque was issued by the petitioner towards repayment of the security deposit amount and not merely as a security instrument.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The petitioners, admittedly, received a sum of Rs.25,00,000/- by way of cheque towards the security deposit from the respondent and entered into a Clearing and Forwarding Agreement. Thereafter, the respondent came to know that the petitioner was never a franchisee of M/s.Cipla and that the respondent conferred by the petitioner. The petitioner has a legal dispute with M/s.Cipla. Further, the petitioner informed the respondent that the Clearing and Forwarding Agreement had been terminated and assured to return the security deposit along with commission and interest. In order to repay the said amount, the petitioner issued a cheque and the same was presented for collection. However, the said cheque was returned dishonoured with an endorsement "Funds Insufficient". Hence, proceedings were initiated under Section 138 of the Negotiable Instruments Act. On receipt of the statutory notice, the petitioner issued a reply notice, which was marked as Ex.P9. A perusal of the

Ex.P9 reveals that there is absolutely not even a whisper about the goods, which were supplied by the petitioner, are within custody of the respondent and they failed to return the value of the goods. Further, the petitioner admitted the signature and also issuance of cheque. Therefore, the respondent had categorically discharge his initial burden as contemplated under Section 138 of the Negotiable Instruments Act.

9. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***(2014) 12 SCC 539*** in the case of ***Indus Airways Private Limited and others Vs. Magnum Aviation Private Limited and another,*** in which the Hon'ble Supreme Court held as follows :

> *"9.The Explanation appended to Section 138 explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its*

cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability."

10. The above case is not applicable to the case on hand, for the simple reason that, in the said case, the cheque was issued as an advance for the supply of goods. However, the complainant failed to supply any goods and as such, the cheque was not issued for any legally enforceable debt. In the case on hand, admittedly, the respondent was supplied the goods to the petitioner. The petitioner received a sum of Rs.25,00,000/- as a security deposit. After termination of the contract, the petitioner is bound to return the security deposit. Therefore, the cheque was issued for discharging the legally enforceable debt. It cannot be said that the cheque was issued for security purpose, that too when it was issued by the petitioner in connection with the transaction involving supply goods to the respondent herein. Therefore, both the Trial Court as well as the Appellate Court rightly convicted the petitioner.

11. In view of the above, this Court finds no infirmity or illegality in the Judgment dated 29.03.2022 passed in C.A.No.133 of 2021 on the file of the V Additional Sessions Judge (FAC), I Additional Sessions Court, Chennai,

confirming the order of conviction and sentence imposed in C.C.No.1869 of 2012, dated 20.04.2021 on the file of the Metropolitan Magistrate, FTC-I, Egmore at Allikulam, Chennai. Accordingly, this Criminal Revision Case stands dismissed.

23-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

LPP

To

1.The I Additional Sessions Court,
City Civil Court,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.I,
Egmore at Allikulam,
Chennai.

G.K.ILANTHIRAIYAN J.

LPP

CRL RC No. 932 of 2022

23-03-2026