

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.936 of 2016

and Crl.M.P.No.7274 of 2016

Sundaravadanan
Proprietor M/s.S.V.M.Auto Products
Denkanikottai Road, Opp: Elforge, Dinnur,
Hosur Taluk,
Krishnagiri District. ... Petitioner/Accused

vs.

M/s.Innoventive Industries Ltd.,
Nos.141, 142, 143, D.Wing
Second Floor, Clover Center
No.7, Moledina Road, Camp Pune
represented by its Authorized Signatory
Arunkumar ... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C.to
set aside the order of learned Additional District and Sessions
Judge, Fast Track Court, Krishnagiri, passed in C.A.No.46 of
2015 on 07.04.2016 and STC.230/14, Judicial Magistrate, Fast
Track Court, Hosur, dated 16/7/2015.

For Petitioner : Mr.Prakash Goklaney

For Respondent : Mr.M.P.Saravanan

सत्यमेव जयते

O R D E R

This revision arises against the judgment of learned
Additional District and Sessions Judge, Fast Track Court,
Krishnagiri, passed in C.A.No.46 of 2015 on 07.04.2016
confirming the judgment of learned Judicial Magistrate, Fast
Track Court, Hosur, passed in S.T.C.No.330 of 2014 on 07.04.2016.

2. Petitioner faced trial for offence u/s.138 of the
Negotiable Instruments Act in S.T.C.No.330 of 2014 on the file
of learned Judicial Magistrate, Fast Track Court, Hosur. Trial
Court, under judgment dated 16.07.2015, convicted the petitioner

and sentenced him to 6 months S.I. and to pay compensation of Rs.35,65,356/- to the complainant. There against, petitioner preferred C.A.No.46 of 2015 on the file of learned Additional District Judge, Krishnagiri, which came to be dismissed under judgment dated 07.04.2016. Hence, this revision.

3. Heard learned counsel for petitioner and learned counsel for respondent.

4. This revision is to be allowed on the sole consideration that neither in the statutory notice nor in the complaint or in the chief examination of the complainant before the trial Court, the receipt sums of Rs.1 lakh on 23.01.2009 and Rs.5,00,000/- on 05.03.2009 had been informed. Paragraph No.2 of the complaint reads thus:

"2. The complainant states that accused used to purchase above mentioned material from the complainant company on credit and both have business relation since long time. The complainant states that Accused have purchased the above said materials from the complainant company vide Bill Nos.1458, 1490, 1491, 1734, 2168 & 2229 dated 13/08/2007, 16/08/2007, 16/08/2007, 04/09/2007, 11/10/2007 & 17/10/2007 respectively each of amount Rs.3,28,166/-, 2,21,321/-, 2,18,353/-, 2,45,913/-, 2,53,700/- & 2,17,173/- respectively. Thus total due amount Rs.14,84,626/- against which you have issued a cheque dated 08/11/2008 bearing No.000406 of the amount of Rs.14,84,626/-. My client states that you have also issued Second cheque of the same date bearing No.000407 of amount Rs.15,67,097/- against the due amount of Rs.15,67,097/- against the goods purchased from my client vide Bill No.2231, 2234 & 2269 on 17/10/2007, 17/10/2007 & 31/10/2007 respectively of each amounting to Rs.4,33,100/-, 4,39,935/- & 6,94,062/- respectively, thus total due amounting to Rs.15,67,097/-. My client further states that you have issued Third cheque bearing No.000408 of the same date of amount Rs.16,13,633/- against the due pending amount Rs.16,13,633/- raised against the Bill Nos.1434, 2288, 2354, D.N.129, 2470, 2471, D.N.131, 2947, D.N.142, D.N.144, D.N.145, D.N.146 & 2981 respectively. Thus in order to pay and discharge the said valid and legal liability you have issued above mentioned three cheques total amounting to Rs.46,65,356/- (In words Forty Six Lacs Sixty Five Thousand & Three Hundred & Fifty Six only). The above all cheques are drawn on Axis Bank Ltd., Hosur Branch,

Hosur 635109 and are signed by you for and on behalf of M/s.SVM Auto Products."

5. It is only in the course of cross-examination that the complainant has admitted to the invoices marked as Ex.D1 which inform the particulars of payment made by petitioner. Similar situation has received consideration in the order of the Delhi High Court in *M/s.Alliance Infrastructure Project Pvt. Ltd. and Ors. v. Vinay Mittal* [Crl.M.C.No.2224/2009 dated 18th January, 2010]. Paragraph Nos.12 and 17 of such order read as follows:

"12. In respect of the cheque, subject matter of Crl.M.C.2225/2009, the amount of the cheque was Rs.31,91,650/- and the respondent, after giving credit for the amount of Rs.10,50,000/- paid to him on 20.10.2008 demanded only a sum of Rs.21,41,650/- vide notice dated 23.1.2009. Therefore, as far as the notice of demand issued in this case is concerned, it was legal and valid as the amount demanded was the actual amount payable by the petitioner to the respondent. But, in respect of the cheque, subject matter of Crl.M.C.2224/2009, the amount demanded in the notice of demand dated 19.12.2008 was Rs.49,47,600/-, though admittedly the amount due to the respondent at that time was only Rs.32,97,600/-, after giving credit of Rs.10,50,000/- received by him by RTGS on 7.10.2008. Thus, the respondent called upon the petitioner to pay much more than the amount actually due and payable by it. In order to comply with the demand made in the notice, the petitioner would have been required to pay the whole of the amount of Rs.49,47,600/- to the complainant/respondent. A perusal of the notice would show that the complainant did not at all refer to the payment of Rs.16,50,000/- received through RTGS, while issuing the notice of demand dated 19.12.2008. This is not as if the complainant/respondent acknowledged the payment of Rs.16,50,000/- and despite that asked the petitioner to make payment of the whole of the amount of the cheque. The complainant/respondent did not even refer to the substantial payment which he had received by way of RTGS. To ask the drawer of the cheque to make payment of Rs.49,47,600/- despite having earlier received a sum of Rs.16,50,000/- against that very cheque is nothing but a dishonest conduct. Had the petitioner complied with the demands made in this notice, it would have been compelled to later on chase the complainant for recovery of the excess amount paid

by it and had the complainant not paid the excess amount received by him, the petitioner would also have been compelled to initiate legal proceedings against him. Therefore, a notice of demand which requires the drawer of the cheque to make payment of the whole of the cheque amount, despite receiving a substantial amount against that very cheque, much before issue of notice, cannot be said to be a legal and valid notice envisaged in Section 138(b) of Negotiable Instrument Act. The expression amount of money used in Section 138(b) of Negotiable Instrument Act, to my mind, in a case of this nature would mean the amount actually payable by the drawer of the cheque to the payee of the cheque. Of course, if the payee of the cheque makes some demands on account of interest, compensation, incidental expenses etc, that would not invalidate the notice so long as the principal amount demanded by the payee of the cheque is correct and is clearly identified in the notice. When the principal amount claimed in the notice of demand is more than the principal amount actually payable to the payee of the cheque and the notice also does not indicate the basis for demanding the excess amount, such a notice cannot be said to be a legal and valid notice envisaged in Section 138(b) of Negotiable Instrument Act. In such a case, it is not open to the complainant to take the plea that the drawer of the cheque could have escaped liability by paying the actual amount due from him to the payee of the cheque. In order to make the notice legal and valid, it must necessarily specify the principal amount payable to the payee of the cheque and the principal amount demanded from the drawer of the cheque should not be more than the actual amount payable by him though addition of some other demands in the notice by itself would not render such a notice illegal or invalid.

17. For the reasons given in the preceding paragraphs, I hold that the complaint, subject matter of Crl.M.C.No.2225/2009 is liable to be quashed because the complainant presented the cheque for encashment of the whole amount of Rs.49,47,600/- though the amount due to him on the date of the presentation of the cheque was Rs.32,9600/- and he also demanded the whole of the amount of Rs.49,47,600/- as principal sum without even indicating the principal amount due to him under the cheque was Rs.32,97,600/- and without even referring

to the part-payment of Rs.16,50,000/- which he had received by RTGS on 7.10.2008. The criminal complaint, subject matter of CrI.M.C.2224/2009 is liable to be quashed as the complainant presented the cheque for encashment of whole of its amount of Rs.31,91,650/- though he had already received a sum of Rs.10,50,000/- before presentation of the cheque and the principal amount due to him on the date of presentation of the cheque was only Rs.21,41,650/-."

6. Courts below erroneously have dealt with the issue by informing that even if the payments of Rs.6,00,000/- is taken into account, the amounts reflected in the cheque will still be owing from the petitioner. The concern of the Court is whether the complainant has approached it with unclean hands. When the answer is in the affirmative, the complainant would suffer the dismissal of his complaint.

The Criminal Revision Case is allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court, Krishnagiri, passed in C.A.No.46 of 2015 on 07.04.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Hosur, passed in S.T.C.No.330 of 2014 on 07.04.2016, is set aside. Petitioner is acquitted of all charges. Bail bond, if any, executed by him shall stand cancelled. It is made clear that this order is without prejudice to civil remedies, if available. Connected miscellaneous petition is closed.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gm

To

1.The Additional District and Sessions Judge,
Fast Track Court, Krishnagiri.

2.The Judicial Magistrate,
Fast Track Court, Hosur.

+ 1 CC TO Mr.M.P.Saravanan, Advocate SR.NO.7909

+1 cc to Mr.Prakash Goklaney, Advocate SR.NO.7994

CrI.R.C.No.936 of 2016

KK [co]

RR 28/02/2017