

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	05.12.2019
Date of Judgment	11.12.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)Nos.399 and 436 of 2015

and

MP(MD)No.1 of 2015

1.Crl.RC(MD)No.399 of 2015:-

M/s.Sri Selvamurugan Textiles,
represented by its Partner,
A.Manoharan.
No.12, MGR Nagar,
Vengamedu, Karur District.

: Petitioner/Respondent/
Complainant

Vs.

P.S.Vijayalakshmi

: Respondent/Appellant/
Accused

Prayer in Crl.RC(MD)No.399 of 2015: Criminal Revision filed under section 397 r/w 401 of the Criminal Procedure Code against the judgment made in Crl.A.No.12 of 2013 on the file of the Principal Sessions Judge, Karur, dated 10.06.2015 modifying the judgment made in STC No.326 of 2012 on the file of the Judicial Magistrate/Fast Track Court (Magistrate Level), Karur, dated 11.07.2013.

For Petitioner : Mr.P.Athimoolapandian

For Respondent : Mr.R.Meenakshi Sundaram

2.Crl.RC(MD)No.436 of 2015:-

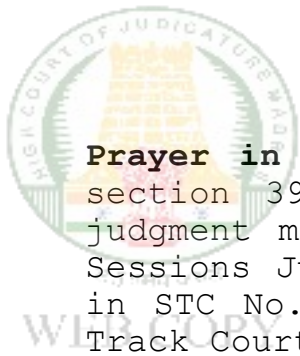
P.S.Vijayalakshmi

: Petitioner/Appellant/
Accused

Vs.

M/s.Sri Selvamurugan Textiles,
represented by its Partner,
A.Manoharan.
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Prayer in CrI.RC(MD)No.436 of 2015: Criminal Revision filed under section 397 r/w 401 of the Criminal Procedure Code against the judgment made in CrI.A.No.12 of 2013 on the file of the Principal Sessions Judge, Karur, dated 10.06.2015 modifying the judgment made in STC No.326 of 2012 on the file of the Judicial Magistrate/Fast Track Court (Magistrate Level), Karur, dated 11.07.2013.

For Petitioner : Mr.R.Meenakshi Sundaram

For Respondent : Mr.P.Athimoolapandian

COMMON JUDGMENT

These Criminal Appeals have been preferred against the judgment made in CrI.A.No.12 of 2013 on the file of the Principal Sessions Judge, Karur, dated 10.06.2015 modifying the judgment made in STC No.326 of 2012 on the file of the Judicial Magistrate/Fast Track Court (Magistrate Level), Karur, dated 11.07.2013 by the complainant as well as the accused respectively.

2.The short facts of the case is that the complainant is a registered partnership firm doing textile business in the name and style of "Sri Selvamurugan Textiles" and the accused had business dealings with the complainant in purchasing textile goods on credit basis and the accused purchased textile goods on credit basis through two purchase orders, dated 30.01.2006 and 31.01.2006 and the accused took delivery of the goods through the invoice, dated 03.04.2006 and for the above-said transactions towards repayment of the amount payable by the accused to the complainant, the accused issued 4 cheques for a total sum of Rs.10,91,880/- and when they were presented for collection on different dates, dishonoured for the reason "**Funds Insufficient**" and thereafter, the complainant issued notice, dated 18.01.2007 calling upon the accused to pay the cheques amount and it was returned as "Not claimed". Hence, the case.

3.The trial court, after proper appreciation of the entire materials on record, had found the accused guilty under section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for 6 months and imposed a fine of Rs.5,000/-, in default to undergo simple imprisonment for 30 days. Aggrieved by the judgment of the trial court, the accused preferred appeal before the first appellate court, the first appellate court dismissed the appeal and directed the accused to pay a fine of Rs.10,93,880/-, in default to undergo simple imprisonment for a period of four months. Against which, both the complainant as well as the accused are before this court with these criminal revisions.

4.Heard both sides and perused the materials available on

<https://hcservices.ecourts.gov.in/hcservices/>



record.

5.The learned counsel appearing for the complainant argued that the fine amount of Rs.10,93,880/- out of the cheque amount of Rs.10,91,880/- is nothing, but nominal because of the fact that provisions under section 38(a) of the Negotiable Instruments Act categorically says fine which may extend to twice the amount of the cheque or with both and the sentence of 6 months imposed by the trial Judge was reduced to 4 months without any reason, when the Act provides the sentence may extend to 2 years as per section 38(b) of the Negotiable Instruments Act and the sentence of 6 months reduced to 4 months leads the accused persons weight have think that instead of paying the cheque amount, he is willing to get inside to cheat the complainant and prays that the criminal revision Crl.RC(MD) No.399 of 2015 is liable to be allowed.

6.The learned counsel appearing for the accused argued that there was no actual transaction between the accused and the complainant and the complainant has not produced the correct statement of accounts and there is difference in claiming the amount in the invoice and in the complaint and the said transaction is not reflected in the Income Tax Returns and the complainant has not even discharged the initial burden of proof and the accused has rebutted the presumption under Negotiable Instruments Act and a sum of Rs.3,00,000/- was paid by the accused is credited by pencil entry in the Ledger Book and there is no legally enforceable debt and in any event, the sentence imposed on the accused is high and excessive and without jurisdiction and prays that the Crl.RC(MD)No.436 of 2015 is liable to be allowed.

7.In this case, the accused admitted the issuance of 5 cheques and also her signature found in Exs.P6 to P9 cheques. Hence, it is presumed that the accused issued the above cheques unless and until is proved. Hence the burden is now on the side of the accused to prove or at least to probablise the version.

8.The accused admitted the business transaction with the complainant and she admitted the orders placed to the complainant for textile goods to the tune of Rs.13,91,800/- by way of Exs.P3 and P4. The accused admitted her signature present in Exs.P3 and P4. Further, she has also admitted the signature of her husband present in Exs.P3 and Ex.P4. Further, the accused has accepted the delivery of the goods for the worth of Rs.13,91,880/- supplied by the complainant under Ex.P5 and the accused has admitted during her chief examination that she issued the cheques for the alleged business transactions.

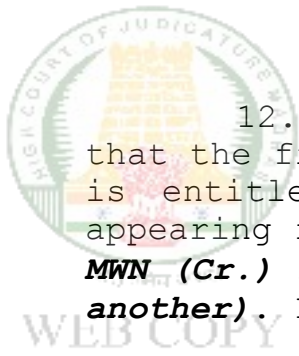
9.Further, on the side of the accused, it is stated that the accused paid Rs.3,00,000/- to the complainant and for the receipt of the above amount, the complaint made by way of endorsement in



accused relied upon Ex.D2. But on the side of the complainant, it is stated that the said endorsement of Rs.3,00,000/- is only the reflex of the amount paid by way of cheque by the accused and not the acknowledgement for payment of cash in hand as stated by the accused. On careful perusal of Ex.D2, it reveals that there is an entry for a sum of Rs.3,00,000/- below the entry for the receipt of payment by way of cheque bearing No.445730. In this case, the accused was examined as DW1. DW1 during her chief examination stated that she paid Rs.3,00,000/- to the complainant in the presence of her husband. To prove it, the husband of the accused was not examined. For the payment of Rs.3,00,000/- to the complainant, the accused has not received any acknowledgement from the complainant. DW1 has not produced any document to prove the source of Rs.3,00,000/-. The accused stated that she paid Rs.3,00,000/- to the complainant. Hence, it is her bounden duty to prove that she paid Rs.3,00,000/- by way of cash to the complainant. But the accused failed to prove it. On perusal of Ex.D2, it is found that the credit of Rs.3,00,000/- by way of cheque was entered and subsequently, the amount of Rs.3,00,000/- was adjusted from the admitted value of Rs.13,91,880/- and arrived at Rs.10,91,880/-. Already, it was decided that the accused failed to prove that she gave Rs.3,00,000/- by way of cash and hence, the endorsement found in Ex.D2 can be presumed that the same was only towards the cheque amount.

10.The learned counsel appearing for the accused argued that no presumption can be drawn under section 139 of the Negotiable Instruments Act regarding the legal enforceable debt for liability and for that, the learned counsel for the accused relied upon the judgement reported in **2010(4)CTC 716 (K.N.Subramaniam Vs. Ezhilarasi and another)**.

11.In this case, the accused made a clear admission in the witness box that she had issued five cheques for the purpose of the alleged business transactions and also there was no earlier business transactions with the complainant. Hence, until and unless the contrary is proved, it is presumed that the accused issued the disputed cheques. It is to be noted in the present case that even without presumption, the accused herself has admitted the liability of Rs.13,91,880/- towards the goods supplied by the complainant. While so, there is no question in saying that there is no legal enforceable liability between the complainant and the accused. Hence, the above ruling reported in **2010(4)CTC 716 (K.N.Subramaniam Vs. Ezhilarasi and another)** relied on by the learned counsel for the accused is not applicable to this case. Hence, this court came to the conclusion that the accused did not probalise her case and the burden was not shifted. Since the burden was not shifted, the presumption in favour of the complainant shall subsist. The complainant proved the case beyond reasonable doubt.



12.The learned counsel appearing for the complainant argued that the first appellate court imposed fine only and the complainant is entitled to the compensation. For that, the learned counsel appearing for the complainant submitted a ruling reported in **2019(3) MWN (Cr.) DCC 75 (SC) (Shree Daneshwari Traders Vs. Sanjay Jain and another)**. In that case, it was held in para 19 and 20 as follows:-

"19.It is for the respondent-accused to adduce evidence to prove that the cheques were not supported by consideration and that there was no debt or liability to be discharged by him. The Receipts-Ex.22/C (colly) relied upon by the respondent-accused do not create doubt about the purchase made on credit and the existence of a legally enforceable debt for which the cheques were issued. The court below erred in saying that by the receipts-Ex/22/C (colly), the respondent-accused has rebutted the statutory presumption raised under section 139 of the Negotiable Instruments Act. The oral and the documentary evidence adduced by the complainant are sufficient to prove that it was a legally enforceable debt and that the cheques were issued to discharge the legally enforceable debt. With the evidence adduced by the complainant, the courts below ought to have raised the presumption under section 139 of the Act. The evidence adduced by the respondent-accused is not sufficient to rebut the presumption raised under section 139 of the Act. The defence of the respondent that though he made payment for the commodities/Rice bags, the blank cheques were not returned by the appellant-complainant is quite unbelievable and unacceptable. The impugned judgment of the High Court cannot be sustained and is liable to be set aside. The respondent-accused is convicted under section 138 of the Negotiable Instruments Act in both the complaints, however, considering that the cheque transaction was of the year 2003, at this distance point of time, we do not deem it appropriate to impose any sentence of imprisonment on the accused.

20.In the result, the impugned judgment of the High Court in Criminal Appeal Nos.53 & 54 of 2006 is set aside and these Appeals are allowed. The respondent-accused is convicted under Section 138 of Negotiable Instruments Act and a Fine of Rs.2,97,150/- (Rs.53,171 + Rs.1,93,979/- + Compensation of Rs.50,000/-) is imposed on the respondent in default of which, the respondent shall undergo imprisonment for six months. The Fine amount of Rs.2,97,150/- is



to be deposited before the trial court within twelve weeks from today, failing which the respondent shall be taken into custody to serve the default sentence. On deposit of Fine amount, the amount of Rs.2,97,150/- shall be paid to the appellant-complainant."

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13.For all the reasons stated above, this court is of the considered view that while confirming the findings of the first appellate court, this court imposed a compensation of Rs.1,00,000/- on the accused, in default of which, the accused shall undergo simple imprisonment for six months.

14.In the result, Cr1.RC(MD)No.399 of 2015 filed by the complainant is **partly allowed**. The accused is directed to pay a compensation of Rs.1,00,000/- to the complainant, within a period of four months from the date of receipt of a copy of this order, in default, the accused shall undergo simple imprisonment for six months. Cr1.RC(MD)No.436 of 2015 filed by the accused is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To,

1.The Principal Sessions Judge, Karur.

2.The Judicial Magistrate/Fast Track Court,
(Magistrate Level), Karur.

Copy to:

The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-104380[F] dated
11/12/2019)

+1 CC to M/s.R.MEENA KSHI SUNDARAM, Advocate (SR-104465[F] dated
11/12/2019)

Cr1.RC(MD)Nos.399 and 436 of 2015
11.12.2019

JMN(11.03.2020) 6P : 7C