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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-10-2026

CORAM

THE HON'BLE MR.JUSTICE SHAMIM AHMED

CRL RC No. 735 of 2021

and

CRL MP Nos.11339 & 11340 of 2021

CNR: {HCMA011381082021}

Perumal
S/o. Kolandai Chetti , 9a Ward No.4, Karuppannan
Veedhi, Kannankurichi Post, Salem 636 008.

..Petitioner(s)

Vs

Sureshkumar
S/o. P.Palanisamy, D.No.371/1, Vijayaraj Nagar,
Sivadapuram Post, Salem 636 307.

..Respondent(s)

Prayer: To call for the records and set aside the judgment in Crl.A.No.50 of 2019 dated 02.11.2020 passed by the Hon'ble I Additional District and Sessions Judge, Salem and confirming Judgment made in STC No.61 of 2018 dated 27.11.2018 passed by the Learned Special Judicial Magistrate Court (Land Grabbing Cases), Salem, and set the petitioner at liberty and thus render justice.

.

For Petitioner(s): No appearance

For Respondent(s): Mr. M Dharwish for Mr. A.Sathasivam

ORDER

This Criminal Revision Case has been filed seeking to set aside the judgment dated 02.11.2020 passed in Crl.A.No.50 of 2019 on the file of the Learned I Additional District and Sessions Judge, Salem, confirming the

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judgment of conviction and sentence dated 27.11.2018 passed in S.T.C.No.61 of 2018 on the file of the Learned Special Judicial Magistrate (Land Grabbing Cases), Salem.

2.When the matter was taken up in the revised call today, there was no representation on behalf of the petitioner. Mr.M.Dharwish, learned counsel, appeared on behalf of the respondent/complainant. It is pertinent to note that this Court, vide order dated 25.11.2021 passed in Crl.M.P.Nos.11339 and 11340 of 2021 in Crl.R.C.No.735 of 2021, had passed the following order:

> *"The Criminal Miscellaneous Petition Crl.M.P.No.11339 of 2021 has been filed by the petitioner/accused, seeking suspension of sentence of imprisonment and Crl.M.P.No.11340 of 2021 has been filed seeking to exempt the petitioner from surrendering to undergo sentence of imprisonment, imposed on the petitioner in conviction Judgment made in Crl.A.No.50 of 2019, dated 02.11.2020 passed by the Hon'ble I Additional District and Sessions Judge, Salem confirming Judgment made in S.T.C.No.61 of 2018 dated 27.11.2018 passed by the Learned Special Judicial Magistrate Court (Land Grabbing Cases), Salem and enlarge the petitioner on bail pending disposal of the Criminal Revision Case.*
>
> *2.In and by both the impugned judgments, the petitioner/accused was convicted for the offence under Section 138 of the Negotiable Instruments Act read with*

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Section 200 of the Criminal Procedure Code and sentenced to undergo three months Simple Imprisonment.

3.According to the learned counsel for the petitioner/accused, there are arguable points available in the Criminal Revision Case, which is not likely to be taken for final hearing in the near future and the petitioner/accused has got a fair chance of succeeding in the Criminal Revision Case and hence, the substantive sentence imposed against the petitioner/accused may be suspended and the petitioner may be exempted from surrendering before the Trial Court.

4.This Court heard the learned counsel for the petitioner and also perused the materials placed on record.

5.Earlier, this Court by order dated 09.11.2021, has granted interim suspension of sentence and exemption from surrendering till 25.11.2021. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of exemption from surrender before the Trial Court, suspension of sentence and bail are granted on the following conditions:

(a) The petitioner/accused ***shall deposit 50% of the cheque amount*** *(Rs.5,00,000/-), namely, Rs.2,50,000/- (Rupees Two*

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Lakhs Seventy Five Thousand Only) before the Trial Court, within two weeks from the date of receipt of a copy of this order and on such deposit being made, the Trial Court shall redeposit the said amount in a fixed deposit account in any nationalized bank, so that the amount accrues interest. The disbursal of this amount shall be decided at the culmination of the Criminal Revision Case. Thereafter, the petitioner/accused is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Special Judicial Magistrate (Land Grabbing Cases), Salem.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the revision petition and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.

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(d) On the failure of the petitioner/accused depositing the said amount, it is open to the Trial Court to commit the petitioner/accused into custody for undergoing the sentence.

6.These Criminal Miscellaneous Petitions stand ordered accordingly.

7.Notice to the respondent returnable on 16.12.2021. Private notice is also permitted. Post the matter on 16.12.2021 for reporting compliance."

3.Thereafter, when the matter was taken up for hearing on 16.12.2021, this Court passed the following order:

"This Court, on 25.11.2021, while granting suspension of sentence and exemption from surrendering, has passed the conditional order, directing the petitioner/accused to deposit 50% of the cheque amount before the Trial Court within a period of two weeks from the date of receipt of a copy of that order.

2.On failure to deposit the said amount, this Court had directed the Trial Court to commit the petitioner/accused into custody for undergoing sentence.

3.When the matter is taken up for hearing, it is reported by the learned counsel for the petitioner/accused that the conditional order has not been complied with, so far.

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4.Mr.A.Sadhasivam, learned counsel undertakes to file Vakalat for the respondent.

5.List the matter after four weeks."

4.Thereafter, the matter was listed on several occasions. On 19.10.2024, the learned counsel appearing for the petitioner sought time to file translated copies of the depositions of the witnesses and other connected documents, before advancing final arguments. The request was considered and time was granted. Subsequently, when the matter was listed on 18.12.2024, the learned counsel for the petitioner again sought time to file the translated copies of the judgment of the Trial Court and other connected documents, before the commencement of final arguments. Accordingly, time was granted.

5.Again, when the matter was listed on 23.01.2025, the learned counsel for the petitioner sought further time to comply with the order dated 18.12.2024 and to file the translated copies of the judgment of the Trial Court and other connected documents. Thereafter, when the matter was listed on 18.03.2026, the learned counsel appearing for the petitioner filed a memo dated 16.03.2026 seeking permission to withdraw his appearance on behalf of the petitioner.

6.Subsequently, when the matter was listed on 15.06.2026, this Court directed issuance of fresh notice to the petitioner, calling upon him to engage

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another counsel and proceed with the matter. As per the office report dated 23.07.2026, the said Court notice was duly served on the petitioner in person, thereby informing him about the pendency of the present Criminal Revision Case and the requirement to appear before this Court.

7.However, when the matter was taken up on 27.07.2026, there was no representation on behalf of the petitioner, either through counsel or in person. The learned counsel for the respondent was present. Considering the fact that the petitioner had already been served with notice and to afford him one final opportunity to prosecute the revision petition, this Court passed the following order:

> *"Inspite of the order passed by this Court dated 15.06.2026, no one appeared on behalf of the petitioner. Even the petitioner also not present before this Court to argue this case.*
>
> *2.Learned counsel for the respondent is present.*
>
> *3.To give one last opportunity to the petitioner to argue this case, put up this case on 29.10.2026.*
>
> *4.In the meantime, learned counsel for the respondent may file counter affidavit, if so desire, after obtaining copies from the Registry on usual charges."*

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8.Today, when the matter is taken up for hearing, there is once again no representation on behalf of the petitioner, either in person or through counsel, despite the specific notice having been served on him and despite this Court having granted him a final opportunity to appear and advance his arguments. The learned counsel for the respondent is present. This Court has also perused the pleadings, the grounds raised in the revision petition and the judgments of the Courts below.

9.The brief facts leading to the filing of this revision petition are that the respondent/complainant initiated proceedings against the petitioner under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the petitioner borrowed a sum of Rs.5,00,000/- on 07.10.2015 on execution of a promissory note and agreed to repay the same. In order to discharge the said liability, the petitioner issued a cheque bearing No.041810 dated 03.04.2016 for a sum of Rs.5,00,000/-, drawn on Tamil Nadu Mercantile Bank, Kannankurichi Branch, Salem. The said cheque was presented for collection on 04.04.2016 and was returned unpaid with the endorsement "Funds Insufficient". Thereafter, the complainant issued a statutory demand notice dated 25.04.2016, which was served on the petitioner on 26.04.2016. Despite receipt of the statutory notice, the petitioner failed to pay the cheque amount, resulting in the filing of the complaint.

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10.The complaint was taken on file in S.T.C.No.61 of 2018 on the file of the Learned Special Judicial Magistrate (Land Grabbing Cases), Salem. During trial, the complainant examined himself as PW1 and his father-in-law Krishnamoorthy as PW2 and marked five documents as Ex.P1 to Ex.P5. On the side of the defence, two witnesses were examined as DW1 and DW2, and no documents were marked. Upon consideration of the oral and documentary evidence, the Trial Court, by judgment dated 27.11.2018, found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo three months Simple Imprisonment.

11.Aggrieved by the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.50 of 2019 before the Learned I Additional District and Sessions Judge, Salem. The petitioner raised various grounds, contending that the judgments of the Courts below were contrary to law and the evidence available on record. It was specifically contended that there was no legally enforceable debt, that the evidence of PW2 was self-contradictory, and that the complainant had allegedly initiated another similar proceeding against the petitioner before another Court. It was further contended that the petitioner had rebutted the statutory presumption through the evidence of DW1 and DW2 and through the cross-examination of the complainant and his witness. However, the Learned Appellate Court, after considering the evidence and the grounds raised by the petitioner, dismissed the appeal on 02.11.2020, thereby confirming the

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conviction and sentence imposed by the Trial Court. Aggrieved by the concurrent judgments of the Courts below, the petitioner has preferred the present Criminal Revision Case.

12.This Court has carefully considered the grounds raised in the revision petition and perused the judgments passed by both the Courts below. The principal contention of the petitioner is that the complainant failed to establish the existence of a legally enforceable debt and that the petitioner had successfully rebutted the statutory presumption through the defence evidence and the cross-examination of the prosecution witnesses. However, the mere raising of such contentions, without demonstrating any patent illegality, perversity or material irregularity in the appreciation of evidence by the Courts below, cannot by itself constitute a ground for interference in the exercise of revisional jurisdiction.

13.It is well settled that once the execution of the cheque is admitted or proved, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the holder of the cheque. Though such presumptions are rebuttable in nature, the accused is required to raise a probable defence to rebut the same. The defence may be established even on the basis of the materials elicited during the cross-examination of the complainant and need not necessarily be proved by leading independent

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evidence. Nevertheless, the question as to whether the statutory presumption has been successfully rebutted is essentially a matter to be determined on the basis of the entire evidence and circumstances of each case.

14.In the present case, the Trial Court had the benefit of recording the evidence of PW1 and PW2, as well as DW1 and DW2, and had considered the rival versions before arriving at its conclusion. The Appellate Court, in turn, independently reassessed the evidence and confirmed the findings of the Trial Court. The contentions relating to the alleged contradictions in the testimony of PW2, the existence of another similar proceeding and the alleged rebuttal of the statutory presumption were grounds available to the petitioner before the Appellate Court. The petitioner has not demonstrated before this Court any specific patent illegality, perversity or jurisdictional infirmity warranting interference with the concurrent findings of the Courts below.

15.It is further relevant to note that this Court, on the specific request made on behalf of the petitioner, had granted suspension of sentence, exemption from surrendering and bail by order dated 25.11.2021, subject to the condition that the petitioner should deposit 50% of the cheque amount, namely Rs.2,50,000/-, before the Trial Court within two weeks from the date of receipt of a copy of the order. The said condition was imposed after considering the submissions made on behalf of the petitioner and as an equitable measure,

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pending disposal of the revision petition. However, even as on 16.12.2021, the learned counsel appearing for the petitioner reported that the conditional order had not been complied with. The petitioner has not produced any material before this Court to establish that the said deposit condition has subsequently been complied with.

16.Thus, the petitioner has failed to comply with the conditional order passed by this Court, despite the passage of several years. Further, the petitioner repeatedly sought time for filing translated copies of the depositions and judgments of the Courts below, but ultimately his counsel sought permission to withdraw his appearance. Even thereafter, this Court issued fresh notice to the petitioner, which was duly served on him in person, and granted one final opportunity to appear and prosecute the revision petition. Despite having full knowledge of the pendency of the present proceedings and the opportunity specifically granted by this Court, the petitioner has neither appeared in person nor engaged another counsel to advance his arguments.

17.The conduct of the petitioner, viewed cumulatively, clearly indicates that he has failed to take effective steps to prosecute the present revision petition. The revision petition is pending from the year 2021, and the petitioner has been afforded sufficient opportunities to place his case before this Court. In spite of the same, he has neither complied with the conditional deposit order nor

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availed himself of the final opportunity granted to advance arguments. This Court cannot indefinitely keep the proceedings pending at the instance of a petitioner who, despite due notice and sufficient opportunities, has failed to prosecute the case.

18.It is well settled that the jurisdiction of this Court under Sections 397 and 401 of the Criminal Procedure Code is supervisory and revisional in nature and is not intended to provide another opportunity for a complete re-appreciation of the evidence as in a regular appeal. In the absence of any patent illegality, perversity, material irregularity or jurisdictional error in the concurrent findings of the Courts below, this Court finds no valid ground to interfere with the conviction and sentence imposed upon the petitioner. Having considered the available materials on record, this Court is of the view that the petitioner has not made out any ground warranting interference in the present Criminal Revision Case.

19.Consequently, this Criminal Revision Case is **dismissed**. The judgment dated 02.11.2020 passed by the Learned I Additional District and Sessions Judge, Salem, in Crl.A.No.50 of 2019, confirming the judgment dated 27.11.2018 passed by the Learned Special Judicial Magistrate (Land Grabbing Cases), Salem, in S.T.C.No.61 of 2018, is hereby **confirmed**. There shall be no order as to costs.

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20.In view of the dismissal of the Criminal Revision Case, the interim order of suspension of sentence and exemption from surrendering granted by this Court, subject to the conditions imposed in the order dated 25.11.2021, shall stand **vacated**. The Trial Court is directed to take immediate and appropriate steps, in accordance with law, to secure the presence of the petitioner/accused to undergo the sentence imposed upon him. The Trial Court shall also take appropriate steps in accordance with law regarding the recovery of the cheque amount, if any, in terms of the judgment passed by it.

21.Let a copy of this order be sent by the Registry of this Court to the Court concerned for necessary compliance and information.

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

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To

1.The I Additional District and Sessions Judge, Salem.

2.The Special Judicial Magistrate Court (Land Grabbing Cases), Salem.

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SHAMIM AHMED, J.

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