IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Revision Case Nos.185 to 194 of 2017 (10 cases)
& Crl.M.P.Nos.2047, 2049, 2050, 2052, 2053, 2055, 2056, 2058, 2059, 2061, 2062, 2064, 2065, 2067, 2067,2068, 2070,2071, 2074, 2073,2074 & 2076 of 2017

Crl.R.C.No.185/2017:

V.Palaniappan .. Petitioner in all Crl.R.Cs. In all the Petitions

- Vs. -

Jagadeesh Prasanth Rathi (HUF),
S/o. Babulal Rathi,
Rep. By his Power Agent,
Mahavir Prasath Rathi. ... Respondent in Crl.R.C.No.185/2017 of CRL RC.189/17

Jagadeesh Prasanth Rathi,
Properitor M/s.Dhanalakshmi,
Textiles Mahavir,Prasatnth Rathi
.. Respondent in Crl.R.C.No.188,193/2017

M/s.Subbulakhsmi,
Textiles Rep.by its
Properietor,
Mahavir,Prasatnth Rathi
..Respondent in Crl.R.C.No.186,191,192,194/2017

Suman Devi Rathi,
Properietor,
M/s.Durga Cotton Mills,
Rep. By his Power Agent,
Mahavir Prasath Rathi.
... Respondent in Crl.R.C.No.187,190/2017

Prayer in Crl.R.C.No.185 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.146 of 2016 on the file of the II Additional District and Sessions Court, Erode dated 22.12.2016, reversing the judgement made in S.T.C.No.172 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode, dated 03.06.2016.

Prayer in Crl.R.C.No.186 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.151 of 2016 on the file of the II Additional District and Sessions Court, Erode dated 03.06.2016, passed in S.T.C.No.177 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.187 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.149 of 2016 on the file of the II Additional District and Sessions Court, Erode dated 03.06.2016, passed in S.T.C.No.175 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.188 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.150 of 2016 on the file of the II Additional District and Sessions Court, Erode dated 03.06.2016, passed in S.T.C.No.176 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.189 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.145 of 2016 on the file of the II Additional District and Sessions Court, Erode 03.06.2016, passed in S.T.C.No.171 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.190 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.148 of 2016 on the file of the II Additional District and Sessions Court, Erode 03.06.2016, passed in S.T.C.No.174 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.191 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.153 of 2016 on the file of the II Additional District and Sessions Court, Erode 03.06.2016, passed in S.T.C.No.179 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.192 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.147 of 2016 on the file of the II Additional District and Sessions Court, Erode 03.06.2016, passed in S.T.C.No.173 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.193 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.152 of 2016 on the file of the II Additional District and Sessions Court, Erode 03.06.2016, passed in S.T.C.No.178 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

Prayer in Crl.R.C.No.194 of 2017: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.154 of 2016 on the file of the II Additional District and Sessions Court, Erode 03.06.2016, passed in S.T.C.No.180 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court) No.1, Erode.

For Petitioner (in all Crl.R.Cs.) : Mr. I.C.Vasudevan
For Respondent (in all Crl.R.Cs) : Mr. Ganeshkumar

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COMMON ORDER

As against the acquittal of the petitioner from the offence under Section 138 of the Negotiable Instruments Act, respondents / complainants have preferred Appeals in Criminal Appeal Nos.146, 151, 149, 150, 145, 148, 153, 147 and 152 to 154 of 2016 before the learned II Additional District and Sessions Judge, Erode. The appellate court, under judgments, dated 22.12.2016 found the petitioner guilty under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo six months Simple Imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month Simple Imprisonment, in each case. There against, the present Revisions have been preferred by the petitioner / accused.

2. For better appreciation, the necessary particulars, with regard to the cheque numbers, dates, amounts, the reasons for return of the cheques against each cases are as follows:-

Crl.R.C. No.	Cheque Nos.	Date	Reason for return of the cheques	Amount
185/2017	023761	27.11.2013	Stop Payment	60,000/-
	023763	27.11.2013	Stop Payment	76,000/-
	023765	27.11.2013	Stop Payment	56,000/-
186/2017	001452	02.12.2013	Exceeds Arrangement.	1,25,000/-
187/2017	023754	27.11.2013	Stop Payment	54,000/-
	023755	27.11.2013	Stop Payment	55,000/-
	023756	27.11.2013	Stop Payment	55,107/-

Crl.R.C. No.	Cheque Nos.	Date	Reason for return of the cheques	Amount
188/2017	001454	25.11.2013	Exceeds Arrangement.	1,00,000/-
	001456	25.11.2013	Exceeds Arrangement.	67,000/-
	001457	25.11.2013	Exceeds Arrangement.	62,000/-
189/2017	023757	25.11.2013	Stop Payment	48,000/-
	023758	25.11.2013	Stop Payment	55,000/-
	023760	25.11.2013	Stop Payment	70,000/-
190/2017	023751	28.11.2013	Stop Payment	65,000/-
	023752	28.11.2013	Stop Payment	67,000/-
	023753	28.11.2013	Stop Payment	62,000/-
191/2017	001375	25.11.2013	Exceeds Arrangement.	1,50,000/-
	001376	25.11.2013	Exceeds Arrangement.	1,50,000/-
192/2017	001377	29.11.2013	Exceeds Arrangement.	1,50,000/-
	001378	29.11.2013	Exceeds Arrangement.	1,50,000/-
193/2017	001458	27.11.2013	Exceeds Arrangement.	54,000/-
	001459	27.11.2013	Exceeds Arrangement.	55,000/-
	001460	27.11.2013	Exceeds Arrangement.	55,107/-
194/2017	001451	02.12.2013	Exceeds Arrangement.	1,25,000/-

3. According to the respondents/complainants on 05.10.2013 the petitioner borrowed amounts from the respondent and issued the aforesaid post dated cheques. When the same were presented for encashment, they were returned / dishonoured. Hence the respondents had issued statutory notices to the petitioner, on 23.12.2013. The petitioner, having received the notice, has issued evasive replies on 13.01.2014, but failed to repay the amounts.

4. On the basis of the complaints given by the respondent, the trial court has taken the cases on file and sent notice to the petitioner herein. After appearance, the petitioner denied the averments made in the complaints filed by the complainants / respondents and stated that false cases were foisted against him. After contest and pursuant to marking of documents and evidence adduced, the trial court dismissed the complaints preferred by the complainants and acquitted the petitioner from the charge levelled against him, against which, the respondents / complainants have preferred appeals before the appellate court, which were allowed on 22.12.2006 and convicted and senteced the petitioner as stated supra. As against the reversal judgement, these Revision Cases are filed by the petitioner / accused.

5. The learned counsel for the petitioner / accused, in all the above cases, submitted that the appellate court erred in convicting the petitioner without considering the material fact that the respondent failed to prove that there was a transaction between the petitioner and the respondent and hence, there is no legally enforceable debt; the appellate court failed to consider that the respondents forcibly took 27 signed blank cheques of the petitioner from his son for his liability and filed various complaints in the name of different persons at different places; the appellate court failed to note that the respondents failed to prove the transactions with the petitioner by producing the income tax returns or any other supporting documents; the appellate court failed to take into consideration that the initial burden was on the complainants to prove the liability of the petitioner; and at any rate, the reasons given by the appellate court for convicting the petitioner are not sustainable in law. Hence the judgement of the appellate court is liable to be set-aside.

6. Per contra, the learned counsel for the respondents / complainants, in all the above cases, submitted that the trial court erred in acquitting the petitioner by overlooking the materials and evidence on record, but the appellate court has rightly assessed the same, reversed the judgment of the trial court and convicted the petitioner, which does not require any interference at the hands of this Court. He further submitted that the reasonings recorded by the appellate court are based on settled principles of law as well as evidence on record. He also submitted that the payment of cheques stopped by the drawer itself would speak volumes that there is a legally enforceable debt by the petitioner.

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

8. The petitioner / accused challenged the judgment of the appellate court by contending that the respondents forcibly took the petitioner's 27 signed blank cheques from his son for the liability of the petitioner's son and filed various complaints in the name of different persons at different places; that the respondent failed to prove the transactions with the petitioner by producing the income tax returns or any other supporting documents; that there is no necessity to give three cheques for different amounts on the same day that too not consecutive in numbers; and that the respondents were represented by their power of attorney, who failed to state that he had personal knowledge about the transactions of the respondents with the petitioner as claimed in their complaints and hence the present complaints are not maintainable.

9. From the cross-examination of P.W.1 and the examination of R.Ws.1 and 2, the case of the petitioner is that R.W.2, Shanmugam, the son of the petitioner worked with the complainant and he introduced one Ramesh Babu to the complainants, in respect of business dealings. During the course of such business transactions, Ramesh Babu owes a sum of Rs.9,00,000/- to the complainant, as discount. Since the said amount was not received, with the help of one police personnel, the complainants had taken away 27 signed cheques, which were kept in the house of the petitioner, by threat and undue influence. Hence according to the petitioner the complaints filed by the respondents will not stand in the eye of law.

10. From the above it is clear that there were transactions between the petitioner and the respondents, though not directly but indirectly. Through one Ramesh Babu, the friend of the petitioner's son, the transactions had taken place and to that effect evidence has been let in by both sides. Though P.W.1 was cross-examined by the petitioner, he has not justified his defence, by properly producing any oral or documentary evidence. In the absence of any proper material placed before the Courts below, it cannot be contended by the petitioner that the complaints are not maintainable. Hence the challenge to the appellate court's judgement on the above grounds does not hold water anymore.

11. Apart from that, the place of such occurrence was stated to be in the house of the petitioner. After the incident, immediately no complaint, whatsoever, was made either by the petitioner or by his son to the Police station, which is hardly 1 Km from their house, but a police complaint was made by them on 01.11.2013, which was after filing of the private complaints by the respondents herein that too, pursuant to the notice served on the petitioner through Court. This was evident from the evidence of the independent witnesses viz., P.Ws.3 and 4-Special Sub-Inspectors of Police. To controvert the same, no convincing reasons or cogent

evidence was let in by the petitioner. This Court is of the opinion that such police complaint by the petitioner is an after-thought and invented theory to deny the case of the complainants as claimed in the complaints.

12. Further, the cheques in question were returned stating "Payment of cheque stopped by the drawer" and "Exceeds arrangement". The person issuing the cheques cannot escape from his liability, even if there is a stoppage of payment, unless he disapproves the same for other reasons. Hence the category of 'stop payment of cheques' would be subject to rebuttal and it would be an offence, if the petitioner fails to discharge the burden of rebuttal. Further, the endorsement made by the Bank 'Exceeds Arrangement' in the memo denotes the fact that the cheque was given for an amount which was not credited into the account and the cheque amount was more than the amount lying in the bank account and therefore the cheque was in fact dishonoured because of insufficiency of funds in the account which falls within the ambit of Section 138 of the Act. Admittedly, the evidence of the petitioner was not only silent about 'stop payment' and 'exceed arrangement', but also not to the effect that the same were for good and valid reasons, which is a sine qua non.

13. The trial court has acquitted the petitioner / accused on the ground that the respondents herein had not discharged the legal presumption under Sections 118 read with Section 139 of the Negotiable Instruments Act that they had required funds for advancing the money to the petitioner. When the petitioner is having a capacity to hold cheque leaves containing more than 25 at a time during 2013, it is well established about his financial capacity, since it is mandatory that the Bank will provide cheque leaves containing more numbers to the persons who have sufficient balance in their accounts.

14. Be that as it may. It is admitted that the cheques in question and the signatures found therein were that of the petitioner and the writings in the cheques were done by his son. It is quite natural that the person, who issued or was responsible to the cheques has to rebut the presumption placing necessary evidence, because when cheques are issued towards payment of certain amount, 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. In this case, rightly the respondents have invoked such presumption. The presumption will live, exist and survive and shall end only when the contrary is proved by the petitioner, whereas the petitioner has not established that the cheques were not issued for consideration and in discharge of any debt or liability through preponderance of probability.

15. In such view of the matter, this Court finds no reason much less any valid reason to differ with the findings of the Appellate Court in convicting and sentencing the petitioner for the offence under Section 138 of the Negotiable Instruments Act. Accordingly, this Criminal Revision Case is dismissed by confirming the judgement passed by the appellate court.

16. The learned Judicial Magistrate (Fast Track Court) No.1, Erode, is hereby 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srk

To
1. The II Additional District and Sessions Court, Erode
2. Judicial Magistrate (Fast Track Court) No.1, Erode.
3. The Chief Judicial Magistrate,Erode(For Information)

Copy to:
1.The Assistant Registrar,(Criminal Side),
High Court,Madras.

2.The Section Officer,
Criminal Section,
High Court,Madras

Criminal Revision Case Nos.185 to 194 of 2017 (10 cases)
& Crl.M.P.Nos.2047, 2049, 2050, 2052, 2053, 2055, 2056, 2058, 2059, 2061, 2062, 2064, 2065, 2067, 2067,2068, 2070,2071, 2074, 2073,2074 & 2076 of 2017

A.SK(04/09/2020)