

WEB COPY



Crl.RC.No.41 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.06.2025

PRONOUNCED ON : 10.06.2025

CORAM:

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

Crl.RC.No.41 of 2023

E.Dhatchinamoorthy

... Petitioner

Versus

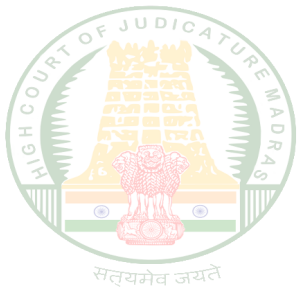
S.Seenuvasan

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records pertaining to the judgment dated 08.11.2022 in Crl.A.No.40 of 2021 on the file of the learned II Additional District Judge, Tindivanam and judgment dated 20.11.2021 in C.C.No.288 of 2016 on the file of the learned Judicial Magistrate No.1, Tindivanam and set aside the same.

For Petitioner : Mr.A.Ramesh,
Senior Counsel
For Mr.R.Ashwin

For Respondent : Mr.S.Madharkhan



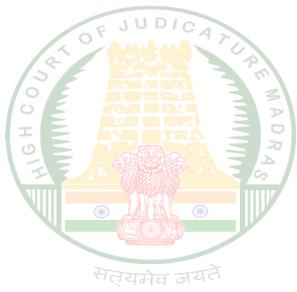
Crl.RC.No.41 of 2023

WEB COPY

ORDER

This Criminal Revision Case has been preferred against the judgment dated 08.11.2022 passed by the learned II Additional District Judge, Tindivanam, in Crl.A.No.40 of 2021, confirming the order of conviction and sentence dated 20.11.2021 passed by the learned Judicial Magistrate No.1, Tindivanam, in C.C.No.288 of 2016, for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as “the NI Act”).

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the NI Act, alleging that the petitioner borrowed a sum of Rs.3,00,000/- and in order to repay the same, he issued cheque for the said amount. It was presented for collection and the same was returned dishonoured for the reason “funds insufficient”. After issuance of statutory notice, the respondent lodged complaint before the trial Court and the same has been taken cognizance in C.C.No.288 of 2016.

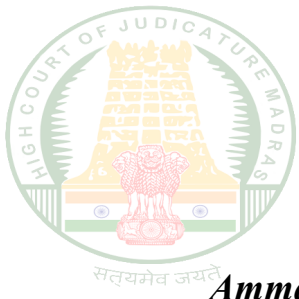


Crl.RC.No.41 of 2023

WEB COPY

3. After taking cognizance, on the side of the respondent, he examined P.W.1 & P.W2 and marked documents in Ex.P.1 to Ex.P.8. On the side of the petitioner, no one was examined and no document has been marked. On perusal of oral and documentary evidence, the trial Court convicted the petitioner and sentenced him to undergo six months simple imprisonment and also awarded compensation to the tune of cheque amount, in default, to undergo one month simple imprisonment. Aggrieved by the same, the petitioner filed an appeal in Crl.A.No.40 of 2021 before the appellate Court and the same was dismissed by confirming the order passed by the trial Court. Hence, the present revision petition has been filed by the petitioner.

4. The learned Senior Counsel appearing for the petitioner raised ground that the amount which was borrowed by the petitioner was not accounted by the respondent and as such it cannot be construed as legally enforceable debt. In support of his contention, he relied upon the judgment reported in **(2004) 12 SCC 83** in the case of **G.Pankajakshi**



Crl.RC.No.41 of 2023

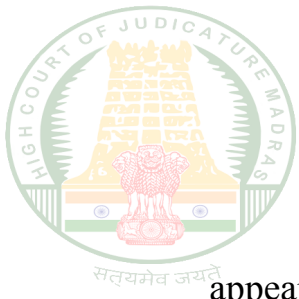
WEB COPY

Amma & ors Vs. Mathai Mathew. He further contended that the respondent failed to mark the original cheque before the trial Court. The respondent only marked a copy of the cheque that too without the consonant with the provisions under Section 65 of the Evidence Act. The cheque is a neither primary nor a secondary evidence.

5. The learned counsel appearing for the respondent submitted that though the amount which was borrowed by the petitioner is not accounted, it could not be the ground for the petitioner not to repay the said amount. He also produced the original cheque before this Court which was misplaced somewhere else during the trial and as such the respondent could not able to mark the same before the trial Court.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Admittedly, it is not the case of the petitioner that he did not borrow any amount from the respondent. The learned Senior Counsel

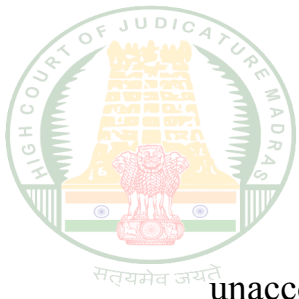


Crl.RC.No.41 of 2023

WEB COPY

appearing for the petitioner emphasised upon that the money which was borrowed by the petitioner was not accounted by the respondent. Therefore, the cheque was not issued for any legally enforceable debt. The unaccounted money can be construed as illegal money. In support of his contention, he relied upon the judgment reported in **(2004) 12 SCC 83** in the case of ***G.Pankajakshi Amma & ors Vs. Mathai Mathew*** in which, the Hon'ble Supreme Court of India held that, if there are unaccounted transaction, then they are illegal transactions. It is settled law that in such cases, the loss must be allowed to lie where it falls. For the unaccounted transactions, the Court could not have lent its hands and pass a decree.

8. Furthermore, the above case has arisen out of a suit for recovery of money. The plaintiff earned money from the money lending business and as such by virtue of Section 9 of the Kerala Moneylenders Act, 1958, the plaintiff ought to have maintained book of accounts. But the plaintiff in that case failed to maintain the same. Therefore, the trial Court dismissed the suit on the ground that he earned money through



Crl.RC.No.41 of 2023

WEB COPY

unaccounted transactions and as such, it amounts to illegal transactions.

Consequently, the Hon'ble Supreme Court of India upheld the judgment of the trial Court.

9. Whereas in the case on hand, the petitioner borrowed a sum of Rs.3,00,000/- from the respondent and it is not in dispute. The respondent was doing rice vending business for the past several years and he earned a sum of Rs.5,00,000/- per month. Further he is an income tax assessee for the past 30 years. However, the amount which was lent in favour of the petitioner was not accounted for returns of his income. Towards the repayment of the said loan amount, the petitioner issued cheque for a sum of Rs.3,00,000/-. On instructions, the cheque was presented for collection and the same was returned dishonoured. After issuance of statutory notice, the respondent filed the present complaint.

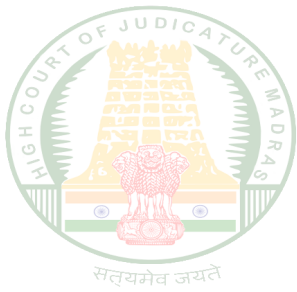
10. It is also seen that the respondent refused to receive the legal notice issued by the respondent. Therefore, the respondent proved his case that the presumption under Section 138 of the NI Act, that the



Crl.RC.No.41 of 2023

WEB COPY

petitioner had issued the cheque for a legally enforceable debt. Strangely, the petitioner raised a ground that since the said amount was not accounted for filing return of income tax, the said money is ill-gotten money and as such, the cheque was not issued for legally enforceable debt. It is unfortunate to state that when the petitioner borrowed money and had spent it for his personal purpose and after having been enjoyed the money and after issuance of cheque towards the repayment of the said amount, the petitioner cannot take a stand that the money which was borrowed by him was not accounted for income tax purpose and as such the said money has to be construed as ill-gotten money. Therefore, the above judgment cited by the learned Senior Counsel appearing for the petitioner is not at all applicable to the case on hand. It was held in a different footing, and the present case is a completely different one. The above case was a suit for recovery of money, but the present case is the complaint filed by the respondent to punish the petitioner for the offence punishable under Section 138 of the NI Act.



Crl.RC.No.41 of 2023

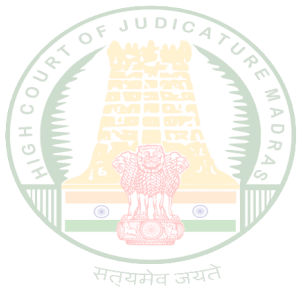
WEB COPY

11. It is relevant to extract the provisions under Section 138 of the NI Act, as follows :-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is



WEB COPY



Crl.RC.No.41 of 2023

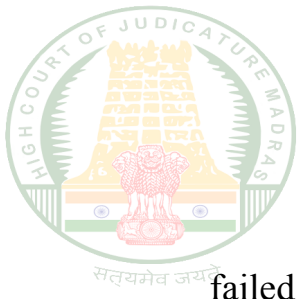
drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

Thus, it is clear that once the petitioner issued cheque knowing fully that there is no money in his account to honour the same, he is liable to be punishable for the offence under Section 138 of the NI Act.

12. Admittedly, the petitioner had issued cheque for the sum of Rs.3,00,000/- and the same was presented for collection. But it was returned dishonoured for the reason “funds insufficient”. Therefore, the petitioner has to discharge his initial burden to prove his case as required under Section 138 of the NI Act. Of course, if at all the respondent had

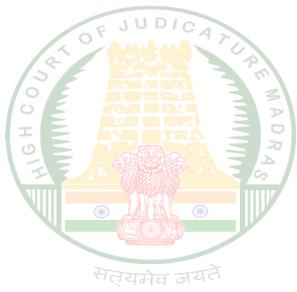


Crl.RC.No.41 of 2023

WEB COPY

failed to account the said money in his return of income, he is liable to be punishable under the Income Tax Act. He is also liable to pay fine for non-accounting of his return of income. But the money which was not accounted by the respondent cannot be construed as ill-gotten money. If the said stand is applied to every single situation, especially in the cases of the offence punishable under Section 138 of the NI Act, no one will ever repay the amount which is borrowed as a loan. Whether the loan amount is accounted or not is not a botheration of the borrower. Once the money is borrowed, it has to be repaid by the borrower as agreed.

13. In this case, in order to repay the loan amount, the petitioner has issued the subject cheque to the respondent and it was returned for the reason “funds insufficient”. Therefore, it is clear that the petitioner has had an intention to cheat the respondent by issuing the cheque with the knowledge that there is no sufficient fund and as such he is liable to punish for the offence under Section 138 of the NI Act. For the very same circumstances, this Court has held in *Crl.A.No.219 of 2020* dated 12.04.2023 in the case of *Sheela Thomas Vs. Molly Joseph* as follows:-

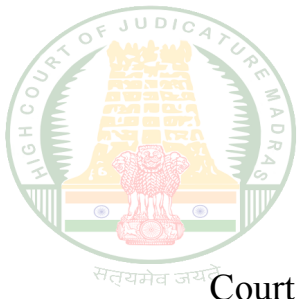


Crl.RC.No.41 of 2023

WEB COPY

“14. Having admitted that the receipt of money whether it is accounted or unaccounted money does not matter for taking cognizance under Section 138 of N.I.Act, only the genuineness of the drawal of the cheque and whether the cheque given to discharge the liability alone matters. Admission in the examination of PW.1, that her husband has no source of income and he was not assessed under income tax or the transaction not reflected in the income tax return all falls to grounds. Since if any unaccounted money maintained or kept by the complainant, it is for the Income Tax Authority to take necessary steps. The person who has borrowed money or received the money cannot decline to repay the money on the account that the money is ill-gotten money.”

14. Further the object of the provisions under Section 138 of the NI Act is to ensure that the commercial and mercantile activities are conducted in a smooth and healthy manner. Accordingly, the act of issuance of cheque, with the knowledge that the bank account from which the cheque is being drawn, has insufficient fund, itself attracts the offence punishable under Section 138 of the NI Act. Therefore, the trial

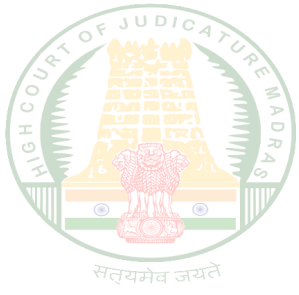


Crl.RC.No.41 of 2023

WEB COPY

Court and the appellate Court have rightly convicted the petitioner for the offence under Section 138 of the NI Act.

15. Insofar Ex.P.2, the cheque is concerned, though the respondent marked xerox copy of the cheque before the trial Court, now the learned counsel appearing for the respondent produced the original cheque before this Court and it is verified with Ex.P.2. Both are one and the same. It was not produced before the trial Court due to misplacement of the cheque. It would not cause any prejudice to the petitioner and it is not fatal to the case of the complainant. In fact, the petitioner also executed a pronote which was marked as Ex.P.1 for the loan borrowed by the petitioner to the tune of Rs.3,00,000/-. Therefore, the respondent clearly proved his case for the offence punishable under Section 138 of the NI Act. Both the trial Court and appellate Court rightly convicted the petitioner and it doesn't require any interference by this Court and the Criminal Revision Case fails.



Crl.RC.No.41 of 2023

WEB COPY

16. Accordingly, the Criminal Revision Case stands dismissed.

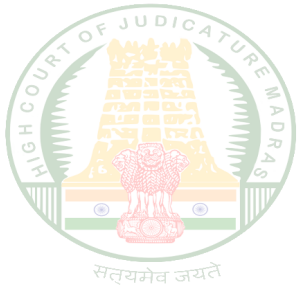
10.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

rts

To
1.The II Additional District Judge,
Tindivanam.

2.The Judicial Magistrate No.1,
Tindivanam.



WEB COPY



Crl.RC.No.41 of 2023

G.K.ILANTHIRAIYAN. J,

rts

Crl.RC.No.41 of 2023

10.06.2025