IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Revision Case No.539 of 2016

N.Chidambaram .. Petitioner/Accused

- Vs. -

M/s. RMC ReadyMix India Pvt. Ltd.
Rep. By its Authorized Signatory,
M.Meenakshi Sundaram
AC-26 SIDCO Industrial Estate,
Thirumudivakkam, Chennai 600 044 .. Respondent/Complainant

Prayer: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.312 of 2014 on the file of the V Additional District and Sessions Court, Chennai, dated 02.02.2016, confirming the judgement made in C.C.No.4071 of 2009 on the file of the learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai, dated 28.11.2014.

For Petitioner : Mr. P.Premkumar
For Respondent : Mr. S.Thanka Sivan.

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O R D E R

As against the concurrent conviction and sentence to undergo Simple Imprisonment for two years and to pay the compensation amount of Rs.9,00,000/- to the respondent, for the offence under Section 138 of the Negotiable Instruments Act imposed by the Courts below against the petitioner / accused, he is before this Court.

2. The case of the complainant / respondent herein is that, they are carrying on business in manufacturing and supply of readymix concrete materials. The petitioner has purchased readymix concrete materials from the complainant on credit basis. A huge amount became due to the respondent. Towards part payment of such dues, the petitioner has issued three cheques. Subsequently, the petitioner has requested the respondent to defer the presentation of the cheques from time to

time, for collection. At last, the petitioner has requested the respondent to present the cheques for collection during November 2008. Accordingly the cheques were presented, but returned with endorsements "funds insufficient" and "payment stopped by the drawer". The respondent has sent a legal notice. Having received such notice, the petitioner did not sent any reply. Hence a private complaint has been preferred by the respondent.

3. Contrary to that, the case of the petitioner herein is that the cheques in question were issued for the purpose of security and without instruction, the respondent had presented them for collection and there is no amount due and payable against the cheques.

4. The Courts below have held that: it is the bounden duty of the petitioner to disprove the case of the respondent by adducing any rebuttal evidence and to establish that there was no legally enforceable debt or liability for which the cheques were issued, while the respondent has initially discharged its burden to prove their case; and the petitioner has not replied to the notice sent by the respondent and thus have ultimately convicted and sentenced the petitioner, as aforesaid.

5. Heard both sides.

6. The learned counsel for the petitioner submitted that petitioner is not liable to meet out the alleged debt, as projected by the respondent; the courts below have failed to attribute any valid and cogent reason for accepting the case of the respondent; the courts below have failed to note that goods will be supplied only on the basis of the Purchase Orders and thus the onus of proving the delivery of materials and liability had rested only with the respondent and not with the petitioner; the courts below have failed to see that the evidence of P.W.1 is silent about the date, time and the acceptance of the petitioner to present the cheques; and in any event, the judgements of the Courts below are bereft of reasons and hence the same have to be set-aside.

7. Per contra, the learned counsel for the respondent / complainant submitted that based on the materials, evidence and settled principles of law, the Courts below have concurrently found the petitioner guilty under Section 138 of the Negotiable Instruments Act, convicted and sentenced him and hence the same warrants no interference by this Court.

8. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

9. It is admitted by the petitioner that Cheques were issued by him and the signature found therein was that of the petitioner. It is trite that the person, who issued or was responsible to issue the cheques, has to rebut the presumption placing necessary evidence, because cheques are issued towards payment of certain amount and it is presumed that there was existence of a legally enforceable debt. When the issuance of the cheques is admitted by the petitioner, the respondent is entitled to invoke presumption under Sections 118 and 139 of the Negotiable Instruments Act for discharging the subsisting liability and in this case, rightly the respondent has invoked such presumption. The presumption will live, exist and survive and shall end only when the contrary is proved by the petitioner, i.e., the cheques were not issued for consideration and in discharge of any debt or liability. It is to be borne in mind that the presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

10. Even assuming the case of the petitioner is to be true that the cheques were issued earlier towards security, as per the law laid down in 2006 Cri.L.J. 452 M/s. STP Limited v. Usha Paints and 2006 (Cri.) 3760 (Kan) (Smt. Umasamy v. K.N.Ramanatan) the petitioner is held liable to be prosecuted under Section 138 of the Negotiable Instruments Act. Primarily, the onus to prove the fact that the cheques were not issued for discharge of any debt and liabilities lies on the accused (petitioner) and not on the (complainant) respondent. Here, in this case, the petitioner has not rebutted such onus by producing oral and documentary evidence, which is fatal to the case of the petitioner.

11. Further, there is no iota of evidence or document on the side of the petitioner by way of reply to prove that there is no legally enforceable debt or liability due to the complainant. Hence, the petitioner has not rebutted the presumption as contemplated under Section 139 of the Negotiable Instruments Act.

12. In view of the above reasonings, this Court is of the opinion that cogent and convincing reasonings have been recorded by the Court below for convicting and sentencing the petitioner/accused and hence they are confirmed as such. This Criminal Revision Case is devoid of merits and hence the same is dismissed. The learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, is directed to secure the accused and to proceed in accordance with law. If any amount has been deposited by the accused, either in the appellate court or in the Trial Court in connection with this case, the same

shall be disbursed with accrued interest to the complainant. It is always open to the parties to file an application before the Trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid, before the trial court, the learned Magistrate shall send a report to the Assistant Registrar (Crl. Side) of this Court who shall make it form part of the records in this Case. Registry is directed to transmit the original records, if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To
1.The V Additional District and Sessions Judge, Chennai.
2. The Metropolitan Magistrate, Fast Track Court IV,
George Town, Chennai.
3.The Chief Metropolitan Magistrate, Egmore, Chennai.
4.The Assistant Registrar, Criminal Side,High Court, Madras.
+1 CC to Mr.S.Thanga Sivan, Advocate, Sr.No. No.17829

Crl.R.C.No.539 of 2016

NMI (CO)
VSI-2(26.05.2020)