



WEB COPY

CRL RC No. 1660 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL RC No. 1660 of 2022

Sundari
W/o. Ramasamy,
South Middle Street,
Variyankaaval Village and Post,
Udaiyaarpalayam Taluk,
Ariyalur District.

..Petitioner

Vs

K.T.Selvaraju
S/o. Thambusamy,
Kommedu Village,
Keezhakudieruppu Post,
Udaiyaarpalayam Taluk,
Ariyalur District.

..Respondent

Prayer : Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure, to set aside the conviction imposed in the judgment dated 15.12.2022 made in CrI.A.No.13 of 2019 on the file of the Learned Principal District and Sessions Court, Ariyalur, confirming the conviction imposed in Judgment dated 22.08.2019 made in S.T.C.No.708 of 2014 on the file of the Learned Judicial Magistrate No.1, Jayankondam.

For Petitioner:

Mr.M.Mohammed Riyaz
for Mr.M.Guruprasad

For Respondent:

S.Kamadevan



ORDER

This Criminal Revision Case has been filed as against the Judgment dated 15.12.2022 passed in Crl.A.No.13 of 2019 on the file of the Principal District and Sessions Judge, Ariyalur, thereby confirming the order of conviction and sentence imposed on the petitioner in STC No.708 of 2014, dated 22.08.2019 by the Judicial Magistrate No.I, Jayankondam, 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 the respondent is an agriculturist and also runs a rice mill. He acquainted with the petitioner through her relative one Swaminathan. While being so, the petitioner borrowed a sum of Rs.6,00,000/- in the month of November 2013 for her business purposes. In order to repay the said amount, the petitioner issued two cheques dated 17.01.2014 and 21.01.2014 for a sum of Rs.3,00,000/- each. Both the cheques were presented for collection on 21.01.2014 and the same were returned dishonoured with an endorsement "Payment Stopped by the Drawer" on 14.02.2014. After causing a statutory notice, the respondent lodged a complaint and the same has been taken cognizance by the Trial Court.



3. In order to prove the complaint, the respondent had examined P.W.1 to P.W.4 and marked Exs.P1 to P8. In order to disprove the complaint, the petitioner/accused had examined D.W.1 to D.W.8 and marked Exs.D1 to D22.

4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and also awarded compensation to the cheque amount. Aggrieved by the same, the petitioner preferred an appeal. The Appellate Court dismissed the appeal and confirmed the order passed by the Trial Court. Hence, the present Criminal Revision Case has been filed.

5. The learned counsel appearing for the petitioner submitted that, in order to rebut the presumption, the petitioner had examined D.W.1 to D.W.8 and marked Exs.D1 to D22. It is the specific case of the petitioner that she never borrowed any loan as alleged by the respondent. Further, the petitioner has absolutely no need to borrow any amount, since she is well off and both her husband and children are in abroad. During the relevant period of the alleged transaction, the petitioner had sufficient funds to honour the cheque amount and was also receiving a sum of Rs.1,00,000/- per month from her husband. Further, on the alleged date of issuance of the cheque i.e., on 09.01.2014, there



was cremation ceremony of her mother-in-law and the petitioner was not even in her house. She was at the river bund performing the last rites along with her family members and nearly 300 persons had gathered to attend the funeral ceremony. Therefore, according to the petitioner, she had not issued any cheque on the said date. In fact, the cheques, which were presented by the respondent for collection, along with other cheques, were lost as early as on 14.03.2013 itself. On the very same day, the petitioner duly informed to her banker not to honour any of the lost cheques and had issued stop payment instructions. The same was marked through P.W.3, who is a banker. Further, on 25.01.2014, the petitioner sent a reminder to her banker not to honour the cheques which was lost by her as early as on 14.03.2013. Thereafter, she lodged a complaint before the Jurisdictional police on 02.04.2014, 04.04.2014 and 24.07.2014.

6. The learned counsel further submitted that the respondent was categorically cross-examined with regard to his source of income to lend such a huge amount to the petitioner herein, that too without obtaining any security document. Therefore, the petitioner categorically rebutted the presumption as contemplated under Sections 118 and 139 of the Negotiable Instruments Act. Even then, both the Courts below, without considering the same, mechanically convicted the petitioner only on the ground that the petitioner did not deny her signature in the cheque. In support of his contention, the learned counsel relied upon several judgments of the Hon'ble Supreme Court of India.



7. Per contra, the learned counsel appearing for the respondent submitted that the petitioner has never denied her signature in the cheque. Further, in order to cheat the respondent, even prior to the alleged borrowal, the petitioner had issued a stop payment letter to her banker. Thereafter, the petitioner issued the very same cheque in order to repay the loan which was borrowed by her. In order to prove his complaint, the respondent examined P.W.1 to P.W.4. In fact, P.W.4, who is relative of the respondent, was very much present at the time of alleged borrowal of Rs.6,00,000/- by the petitioner herein. Therefore, the Trial Court and the Appellate Court rightly appreciated the evidence of the respondent and convicted the petitioner. Since both the Courts concurrently recorded findings of fact, the same does not warrant any interference by this Court.

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

9. The respondent lodged a complaint alleging that the petitioner borrowed a sum of Rs.6,00,000/- during the month of November 2013 for her business purposes. According to the petitioner, on the date of the alleged borrowal, she had sufficient funds in her account, since her husband and children were working in abroad and she was receiving a sum of Rs.1,00,000/-



per month from her husband. The statement of accounts was marked as Ex.D12. The specific case of the petitioner is that the impugned cheques viz., Exs.P1 and P2, along with certain other cheques, had been lost as early as on 14.03.2013. On the very same day, immediately the petitioner issued a letter to her banker, which was marked as Ex.D1, stating that she lost several signed blank cheques and requested the banker, who had deposed as P.W.3, not to honour any of those cheques including Exs.P1 and P2. The said communication was duly received by P.W.3. In fact, the respondent had examined the petitioner's banker as P.W.3. P.W.3 has categorically deposed that he received the letter dated 14.03.2013 from the petitioner. That apart, the petitioner also sent a reminder dated 25.01.2014, which was marked as Ex.D2, thereby requested to the P.W.3 not to honour any cheques and confirmed the stop payment instructions. Both the communications clearly proved the defence of the petitioner that she did not issue any cheque in favour of the respondent for any legally enforceable debt.

10. According to the respondent, the alleged borrowal was made during the months of November and December 2013. However, it is the specific case of the petitioner that even much prior to the said alleged borrowal of Rs.6,00,000/- by the petitioner, she had issued a stop payment letter to her banker in respect of Exs.P1 and P2 through P.W.3. Therefore, the petitioner would have issued the cheques, viz., Exs.P1 and P2, in favour of the



respondent on 17.01.2014 and 21.01.2014. The second communication letter issued by the petitioner to the banker was also made without any knowledge of the presentation of the cheques by the respondent. In fact, the respondent presented Exs.P.1 and P2 for collection on 21.01.2014 and the same were returned dishonoured on 14.02.2014 with endorsement “Payment Stopped by the Drawer”, which was informed to the respondent through return memo dated 15.02.2014.

11. Further, on the date of alleged issuance of cheque, i.e., on 09.01.2014, there was a post-funeral ceremony of the petitioner’s mother-in-law had taken place. The intimation relating to the said ceremony was marked as Ex.D5, which clearly shows that the ceremony was conducted on 09.01.2014 at the river bund, Mela Lake, Variyankaval, Udayarpalayam Taluk, Ariyalur District. The death certificate of the petitioner’s mother-in-law was marked as Ex.D4. The salary certificate of the respondent was marked as Ex.D20 and the pass book of the petitioner was marked as Ex.D3. It shows that the petitioner was receiving money from her husband every month and she had sufficient money in her account at the time of presentation of the cheque. Therefore, the petitioner had no necessity to borrow any amount from the respondent, that too for business purposes. The petitioner did not engage any business to lend money from the respondent and she used to visit abroad to meet her children and husband. Therefore, the petitioner categorically rebutted the presumption



as contemplated under Section 139 of the Negotiable Instruments Act. Mere admission of signature in the cheque would not be sufficient to convict the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

12. In the case on hand, the petitioner denied the very borrowal of the loan and issuance of the cheque. In fact, the petitioner categorically proved that the cheques were lost and that she issued stop payment letter to her banker. The provision under Section 118 of the Negotiable Instruments Act deals with presumptions and Section 139 of the Negotiable Instruments Act raises a presumption that the cheque was issued for legally enforceable debt. However, both the presumptions are rebuttable in nature and in the present case the petitioner categorically rebutted the presumption. However, the respondent failed to prove that the cheques were issued for legally enforceable debt. Though the petitioner admitted her signature found in the cheque and presumed that the cheque was issued for legally enforceable debt. It was rebuttable presumption and it can be proved by placing reliance upon the materials produced by the accused to prove the defence or by adducing independent witness. The burden on the accused is only to prove her defence on the basis of preponderance of probabilities and not beyond reasonable doubt. Once the accused has rebutted the presumption, the entire burden shifted on the shoulder of the respondent to prove that the cheques were issued for legally enforceable debt.



13. In the case on hand, the petitioner has categorically rebutted the presumption and even then the respondent failed to prove that the cheques were issued for legally enforceable debt. Unfortunately, both the Courts below concurrently held perverse findings that the petitioner issued the cheques for legally enforceable debt and convicted her. Therefore, this Court of the considered view that the findings of the Trial Court as well as the Appellate Court are perverse and unsustainable in law. Hence, the Judgment of the Trial Court and confirmed by the Appellate Court is liable to be set aside.

14. In view of the above, the Judgment dated 15.12.2022 passed in Crl.A.No.13 of 2019 on the file of the Principal District and Sessions Judge, Ariyalur, confirming the order dated 22.08.2019 passed in STC No.708 of 2014, dated 22.08.2019 on the Judicial Magistrate No.I, Jayankondam, is hereby set aside. Accordingly, this Criminal Revision Case stands allowed.

01-04-2026

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

LPP



To

1. The Principal District and Sessions Court,
Ariyalur.

2. The Judicial Magistrate No.I,
Jayankondam.



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G.K.ILANTHIRAIYAN J.

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