

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Criminal Appeal Nos. 230 to 233 of 2009

M/s.Indian Oil Corporation Ltd.,
Rep. by its D.G.M. (Aviation)
Shri.C.S.Shankar.

....Appellant in all appeals /Complainant

.Vs.

1. NEPC Airlines,
A.Division of NEPC Micon Ltd.,
Rep. by its Managing Director,
Mr.Thirupathi Kumar Kemkha

2. Thirupathi Kumar Kemkha

..... Respondents in Crl.A.Nos.
230 & 231 of 2009 /Accused 1 & 2

1. Madhusudhan Kemkha

..... Respondents in Crl.A.Nos.
232 & 233 of 2009

Prayer in Crl.A.No. 230 of 2009: Criminal application has been filed under Section 378 of Criminal Procedure Code to set aside the Judgment dated 30.12.2008 passed in Crl.Appeal No.41 / 08 by the VI Additional Judge, City Civil Court, Chennai and confirm the judgment dated 11.01.2008 passed in C.C.No. 4866 of 1997 by the XIII Metropolitan Magistrate, Egmore, Chennai.

Prayer in Crl.A.No. 231 of 2009: Criminal application has been filed under Section 378 of Criminal Procedure Code to set aside the Judgment dated 30.12.2008 passed in Crl.Appeal No.40 / 08 by the VI Additional Judge, City Civil Court, Chennai and confirm the judgment dated 11.01.2008 passed in C.C.No. 4865 of 1997 by the XIII Metropolitan Magistrate, Egmore, Chennai.

Prayer in Crl.A.No. 232 of 2009: Criminal application has been filed under Section 378 of Criminal Procedure Code to set aside the Judgment dated 30.12.2008 passed in Crl.Appeal No.44 / 08 by the VI Additional Judge, City Civil Court, Chennai

and confirm the judgment dated 11.01.2008 passed in C.C.No. 4865 of 1997 by the XIII Metropolitan Magistrate, Egmore, Chennai.

Prayer in Crl.A.No. 233 of 2009: Criminal application has been filed under Section 378 of Criminal Procedure Code to set aside the Judgment dated 30.12.2008 passed in Crl.Appeal No.45 / 08 by the VI Additional Judge, City Civil Court, Chennai and confirm the judgment dated 11.01.2008 passed in C.C.No. 4866 of 1997 by the XIII Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.A.Ramesh,

For Respondents
in Crl. A.Nos.230 & 231 of 2009 : Mr. S.R.Raghunathan

For Respondent
in Crl. A.Nos.232 & 233 of 2009 : Mr. C.P.Palanichamy

COMMON JUDGMENT

These criminal appeals were filed as against the order of acquittal order passed in Criminal Appeals in Crl.A.Nos.40, 41, 44 and 45 of 2008 by the learned VI Additional Judge, City Civil Court, Chennai dated 30.12.2008.

2.The facts of the case is that M/s.Indian Oil Corporation Limited entered into a contract with NEPC Airlines for the supply of aircraft fuel in the year 1996. An amount to the tune of INR 19 crores was payable by NEPC Airlines to IOC. In view of the large outstanding, IOC decided to supply fuel on cash and carry basis and also demanded for an advance payment. Pursuant to which 7 cheques were issued by the NEPC / respondents

3.The seven cheques amounting to Rs.183.5 lakhs, subsequently Rs.70 lakhs was paid and when the other four cheques were presented for collection, the cheques were returned with an endorsement "full cover not referred and refer to drawer". Hence, a statutory notice was issued to the respondent / NEPC and a reply was also issued by NEPC.

4.After the trial, the learned XIII Metropolitan Magistrate, Egmore, Chennai, found the accused guilty in C.C.Nos.4865 & 4866 of 1997 and convicted the accused under Section 138 of Negotiable Instrument Act and sentencing A1 to pay a fine of Rs.3,000/- and A2 and A3 to undergo six months simple imprisonment and pay a fine of Rs.3,000/- and on failure to pay the fine of Rs.3,000/- undergo 3 months simple imprisonment.

5. Aggrieved by the said order, an appeal was preferred by NEPC / the accused company against the order of the Trial Court. The learned VI Additional Judge, City Civil Court, Chennai, through an erroneous order had set aside the order of the Trial Court and acquitted the accused in Criminal Appeals in CrI.A.Nos.40, 41, 44 and 45 of 2008 dated 30.12.2008. Aggrieved by the order of acquittal, the present appeals are preferred by the appellant / complainant.

6. The learned Senior Counsel appearing for the appellant would submit that the entire cheque amount has been paid by the respondents / NEPC during the trial. Apart from the above now the NEPC has offered a sum of Rs.10 lakhs as additional amount towards compensation. Accordingly, prays for appropriate orders from this Court.

7. The learned counsel appearing for the respondents / NEPC would submit that the first accused had paid a sum of Rs.113.5 lakhs being the amount covered under four cheques. Pursuant to the understanding of compliance in four instalments even before receipt of the summons. He would further submit on instructions that the NEPC / respondents have also agreed to pay Rs.5 lakhs in each of the criminal appeals in CrI.A.Nos.230 to 233 of 2009 in C.C.Nos.40, 41, 44 and 45 2008 towards compensation. Accordingly, the learned counsel relied upon the judgment of Supreme Court Cases (2018) 1 SCC 560 (Before Adarsh Kumar Goel and Uday U Lalit.JJ) in Criminal Appeal No.1731 of 2017 (Meters and Instruments Private Limited and another vs.Kanchan Mehta):

"18.1 Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in of presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus, read, principle of Section 258 Cr.P.C. will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3.Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

8.Considering the fact that the entire amount covered under the four cheques were already been paid and apart from the above, the respondents / NEPC have also come forward to pay Rs.5 lakhs in each, totally Rs.10 lakhs in Crl.A.Nos.230 to 233 of 2009 in C.C.Nos.40, 41, 44 and 45 2008, these criminal appeals are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Judge,
City Civil Court, Chennai.
2. The XIII Metropolitan Magistrate,
Egmore, Chennai.
3. do Thro Chief Metropolitan Magistrate,
Egmore, Chennai.
4. Section Officer
Criminal Section
High Court of Madras

+lcc to Mr.Siva Subramanian, Advocate, S.R.No.86806

+lcc to Mr.Raghunathan, Advocate, S.R.No. 86921

Crl.A.Nos. 230 to 233 of 2009

MG(CO)

GN(21/01/2019)