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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2026

CORAM:

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

Crl.R.C.No.1101 of 2019

1.M/s.Essaarkay Forex Pvt. Ltd.,
Rep. By its Director M.Sekar,
G4, Nelson Plaza,
New No.90, Old No.149,
Nelson Manickam Road,
Choolaimedu,
Chennai – 600 094.

2.M.Sekar,
Director,
M/s.Essaarkay Forex Pvt. Ltd.,
5th Cross Street,
Govindarajapuram,
Gudvanchery – 603 202.
Chengalpattu District.

3.K.Ramesh Babu,
Director,
M/s.Essaarkay Forex Pvt. Ltd.,
No.1, Nainiappan Street,
Mannady, Chennai – 600 001. …. Petitioners

Vs

M/s.FRR Forex Ltd.,
Represented by its Senior Manager,
Krishna Prasad
No.74/26, III Floor, Fagun Mansion,
Ethirajsalai, Chennai – 600 008. …. Respondent

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PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the Judgment of the XV Additional Sessions Court, Chennai dated 27.08.2019 made in Criminal Appeal 542 of 2018 modifying the conviction and the Judgment made by the learned Metropolitan Magistrate (Fast Track – 2), Egmore at Allikulam, Chennai, in C.C.No.1818 of 2018 dated 17.09.2018.

For Petitioners	:	Mr.J.Nandagopal
For Respondent	:	No appearance

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 27.08.2019 made in C.A.No.542 of 2018 on the file of the XV Additional Sessions Court, Chennai, thereby confirming the order of conviction and sentence imposed by the Metropolitan Magistrate (Fast Track Court-II) Egmore at Allikulam, Chennai, in C.C.No.1818 of 2018, dated 17.09.2018, for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard the learned counsel appearing for the petitioners and perused the materials available on record. Though notice has been served on the respondent and the name is printed in the cause list, none appeared on behalf of the respondent, either in person or through pleader.

3. The case of the respondent is that the respondent is a registered Company under the Companies Act and is engaged in the business of foreign

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exchange. In the course of its business, the accused had purchased foreign currency from the respondent on 07.10.2013 and 08.10.2013, in total to the tune of Rs.11,79,550/-. After repeated request made by the respondent, the accused sought time for making payments and come forward to settle the dues by entering into a Memorandum of Agreement dated 26.11.2013. Pursuant to the said Memorandum of Agreement, the accused issued four cheques in favour of the respondent. When all the cheques were presented for collection, the same were returned dishonoured with the endorsement “Funds Insufficient”. After causing a statutory notice, the respondent initiated the proceedings under Section 138 of the Negotiable Instruments Act and the same has been taken cognizance by the Trial Court.

4. In order to prove the complaint, the respondent had examined P.W.1 and marked Exs. P1 to P8. On the side of the accused, D.W.1 was examined and Exs.D1 & D2 were marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced them to undergo one year simple imprisonment and also awarded compensation to double the cheque amount. Aggrieved by the same, the accused preferred an appeal. The Appellate Court,

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while partly allowing the appeal, modified the sentence alone from one year simple imprisonment to six months simple imprisonment and reduced the compensation to the cheque amount. Hence, the present Criminal Revision case has been filed.

6. The accused did not deny the signature found in the cheques and also the issuance of the cheque. Therefore, the respondent has discharged the initial burden as contemplated under Section 138 of the Negotiable Instruments Act. That apart, the Memorandum of Agreement entered into between the accused and the complainant was marked as Ex.P2. A perusal of the Ex.P2 reveals that the accused has admitted the purchase of foreign currency and, in order to settle the said amount, had issued cheques. Though the accused had cross examined the respondent, nothing was stated to rebut the statutory presumption. Further, mere denial is not sufficient to rebut the statutory presumption and such presumption can be rebutted only by adducing cogent and acceptable evidence. Therefore, both the Courts below have concurrently found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act. However, the Appellate Court modified the sentence from one year to six months and reduced the compensation to the cheque amount.

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7. The learned counsel appearing for the petitioners submitted that if the petitioners settle the entire cheque amount, they may be acquitted of the offence.

8. In view of the above said submission, the order of conviction and sentence imposed by the Trial Court and confirmed by the Appellate Court is hereby set aside. The petitioners are acquitted on condition that the petitioners shall pay the entire cheque amount to the respondent **on or before 29.05.2026**, failing which, the order of conviction and sentence imposed by the Trial Court and confirmed by the Appellant Court shall stand automatically restored. Failing which, the respondent is at liberty to secure the petitioners to undergo the remaining period of sentence in accordance with law.

9. In the result, this Criminal Revision Case stands allowed.

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(1/3)

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

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To

1. The XV Additional Sessions Judge,
Chennai.

2. The Metropolitan Magistrate (Fast Track – 2),
Egmore at Allikulam, Chennai.

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