



WEB COPY

CRL A No. 887 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2026

CORAM

THE HON'BLE MR JUSTICE C. SARAVANAN

CRL A No. 887 of 2019

M/s. FEC India Private Limited,
Plot No.7, Door No.259 / 2A,
P.K.M Road, Athipet, Ambattur,
Chennai – 600 058.
Represented by its Director,
S.Jeevarathinam.

..Appellant /
Respondent /
Complainant

Vs

Regunathan,
The Managing Director,
GPR Power Solutions (P) Ltd,
Plot No.76, VGN Mahalakshmi Nagar
Extension -V, 2nd Main Road,
Thiruverkadu, Chennai – 600 077.

..Respondent /
Appellant / Accused

PRAYER: Criminal Appeal is filed under Section 378(4) of Cr.P.C, praying to set aside the order of Acquittal passed by the learned I Additional District and Sessions Judge, Thiruvallur in C.A.No.60 of 2018 dated 17.10.2019 by reversing the Judgment of the Learned Judicial Magistrate, Fast Track Court at (Magisterial Level), of Ambattur in S.T.C.No.368 of 2016 dated 14.03.2018 and allow the appeal.

For Appellant(s): Mr.K.Thilageswaran

For Respondent(s): Mr.A.R.Nixon



JUDGMENT

WEB COPY

The successful complainant before the Trial Court, namely, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, in S.T.C. No.368 of 2016, is before this Court challenging the Judgment dated 17.10.2019 passed by the learned I Additional District and Sessions Judge, Thiruvallur, in Criminal Appeal No.60 of 2018.

2. By the Impugned Judgment dated 17.10.2019, the Appellate Court reversed the conviction and sentence imposed on the respondent / accused by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, by judgment dated 14.03.2018 in S.T.C.No.368 of 2016. The Trial Court convicted the respondent / accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo simple imprisonment for a period of eight months. The Trial Court also directed the respondent / accused to pay a sum of Rs.10,38,219/-, being the cheque amount, as compensation to the complainant within a period of two months, failing which he was directed to undergo simple imprisonment for a further period of two months.

3. The Appellate Court reversed the aforesaid conviction and sentence, *inter alia*, on the following observations:-



WEB COPY

“17. Upon perusal of the facts stated by the accused and the complainant and also upon perusal of the documents submitted, it is clear that there was some dispute between the complainant and the accused with regard to the supply of materials as per Ex.P2 and Ex.P3. Further PW1 has also categorically admitted that Ex.P4 was the security cheque issued by the accused to the complainant. It is also seen that the fact of the pending Arbitration Proceedings between the accused and the General Motors Company was not disputed by the complainant. Hence, it is seen that there was a problem with regard to the contract between the parties and therefore the stop payment instructions were given by the accused. There is no contrary evidence submitted by the complainant to show that the cheque was issued only subsequent to the delivery of the materials and to show that the accused directed the complainant to present the cheque on the date concerned.

18. The learned counsel for the accused would state that despite having received the part payment the cheque was presented for the entire amount. In this context, since this court has already found that the cheque was a security cheque and has also found that the stop payment was given only subsequent to the part payment made by the accused concerned, it is not necessary to delve into the issue whether the presentation of the cheque for the entire sum is proper or not.

19. The next contention raised by the learned counsel for the accused is that the arbitration clause was not invoked by the complainant and he has straight away proceeded to the criminal proceedings. In this context as rightly contended by the learned counsel for the complainant, the arbitration clause cannot be considered as a bar for initiating the criminal proceedings. Therefore, such a contention raised by the learned counsel for the accused cannot merit consideration.

20. For the foregoing reasons, this court finds that the accused has by preponderance of probabilities established that the cheque in Ex.P4 was issued Only for security purpose prior to the supply of goods by the complainant. Further There was a dispute with regard to the contract between the parties. There were also arbitration proceedings initiated between the accused company and General Motors Company at Pune with regard to the purchase



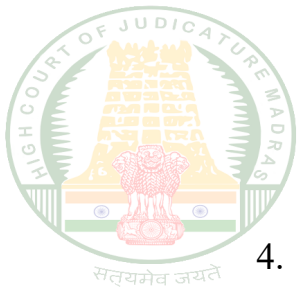
WEB COPY

order in dispute. The part payment of Rs.3,00,000/- was received by the complainant company only after the termination of contract was intimated to the accused company under Ex.D7. By way of eliciting the above facts, the accused has by preponderance of probabilities rebutted the presumption in favour of the complainant. Since the presumption stands rebutted, the onus shifts upon the shoulders of the complainant once again to show that the cheque was issued for a legally enforceable liability and that the cheque was issued only after supply of goods and that accused stopped the payment of the cheque with the dishonest intention of dishonoring payment under the disputed cheque. In this case, it is seen that there are no materials produced by the complainant to show that the cheque was issued after the supply of goods towards legally enforceable liability. Further, there are no materials to show that the accused acted with the dishonest intention to defraud the complainant by giving stop payment instruction to his bank. Therefore, the complainant has failed to prove the guilt of the accused.

21. In view of the above, this court finds that the complainant is entitled to the presumption under section 118 r/w section 139 of Negotiable Instrument Act. The accused has produced sufficient materials to rebut the presumption in favour of the complainant. Accordingly, points no. 1 and 2 are answered.

Point No.3:

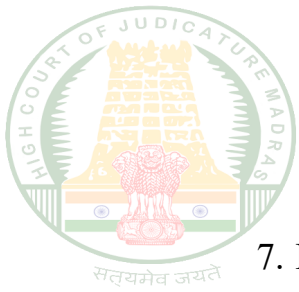
22. In the preceding point, this court has found that the accused has rebutted the presumption in favour of the complainant and the complainant has failed to prove the guilt of the accused. The trial court has without going into the materials on record, held that the complainant proved his case and has consequently convicted the accused for the evidence under section 138 of Negotiable Instrument Act. In view of the findings as stated above, this court finds it necessary to interfere with the judgment of the trial court. Since this court finds that the complainant has failed to establish his case against the accused, the appeal deserves to be allowed. Accordingly, point no.3 is answered.”



4. The appellant appears to be a supplier of Industrial components, namely, Alpha Laval Plate Heat Exchanger Plates. The respondent had initially issued a Letter of Intent (LOI) marked as Ex.D1, followed by a Purchase Order marked as Ex.D3 dated 21.11.2015. Pursuant thereto, the appellant raised Tax Invoice Ex.P2 dated 30.12.2015 for a sum of Rs.13,38,219/-.

5. As per the terms and conditions of the contract entered into between the appellant and the respondent-company, represented by its Managing Director, the supply was secured by a post-dated cheque for 47 days. Accordingly, Ex.P4 cheque dated 29.02.2016 for a sum of Rs.13,38,219/- was issued.

6. After the goods were delivered, the respondent made part payment, leaving a balance amount of Rs.10,38,219/-. Since the amount payable under Ex.D1 Letter of Intent, Ex.D3 Purchase Order dated 21.11.2015, Ex.P2 Tax Invoice dated 30.12.2015, and Ex.P3 Delivery Challan dated 30.12.2015 remained unpaid, the appellant presented the cheque for encashment on 03.05.2016. However, the cheque was returned unpaid as evidenced by Ex.P6 Return Memo dated 05.05.2016 issued by the appellant's banker.



7. It appears that the respondent had also issued instructions for stoppage of payment. In view of the above developments, the appellant issued a statutory notice under Ex.P7 dated 12.05.2016. The said notice was replied to by the learned counsel for the respondent through an interim reply dated 25.05.2016 marked as Ex.P8, seeking fifteen days' time to furnish a detailed response on the ground that the Managing Director of the respondent-company was abroad.

8. Thereafter, a legal notice dated 29.06.2016 marked as Ex.D4 is stated to have been issued by the respondent, which has been denied by the appellant.

9. The Trial Court, upon consideration of the evidence on record, convicted the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881.

10. Both the learned counsel for the appellant and the learned counsel for the respondent fairly submitted that the issue involved in the present case is no longer *res integra* and is squarely covered by the decision of the Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and others***, decided on 11.10.2022 and reported in ***MANU/SC/1294/2022***. The conclusion reached by the Hon'ble Supreme Court in Paragraph No.30 reads as follows:



“30. In view of the discussion above, we summarise our findings below:

(i) For the commission of an offence Under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence Under Section 138 will stand attracted;

(iv) The first Respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first Respondent cannot be deemed to have committed an offence Under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first Respondent has not committed an offence Under Section 138, the validity of the form of the notice need not be decided.”

11. The reasoning leading to the aforesaid conclusion is contained in Paragraphs 26 to 29 of the said judgment, which are extracted hereunder:-

“26. The Appellant contends that the purpose of Section 138 of the Act would be defeated if the dishonour of the cheque issued



for security is not included within the purview of Section 138 where the payment of a part of the cheque amount is made. It was contended that it would lead to a possibility where the drawer of the cheque could evade prosecution Under Section 138 by paying a small amount of the debt while defaulting on the remaining payment. Section 56 stipulates that if there is an endorsement on a negotiable instrument that a part of the sum mentioned in the cheque has been paid, then the instrument may be negotiated for the balance. Section 56 reads as follows:

56. Indorsement for part of sum due.- No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

27. Section 15 defines the phrase 'indorsement' as follows:

15. Indorsement. When a maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorse".

28. A Division Bench of the Kerala High Court has held in Joseph Sartho v. Gopinathan MANU/KE/0342/2008: (2008) 3 KLJ 784 that since the representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the drawer of the cheque cannot be convicted for the offence Under Section 138 of the Act. The High Court of Delhi addressed the same issue in Alliance Infrastructure Project Ltd. v. Vinay Mittal MANU/DE/0031/2010: ILR (2010) III Delh 459. The High Court observed that when part payment is made after the cheque is drawn, the payee has the option of either taking a new cheque for the reduced amount or by making an endorsement on the cheque acknowledging that a part payment was made according to the provisions of Section 56 of the Act. It was also held that the notice of demand which requires the drawer of the cheque to make payment of the whole amount represented in



WEB COPY

the cheque despite receiving part repayment against the sum, before the issue of notice, cannot be valid Under Section 138(b) of the Act. A similar view was taken by the High Court of Gujarat in Shree Corporation y. Anilbhai Puranbhal Bansal [MANU/GJ/0379 /2018 2018 (2) GLH 105].

29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque Under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence Under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.”

12. In view of the aforesaid decision of the Hon’ble Supreme Court, the reversal of the conviction by the Appellate Court in the impugned judgment cannot be interfered with by this Court.

13. However, the appellant cannot be left without a remedy by applying the latin maxim ‘ubi jus Ibi remedium’, meaning where there is a right, there is a remedy. It is noticed that the Purchase Order, marked as Ex.D3 dated 21.11.2015, contemplates resolution of disputes through arbitration under the provisions of the Arbitration and Conciliation Act, 1996. The said Purchase Order also specifies Chennai as the venue of arbitration. The relevant



arbitration clause contained in Annexure - II (Terms and Conditions) appended to the Purchase Order is reproduced below:-

WEB COPY

“10.0 Arbitration:

Arbitration shall be in accordance with Indian Arbitration and Conciliation Act 1996. The arbitration venue shall be at Chennai.”

14. Thus, the dispute between the appellant and the respondent is arbitrable. The Arbitration proceedings shall be deemed to have commenced in terms of Section 21 of the Arbitration and Conciliation Act, 1996. Therefore, liberty is granted to the appellant to work out its remedy in accordance with Section 21 of the Arbitration and Conciliation Act, 1996.

15. All issues are left open to be canvassed by the parties before the Arbitral Tribunal. Accordingly, the Criminal Appeal stands dismissed with the above liberty.

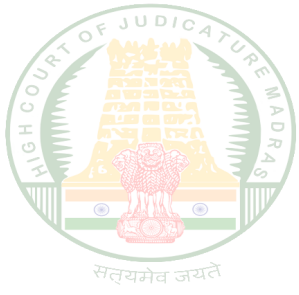
23-06-2026

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

av

To

1. The learned I Additional District and Sessions Judge, Thiruvallur.
2. The learned Judicial Magistrate, Fast Track Court at (Magisterial Level), Ambattur.



WEB COPY

CRL A No. 887 of 2



C.SARAVANAN, J.

av

CRL A No. 887 of 2019

23-06-2026