



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

WEB COPY Criminal Revision Case (MD)Nos.19, 26 and 27 of 2013

Baskaradhas .. Petitioner in all the Criminal RCs.  
Vs.  
Christudhas .. Respondent in all the Criminal RCs.

Criminal Revision Cases filed under Section 397 read with 401 of the Criminal Procedure Code to call for the records of the learned Sessions Judge, Kanyakumari Division, Nagercoil, in CrI.A.Nos.103 of 2011; 102 of 2011 and 101 of 2011 by Judgment dated 11.07.2012, confirming the conviction and sentence of imprisonment for one year rigorous imprisonment and to pay a compensation (twice amount of cheque) of Rs.20,000/-, Rs.20,000/- and Rs.11,000/- respectively, in default, to undergo three months simple imprisonment for an offence under Section 138 of Negotiable Instruments Act, imposed by the learned Judicial Magistrate No.II, Nagercoil, in S.T.C.Nos.3050 of 2006; 3049 of 2006 and 2779 of 2006 by the Judgement dated 28.09.2011, respectively and set aside the same.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : Mr.R.L.Victoriya Gowri

## C O M M O N O R D E R

The complainant is stated to be the proprietor of G.K.Industries. The Industry was engaged in the business of producing and selling weighing machines. The accused is stated to be the customer of G.K.Industries, having purchased the weighing machine from the complainant. It is alleged that the accused, after purchase of three weighing machines, issued three cheques, dated 28.02.2006, 28.03.2006 and 28.04.2006, each of the cheques, having been issued for a sum of Rs.10,000/-; Rs.10,000/- and Rs.5,500/- respectively.

2. When the amount was not realized, after being presented for collection and after issuance of the legal notice, the complainant has filed three cases, in respect of each of the cheques, before the learned Judicial Magistrate No.II, Nagercoil, under Section 138 of Negotiable Instruments Act.

3. The complainant himself has examined as P.W.1 and Exs.P1 to P-10 were marked. On the side of the accused, no oral evidence was adduced, but Exs.D1 to D8 were marked.

4. After hearing both sides, the learned Judicial Magistrate has come to the conclusion that the offence under Section 138 of Negotiable Instruments Act, is proved and therefore, the accused was convicted and sentenced to undergo rigorous imprisonment for one year and also to pay twice the amount of cheque, as compensation, i.e., the payment of Rs.20,000/- in default, to undergo simple imprisonment for a period of three months, in each of the cases, in respect of the offence under Section 138 of the Negotiable Instruments Act. Challenging the Judgment,



dated 28.09.2011, an appeal was filed before the learned Sessions Judge, Nagercoil. The learned Sessions Judge, Nagercoil, confirmed the conviction and Judgment imposed by the learned Judicial Magistrate No.II, Nagercoil. Challenging the same, these revision petitions have been filed.

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5. The first contention of the learned counsel for the revision petitioner is that the cheques have been issued only in the name of G.K.Industries, but the complaint is not filed in the name of G.K.Industries and therefore, the conviction and sentence are not maintainable.

5.1. This contention cannot be accepted, as G.K.Industries is stated to be a proprietorship industry, standing in the name of the complainant-Christudhas. The Provisional Registration Certificate has been filed to show that, as on 28.03.2001, which is valid up to 27.03.2006, the complainant is stated to be the proprietor of the G.K.Industries. As per Ex.P-9, the ownership has been transferred only on 03.07.2007. Till such time, as stated in cross-examination, the complainant is the proprietor of G.K.Industries. It is the suggestion of the accused that there are two other partners, by name, Subramanian and Thiyagarajan. Then, the onus shift on the accused persons to examine those two persons to show that they are the partners. The accused did not discharge the burden. Therefore, the contention that the complaint is not maintainable cannot be accepted.

6. It is the contention of the learned counsel for the revision petitioner that purchase was upto the year 2009 and these cheques have been ante-dated and have been filled up to make it appear as though the purchase was in the year 2006, whereas it is not actually so.

6.1. This contention also cannot be accepted, as under Section 20 of the Negotiable Instruments Act, when the signed cheque is given to the complainant, it gives authority to the complainant to fill up the date as well as the other particulars of the cheque and therefore, having given the cheques, it is not open to the accused to contend that it has been later on filled up.

6.2. The fact remains that the purchase of machines from G.K.Industries is an admitted fact.

6.3. From the document, which is filed as additional typed set of papers, it is evident that atleast in respect of the first cheque, the complainant had been the proprietor of the concern.

7. The next contention of the learned counsel for the revision petitioner is that the cheques were not issued towards discharge of the legal liability and therefore, the accused is not liable to answer the claim under Section 138 of Negotiable Instruments Act. In other words, the contention is that, the cheques had been issued only as a security for due performance of the contract and therefore, based upon the cheques, the complaint will not lie under Section 138 of Negotiable Instruments Act.

7.1. This contention also cannot be accepted, as it is an admitted fact that the amount is legally payable in respect of the purchase made from G.K. Industries. Therefore, the cheques have been issued only towards payment of the purchase money, which is legally due.



8. The next contention of the learned counsel for the Revision Petitioner is that, after 2006, the complainant herein has transferred his interest from G.K. Industries to some other third parties and those documents have been filed before the Court, with whom the accused had transactions; those documents have been marked by consent. In other words, the contention is that, the complainant, having accepted the validity of those documents, without even raising formal objection, is deemed to have accepted the contents of the documents and once there is evidence to show that he was not the proprietor of the concern after 2006, the complaint is not maintainable.

8.1. This contention cannot be accepted, as under Ex.P-9, the interest in the company has been transferred only on 03.07.2007. All the three cheques are dated prior to that. Therefore, as the sole proprietor of the G.K. Industries, during relevant time, the complainant has authority to file these complaints and the complaint is maintainable.

9. The learned counsel appearing for the complainant would submit that there are documents sought to be relied upon as additional documents and if those documents are to be admitted, then the matter has to be remanded and the other side has to be given an opportunity to contest the case, on merits, towards proof of documents.

9.1. A perusal of the documents, sought to be relied upon, would go to show that those documents cannot be considered or admitted at this stage, as the matter is pending for more than nine years. Apart from that, the cheques' amount involved is totally to a sum of Rs.25,500/-. Already the accused has deposited the entire amount, as per the conditional order passed by this Court. The lower court has also pointed out that it was the accused, who successfully dragged on the matter for five years.

10. Under such circumstances, in order to do justice to both parties, this Court is of the view that the complainant should be permitted to withdraw the entire amount deposited by the accused herein along the cost of litigation towards three cases before all the three Courts, which is estimated at Rs.10,000/-. Accordingly, the complainant is permitted to do so.

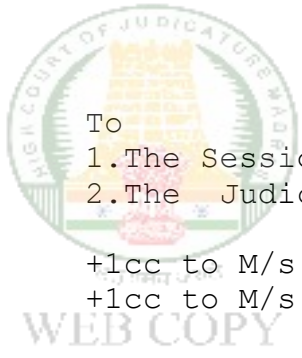
11. In the result, the conviction and sentence imposed upon the accused in three cases are set aside. The cost of litigation of Rs.10,000/- shall be deposited within a period of ten days from the date of receipt of the copy of this order. The complainant is permitted to withdraw the cheques' amount already deposited as well as the costs of Rs.10,000/-.

12. The Criminal Revision Petitions are disposed of, accordingly.

Sd/-

Assistant Registrar(RTI)

/True copy/



To

- 1.The Sessions Judge, Kanyakumari Division, Nagercoil.
- 2.The Judicial Magistrate No.II, Nagercoil.

+1cc to M/s.L.Victoria Gowri, Advocate SR.No.63019

+1cc to M/s.S.Deenadhayalan, Advocate sR.No.63119

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