

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.210 of 2019

and

Crl.M.P.No.2120 of 2019

M/s.Neptune Inflatables Ltd.,
(Company in Liquidation)
No.12, Bishop Wallers Avenue (East)
Mylapore, Chennai-600 004.

...Petitioner

-Vs-

Industrial Venture Capital Ltd.,
Vairams No.112, Thiyagaraya Road,
T.Nagar, Chennai-600 017.
Having its registered office currently at
No.10, R Block II Floor,
Prem Nagar Colony, South Boag Road,
T. Nagar, Chennai-600 017.

...Respondent

This Criminal Revision case is filed under Section 397 read with Section 401 of Cr.P.C. to set aside the judgment of conviction imposed in C.A.No.39 of 2017 on the file of the learned XVII Additional Judge, City Civil court, Chennai dated 02.01.2019 confirming the conviction in C.C.No.2594 of 2004 on the file of the learned Metropolitan Magistrate/Fast Track Court No.III, Saidapet, dated 24.01.2017 directing the revision petitioner/1st accused to pay the cheque amount of Rs.59,87,400/- under Section 138 of NI Act is concerned.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.K.P.Anandakrishna

O R D E R

This revision has been filed by the petitioner to set aside the judgment in C.A.No.39 of 2017 on the file of the learned XVII Additional Judge, City Civil Court, Chennai dated 02.01.2019, confirming the conviction and sentence in C.C.No.2594 of 2004, on the file of the learned Metropolitan Magistrate/Fast Track Court No.III, Saidapet, dated 24.01.2017.

2. The case of the respondent is that the revision petitioner had applied for personal loan of Rs.59,87,400/- vide his letter dated 11.01.1996 to the respondent/complainant for purchase of Rs.3,52,200/- equity shares of Rs.10/- at a premium of Rs.7/- each. The loan was sanctioned by the complainant and an agreement dated 11.01.1996 was executed in favour of the complainant by the petitioner/accused under clause 3 of the agreement. The loan was repayable on demand. Subsequently, the petitioner/1st accused on behalf of the second petitioner/accused represented 2 and 3 petitioner/accused issued a cheque No.410723 dated 11.01.1996 drawn on Karur Vysya Bank for a sum of Rs.50,00,000/- and cheque No.896385 dated 11.01.1996 drawn on syndicate Bank, T.Nagar, Chennai for a sum of Rs.9,87,400 in favour of the respondent/complainant in settlement of the said amount. Subsequently, the said cheque was presented on 28.07.2003 and the same was dishonored with an endorsement 'refer to drawer'. The same was intimated to the respondent/complainant vide return memo dated 01.08.2003. The second and third accused issued a cheque No.848303 dated 25.03.2003 on behalf of the petitioner for a sum of Rs.59,87,400/- drawn on Syndicate Bank, knowing fully well that the petitioner had no money in its account. The complainant issued statutory notice on 12.08.2003, as contemplated under Section 138 of NI Act, which was duly received by the first petitioner represented by the second petitioner.

3. The respondent has filed a private complaint against the petitioner under Section 200 of Cr.P.C. before the learned Metropolitan Magistrate, FTC III, Saidapet, for offence under Section 138 of Negotiable Instruments Act, which was taken on file in C.C.No.2594 of 2004. After an elaborate enquiry, the learned Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced A2 and A3 to undergo six months simple imprisonment and A1 was directed to pay a sum of Rs.59,87,400/- as compensation to the complainant. Aggrieved against the order dated 24.01.2017, the accused had preferred an appeal in C.A.No.39 of 2017. The learned XVII Additional City Civil Court, Chennai dismissed the appeal. Challenging the same, the first accused has filed the present criminal revision before this Court.

4. The learned counsel for the petitioner would submit that the company itself was wound up on 10.03.1999. Therefore, after winding up of the company, all the assets had gone for liquidation and therefore, no private transaction is permissible under the Companies Act. Therefore, the issuance of cheque by the respondent on 25.07.2003 itself was in question. Even assuming that the cheque was issued only on 25.07.2003, the cheque was alleged to have been issued on 25.07.2003, after

three years from the date of alleged loan on 11.01.1996. Since, the cheque was issued after the period of limitation. Therefore, the cheque has not been issued to discharge legally enforceable debt, no action can be taken against the accused for time barred debts. For the above reason, Section 138 of NI Act will not be attracted. The cheque has not been issued towards a legally enforceable debt. Both the Court have failed to consider all these aspects and dismissed the petition. Therefore, the learned Counsel prays to set aside the judgment of the Appellate Court.

5. In support of his contentions, the learned counsel for the petitioner has placed reliance on the following judgments:-

1. CDJ 2001 SC 1423 (Sasseriyil Joseph Versus Devassia)
2. CDJ 2010 MHC 7755 (K.Kumaravel Versus R.P.Raman)
3. (2006) 1 MWN (Cri) DCC 64 (M/s.Counter Point Advt. P.ltd., Chennai Versus M/s.Haritha Finance Limited, Chennai and another)

6. The learned counsel for the respondent would submit that during trial, the accused has not denied his signatures and also the execution of the cheques. Therefore, there is statutory presumption under 118 and 139 of NI Act, that the cheque was issued for discharging the legally enforceable debt. It is for the revision petitioner/accused have to rebut the presumption. But. they have not rebutted the presumption in the manner known to law. The only intention of the accused is to drag on the proceedings. Therefore, the judgment passed by the lower Appellate Court does not warrant interference. The learned counsel for the petitioner would submit that the first accused company was wound up as early as 10.03.1999 and subsequently, the cheque alleged to have been issued by the second and third accused is not valid and no criminal proceedings can be initiated based on the above said cheque.

7. Heard the learned counsel appearing for the petitioner and respondent and perused the materials available on record.

8. Admittedly, the respondent/complainant filed a complaint under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act against the revision petitioners. The respondents marked the cheque, the return memo issued by the Bank, copy of the notice sent to the petitioner and returned cover. The cheque is executed by the revision petitioner in favour of the respondents. If once the signature is admitted, it is for the accused to rebut the presumption. No doubt the presumption under Section 118 and 139 of the Negotiable Instruments Act are rebuttable presumption. No doubt, the rebuttal can be done by the accused either directly or preponderance of probabilities. While rebutting the presumption,

the accused need not let in direct evidence and rebut the presumption. He can very well rebut the presumption by preponderance of probabilities or probable defence. Even the defence can be established and the presumption can be rebutted during the cross examination of the witnesses. Therefore, this Court has to see whether the revision petitioner has rebutted the presumption.

9. On a reading of the materials and also considering the submission made by the learned counsel for the petitioner, admittedly the company was wound up only on 10.03.1999. The alleged loan transaction took place way back on 11.01.1996. The alleged cheque has been misused. Therefore, it creates a doubt in the mind of this Court that when the company itself was wound up in the year 1999, a transaction could not be taken after winding up of the company, the cheque is alleged to have been issued only on 20.05.2003. Therefore, this Courts finds that the cheque has not been issued to discharge legally enforceable debt. Even assuming that the cheque is issued by the petitioner, proved by the respondent/complainant, the amount cannot be recovered. The amount mentioned in the cheque cannot be recovered as it is time barred. Therefore, the cheque is not issued for legally enforceable debt or liability unless it is proved there is a fresh promise to repay the money.

10. On a careful reading of the citations referred to by the learned counsel for the respondent, this Court is of the view that the authorities cited by the learned counsel for the petitioner are not applicable to the present case on hand. Even if the cheque was issued prior to winding up of the company, there is no bar for filing the complaint under Section 138 of NI Act. Whereas in this case, the transaction itself is alleged to have taken place before winding up of the company i.e. 11.01.1996. The cheque is alleged to have been issued only on 25.03.2003, that is, only after the winding up of the company. Therefore, the authorities referred by the learned counsel is not made applicable. In this case, admittedly there is no document to show that the revision petitioner had made fresh promise within the period of limitation. The contention raised by the learned counsel admittedly the cheque was issued only after three years of the alleged transaction that too after winding up of the company.

11. Under these circumstances, the contention raised by the learned counsel for the respondent is not acceptable and the citation referred to by the learned counsel for the respondent is also not applicable in the present case on hand. This Court finds that there is perversity in the order passed by both the Courts below. Therefore, it warrants interference of this Court.

12. For the above said reasons, the order passed by the Appellate court and the learned Metropolitan Magistrate are liable to be set aside and this Revision is allowed.

13. In the result, the revision is allowed. The order passed by the Courts below are set aside. Consequentially, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

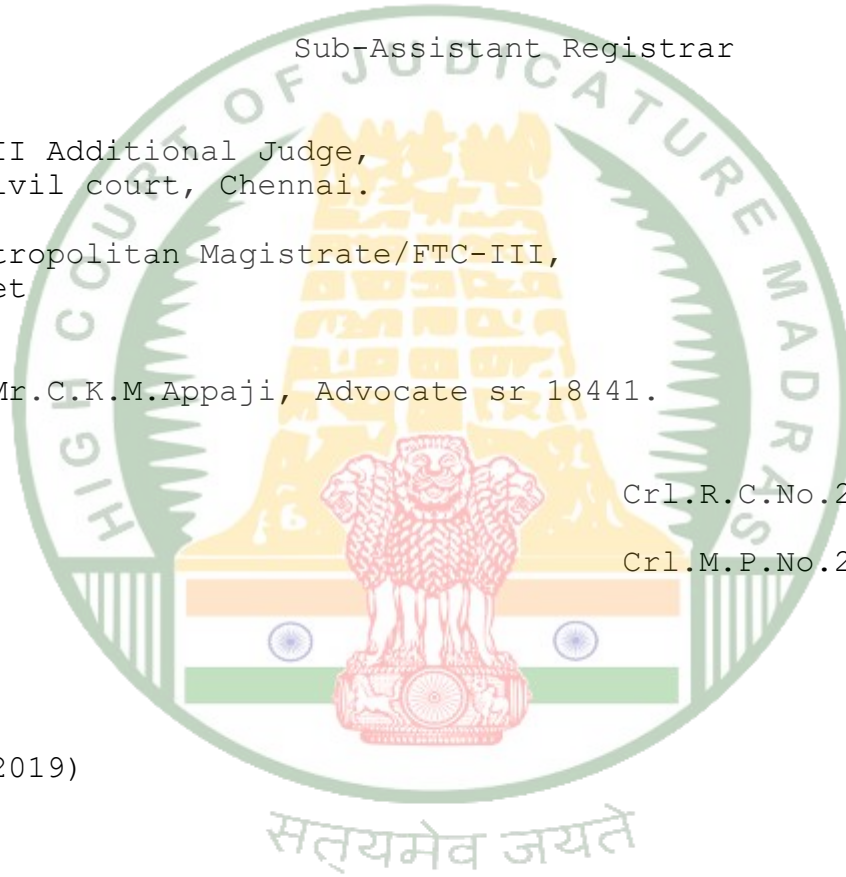
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To

1. The XVII Additional Judge,
City Civil court, Chennai.
2. The Metropolitan Magistrate/FTC-III,
Saidapet

+1 CC to Mr.C.K.M.Appaji, Advocate sr 18441.

Crl.R.C.No.210 of 2019
and
Crl.M.P.No.2120 of 2019

GP(CO)
SP(31/10/2019)



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