



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.11.2019

PRONOUNCED ON : 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.344 of 2014

WEB COPY

Sridhar

...Petitioner/Appellant/Accused

Vs

Pushparaj

...Respondent/Respondent/Complainant

**PRAYER:** Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the judgment of the II Additional District and Sessions Judge, Tiruchirappalli in Crl.A.No.23 of 2014 dated 24.06.2014 modifying the judgment of the Judicial Magistrate Court, Thuraiyur in S.T.C.No.582 of 2011 to the extent of reducing the compensation awarded to the respondent from a sum of Rs.3,50,000/- to Rs.1,75,000/- and in other aspects confirming the judgment of the Judicial Magistrate Court, Thuraiyur in S.T.C.No.582/2011 dated 19.02.2014.

For petitioner : Mr.V.Singan

For Respondent : Mr.R.Gandhi

### **ORDER**

This criminal revision case has been filed as against the findings of the learned Judicial Magistrate, Thuraiyur in S.T.C.No.582 of 2011, dated 19.02.2014 and the II Additional District and Sessions Judge, Tiruchirappalli in C.A.No.23 of 2014, on the complaint filed by the respondent under Section 138 of NI Act.

2.The case of the respondent / complainant is that the complainant and the petitioner / accused are well known to each other. On 29.06.2011, the accused borrowed a sum of Rs.1,75,000/- from the complainant for his urgent expenditures and promised to repay the same in one month. He had also issued a post dated cheque dated 01.08.2011[Exp1] on the same day. As requested by the accused, the complainant had presented the cheque before the Union Bank of India, Keerambur on 09.08.2011 for collection and the same was returned on 11.08.2011 with an endorsement 'insufficient funds in the accused account'. The complainant had received the return memorandum and the dishonoured cheque on 22.08.2011 from the Bank. Thereafter, on 07.09.2011, he issued a legal notice [Exp4] to the accused and the same was received by the accused on 09.09.2011. The accused did not pay the cheque amount, but, sent a



reply notice [Exp7] on 14.09.2011 denying the averments in the legal notice as false. Therefore, the respondent had filed the above complaint for the offence under Section 138 of NI Act before the Judicial Magistrate, Thuraiyur in STC.No.582 of 2011.

3. In conclusion of the trial, the trial Court found the accused guilty under Section 138 NI Act and convicted and sentenced him to undergo simple imprisonment for six months and directed to pay compensation of Rs.3,50,000/- to the complainant. As against the conviction and sentence, the accused has preferred an appeal before the II Additional District and Sessions Judge, Tiruchirappalli in Crl.A.No.23 of 2014, wherein, the appellate Court, dismissed the appeal by confirming the judgment of the trial Court. However, the appellate Court modified the compensation amount from Rs.3,50,000/- to Rs.1,75,000/- and directed the accused to pay the same within a period of one month and in default of payment, three months simple imprisonment was also ordered.

4. Aggrieved over the judgment of the appellate Court, the accused has filed the present criminal revision case.

5. Heard Mr.V.Singam, learned Counsel for the revision petitioner and Mr.R.Gandhi, learned Counsel for the respondent.

6. The learned Counsel for the petitioner submits that the complainant is a stranger and he has not established that he was having sufficient means to lend a sum of Rs.1,75,000/-. Though the cheque was produced, the complainant has not produced any independent evidence that anterior to the date of issuance of cheque in question there was pre-existing debt against the accused. The existence of legally enforceable debt, which is anterior in point of time is to be established as a matter of fact to relate the cheque in question that it was given by the accused for discharge of that debt. The existence of financial circumstances at that relevant point of time by the complainant to lend the amount as stated in the complaint is to be established as a matter of fact and law. But the complainant has not produced any documentary evidence to establish his financial status to lend such amount to the accused as projected in the complaint. The debt according to him has to be independently proved by the complainant. The cheque, which was given as a security is not covered under Section 138 of NI Act.

7. In support of his contention the learned Counsel for the revision petitioner, also relied on the following judgments.

(i) M/s.Sri Alumu Chits Pvt Ltd Vs R.Ponnusamy, reported in 2012 (2) TLNJ (Criminal)

(ii) Veerappan.S Vs. Sundar.K, reported in 2018 (2) TLNJ (Criminal)



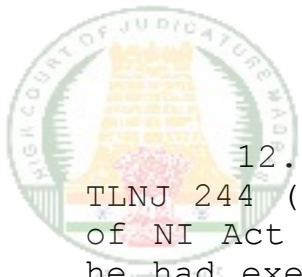
- (iii) D.Muthukumarasamy Vs V.Sivakumar, reported in 2015 (2) TLNJ 281 (Criminal)
- (iv) A.Baskaran Vs. N.Sathishkumar, reported in 2019(1) TLNJ 244 (Criminal)
- (v) J.K.Rawarappa Vs. Rajan, reported in 2012(2) TLNJ 148 (Criminal).

8.By relying on the above said judgments, the learned Counsel submits that the trial Court has not appreciated the legal position in a proper manner. The legally enforceable debt has to be independently proved by the complainant in order to relate the cheque, which got bounced and omission to prove the existence of debt, the complaint under Section 138 of NI Act cannot be sustained.

9.Per contra, Mr. R.Gandhi, learned Counsel appearing for the respondent/complainant submits that the complainant and the accused are known to each other and on 29.06.2011, the petitioner/accused met the complainant and borrowed a sum of Rs.1,75,000/- for certain urgent expenditure and in discharge of the same, he issued the cheque in dispute on 01.08.2011 and the same was presented for collection on 09.08.2011. But it was returned with an endorsement 'insufficient funds' on 11.08.2011. On receipt of return memo, the complainant issued the legal notice to the accused on 07.09.2011 and the accused sent a reply notice on 14.09.2011, but failed to pay the amount within the stipulated time and therefore, a complaint has been filed under Section 138 NI Act. In the reply notice[Exp7], the accused has taken a specific stand that his partner one Thangamani had stolen the cheque in question, forged his signature and colluding with the complainant had presented the cheque through the complainant. Though the signature in the cheque [Exp1] was disputed, the accused has not taken any steps during the trial to refer the same for handwriting expert. The cheque was not denied that of the petitioner and therefore, the trial Court as well as the appellate Court rightly found him guilty and convicted the petitioner/accused.

10.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

11.Most of the decisions referred by the learned Counsel for the petitioner are on appeal against acquittal. The ratio, which was applied in deciding the case on appeal against acquittal cannot be equated on revision filed against the concurrent findings of conviction imposed on the petitioner. The trial Court as well as the appellate Court found the revision petitioner guilty, convicted and sentenced him for the offence under Section 138 of NI Act.



12. In Baskaran Vs. N.Sathishkumar, reported in 2019 (1) TLNJ 244 (Criminal), this Court held that burden under Section 139 of NI Act would shift to the accused, when once it is shown that he had executed the cheque. The Hon'ble Supreme Court in Rangappa Vs Sri Mohan, reported in 2010 (11) SCC 441 has held that the said burden can be discharged by preponderance of probabilities and not by proof beyond reasonable doubt. In Kumaravel Vs. R.P.Rathinam, reported in (2011) 3 MLJ (Crl) 155 this Court laid a ratio decidendi that there can be an acknowledgment for a time barred debt, but drawing of a cheque itself is not an acknowledgment unless a debt was enforceable on the date of issuance of cheque. In Vijay Vs Laxman and another, reported in (2013) 1 TLNJ 94 Crl, the Hon'ble Supreme Court has held as follows:

*"We are not unmindful of the fact there is a presumption that the issue of a cheque is for consideration. Sections 118 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the Courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court. In M.S.Narayana Menon Vs State of Kerala, reported in (2006) 6 SCC 39, held that the presumptions under Sections 138 of NI Act are rebuttable and the standard of proof required for such rebuttal is preponderance of probabilities and not proof beyond reasonable doubt, the Court observed for rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon."*

13. In M/s. Sri Alumu Chits Pvt Ltd's case, cited supra, the accused has rebutted the presumption and established before the Court that the cheque was issued only as a security and also the case is arising on appeal against acquittal.

14. In this case, during the trial, the cheque ExP1 was not disputed by the accused. But according to the petitioner/accused, the cheque ExP1 was stolen by his partner one Thangamani and he



had forged the signature of the accused and by colluding with the complainant, filled up and presented the same through this complainant. But, during the examination, the accused admitted his signature in the cheque ExP1. Admittedly, there is no complaint what soever, from the accused as against the said Thangamani for the theft of the cheque. The accused had also admitted in his cross examination that he cannot substantiate by any document that there was any dispute between himself and his partner Thangamani. The trial Court as well as the appellate Court have rightly convicted on the contradictory stand taken by the accused with regard to the cheque in ExP1.

15.The learned Counsel for the petitioner without referring any perversity or blatant error on the orders of the trial Court as well as the appellate Court has relied upon the above judgments and contended that the complainant was not having any sufficient means to lend any money. As rightly held by the trial Court and the appellate Court, the cheque ExP1 and the signature in the cheque were accepted by the accused. The different stand taken in the reply notice that the cheque ExP1 was stolen and the signature was forged by his partner one Thangamani and through a stranger/complainant, the cheque was presented for collection. Admittedly, there is no complaint as against the said Thangamani and no steps have been taken by the petitioner/accused to dispute the signature in ExP1.

16.There is no merit in this revision case and accordingly, the revision case is dismissed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)

Dsk  
To

1.II Additional District and Sessions Judge,  
Tiruchirappalli.

2.The Judicial Magistrate,  
Thuraiyur.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Chief Judicial Magistrate, Trichy.

4.The Section Officer, (2 copies)  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

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**31.01.2020**

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