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Crl.R.C.No.1113 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.03.2026

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

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R.Babu

... Petitioner

Vs.

P.Sivakumar

... Respondent

Prayer: Criminal Revision case is filed under Sections 397 and 401 of Cr.P.C to pass order for suspend the sentence dated 22.12.2020 passed in S.T.C.No.13 of 2018 by the Judicial Magistrate, Fast Track Court at Thiruvannamalai and confirmed the same by the Principal District and Sessions Court at Thiruvannamalai on 07.12.2021 in Criminal Appeal No.5 of 2021 until disposal of the above Criminal Revision.

For Petitioner : Mr. V.K. Sathyamurthy

For Respondent : Mr.B. Jawahar

ORDER

This Revision case is filed as against the Judgment passed in Criminal Appeal No.5 of 2021 dated 07.12.2021 on the file of Principal District and Sessions Court at Thiruvannamalai confirming the order passed by the learned Judicial Magistrate, Fast Track Court at Thiruvannamalai in S.T.C.No.13 of 2018 dated 22.12.2020.



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2. Brief facts necessary for the disposal of the case is as follows:

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2.1.The petitioner is an accused in the complaint lodged by the respondent for the offence under section 138 of the Negotiable Instruments Act. In the complaint, it has been stated that the petitioner used to borrow money from the respondent as hand loan frequently and used to repay the same as and when the petitioner gets funds. Whiles, as the amount borrowed by the accused spiraled to Rs.5,00,000/- on 02.07.2017 the complainant demanded for the repayment. Hence, the petitioner issued cheque to repay the said amount and when the cheque was presented for collection it was returned as “funds insufficient. Thereafter, the respondent issued legal notice and lodged a complaint and the same was taken cognizance by the Trial Court and the Trial Court framed the charges against the petitioner under Section 138 of the Negotiable Instruments Act..

2.2.Before the Trial Court, respondent herein/Sivakumar examined himself as P.W.1 and Documents Exs.P.1 to P.5 were marked and no witnesses and documents were marked on the side of the petitioner herein.



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2.3. On a perusal of the Oral and Documentary evidence the Trial

WEB COPY Court found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment U/s 255(2) of Cr.P.C and he was directed to pay a compensation of Rs.5,00,000/- i.e the amount due on the cheque to the complainant u/s 357(3) of Cr.P.C and on default of payment of compensation the accused was further sentenced to undergo two months simple imprisonment. Challenging the same, the petitioner filed Criminal Appeal No.5 of 2021 on the file of Principal District and Sessions Court at Thiruvannamalai and the same was dismissed on 07.12.2021. Aggrieved over the same, the petitioner has filed the present revision.

3. The learned counsel for the petitioner submitted that the respondent did not whisper on what date the amount was borrowed and how much amount was borrowed by the petitioner. Further the respondent did not rely any documents to prove that he had sufficient funds to lend such a huge amount to the petitioner. Further the respondent categorically admitted in his cross examination that there were two notices. Further the respondent failed to serve the second notice to the



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petitioner. The petitioner is aged about 66 years and now he is bedridden and counting his days. Hence, prays to allow this petition.

4. The learned counsel for the respondent submitted that the petitioner did not even elicitate anything when P.W.1 was cross examined and to rebut the presumption as contemplated under section 138 of the Negotiable Instruments Act. Therefore, the petitioner was convicted under Section 138 of the N.I Act. Hence, the Judgments passed by the both the Courts do not warrant interference and prays to dismiss this petition.

5. On a perusal of documents it is seen that the petitioner admitted his signature and admitted issuance of the cheque. It is the contention of the respondent that the petitioner did not even elicitate anything during the cross examination of P.W.1 and to rebut the presumption as contemplated under section 139 of the Negotiable Instruments Act.

6. Therefore, the respondent discharged his burden as contemplated under Section 138 of the Negotiable Instruments Act. It is the contention



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of the learned counsel for the respondent that there was two notices and the petitioner refused to receive the second notice. On perusal of the postal track consignment which is marked as Ex.P.5 reveals that the legal notice dated 25.07.2017 was served to the address where the summons has been sent and the petitioner appeared before the Court after receipt of the summons. Even after receipt of the legal notice, the petitioner failed to rebut the presumption. Therefore, the provisions contemplated under section 138 has been duly complied. The petitioner did not get into the box to depose and rebut the presumption and also failed to even properly explain himself during the cross examination and also failed to even produce any piece of evidence to substantiate his contention. Therefore, the Trial Court rightly convicted the petitioner under section 138 of the Negotiable Instruments Act and the same was confirmed by the Appellate Court.

7.While granting suspension of sentence, the Trial Court had directed the petitioner to deposit a sum of Rs.5,00,000/- to the credit of STC No.13 of 2018 on the file of the Judicial Magistrate, Fast Track Court at Thiruvannamalai. However, the petitioner had deposited only



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Rs.2,50,000/-. Hence, the petitioner is directed to deposit the remaining amount of Rs.2,50,000/- to the credit of S.T.C.No.13 of 2018 within a period of eight weeks from today. On such deposit, the sentence of imprisonment passed by the Magistrate Fast Track Court, Thiruvannamalai in S.T.C.No.13 of 2018 will stand set aside. It is also made clear that if the petitioner fails to deposit the said amount, the respondent shall proceed against the petitioner in the manner known to law to ensure that the Revision petitioner serves the remaining sentence.

8. It is made clear that after the deposit of Rs.2,50,000/- made by the petitioner, the respondent is at liberty to withdraw the entire amount by way of filing appropriate application. It is also made clear that on filing of such application, the learned Judicial Magistrate, Fast Track Court at Thiruvannamalai shall permit the respondent to withdraw the amount without ordering notice to the petitioner. This Criminal Revision case is disposed of accordingly.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To.

1. The Judicial Magistrate, Fast Track Court at Thiruvannamalai
2. The Principal District and Sessions Court at Thiruvannamalai
3. The Public Prosecutor,
Madras High Court, Chennai.



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G.K.ILANTHIRAIYAN, J
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