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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.430 OF 2015

AND

M.P.NO.3 OF 2015

T.Moorthy alias Daniel Moorthi

.. Petitioner

Vs.

M/s.Bloom Electronics (P) Ltd.,
Represented by its Accountant
M. Raju

.. Respondent

Prayer : Petition filed under Section 397 & 401 of the Criminal Procedure Code, to call for the records in C.A.Nos.45 of 2013 & 114 of 2013, respectively on the file of learned V Additional District Sessions Judge, Coimbatore and set aside the order dated 09.02.2015 confirming the conviction and the sentence passed by the learned Judicial Magistrate, Fast Track Court, Level-II, Coimbatore in STC.No.188 of 2012 (STC.822/09-JM.No.7, Coimbatore) by a judgment dated 26.02.2013.

For Petitioner : Mr.H.Rajasekar

For Respondent : Mr.R.Babu

O R D E R

The matter is heard through "Video Conference".

2. Convicted accused is the revision petitioner herein.

3. The respondent herein filed complaint under Section 200 of Cr.P.C., to prosecute the accused for the offence under Section 138 of Negotiable Instruments Act.

4. This criminal revision petition is filed against the order passed by V Additional District and Sessions Court,



Coimbatore in C.A.No.45 of 2013 by an order dated 09.02.2015, confirming the conviction under Section 138 of Negotiable Instruments Act rendered by the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, STC No.188/2012 (STC.822/09-JM.No.7, Coimbatore) dated 26.02.2013 and affirming the sentence of Simple imprisonment for six months and a fine of Rs.3,000/- in default, shall undergo simple imprisonment for one month.

5. The brief facts of this case is that the petitioner is a customer of the respondent who is a dealer in computer accessories having credit dealings with the respondent. As per the accounts maintained by the respondent in the regular course of business the petitioner is liable to pay a sum of Rs.4,93,779/-. As such the petitioner has issued a cheque for Rs.4,50,000/- and the respondent presented the cheque on 04.06.2009, on its dishonor on 05.06.2009, the petitioner then requested the respondent to represent, accordingly, on funds in the drawer's account. The respondent issued the statutory notice on 15.10.2009.

5(i) The contention of the petitioner is that he was dealing with the respondent company for the past 5 years and the usual practice is to give a cheque and get the goods in the morning and on the same day evening cash would be paid and the cheque would be returned to the petitioner.

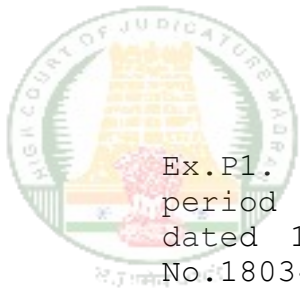
5(ii) Even after payment of cash this cheque was not returned on the same days and it was requested that the next day cheque would be returned to the petitioner, the cheque was issued as security and was not intended to be deposited in bank.

6. The respondent was examined as the sole witness as P.W.1 and marked Exs.P1 to P6. The petitioner examined himself as D.W.1 and his wife was examined as D.W.2. After going through the evidence on record, the learned trial Magistrate held the petitioner guilty as complained of under Section 138 of Negotiable Instruments Act and sentenced the petitioner and the appellate Court also continued the conviction and the sentence and hence, the revision.

7. The learned counsel for the revision petitioner would contend that the trial Court has committed an error in giving the statutory presumption in favour of the respondent.

8. Heard, the learned counsel for the respondent.

9. On perusal of the documents filed by the respondent, it is seen that the minutes extract and authorisation letter are



Ex.P1. The ledger account pertaining to the accused for the period 01.04.2008 to 31.03.2009 is Ex.P2. The original cheque dated 16.04.2009 for Rs.4.50 lakhs of Karur Vysys Bank with No.180343 is Ex.P3. Return memo dated 07.10.2009 is Ex.P4. Legal notice dated 15.10.2009 with two postal receipts is Ex.P5. Two acknowledgment cards are Ex.P6 series. With this complainant side evidence was closed.

10. During the cross examination of P.W.1, there is a signature in the cheque and issuance of cheque by the revision petitioner are not disputed and hence, both the Courts below has rightly came to the conclusion that the respondent/private complainant is entitled to statutory presumption under Section 138 of Negotiable Instruments Act including the existence of legally enforceable debt.

11. The suggestive case of the defence is that it is an usual process to give a cheque and get the goods in the morning and on the same day evening, cash would be paid and the cheque would be returned to the accused. However, even after payment of cash, the petition-cheque was not returned on the same day and when it was requested, they said the next day, the cheque would be returned. However, without doing so, notice has been sent by complainant company which returned in filing by case under Negotiable Instruments Act. The wife of the revision petitioner was examined as D.W.2.

12. Admittedly, both D.W.1 and D.W.2, would state that the cheque was issued for the proprietrix of the complainant company, it was duly signed and these facts are not disputed. Ex.P2 is the ledger book pertaining to the period 01.04.2008 to 31.03.2009 to show that the respondent/accused has taken goods from the private complainant and in due of Rs.4,93,779.98/- and hence, the existing legally enforceable debt is established and hence, both the Courts below has rejected the suggestive case of the defence.

13. After perusing the evidence of D.W.1 and D.W.2 though, they say that they have paid the amount, no receipt has been found.

14. On the contrary, the private complainant has filed Ex.P2 to show the transaction between the parties and the amount due by the revision petitioner/accused.

15. It is mentioned in the regular course of business within Section 35 of Indian Evidence Act and hence, I find that the private complainant has proved the transaction between the parties and as per Ex.P2, it is clearly demonstrates the pre-



existence of legal enforceable debt and cheque has been issued and the cheque has been issued from the account of the revision petitioner/accused and signature has not been disputed and hence, I find that on the cheque having been returned as insufficient funds, as could be seen from Ex.P4/Return memo and legal notice has been issued. The conviction passed by both the Courts below does not warrant any interference. Accordingly, the order of conviction is hereby confirmed.

16. On the point of quantum of sentence, both the parties heard.

17. Taking into consideration, the money involved in the amount, I find that the period of sentence be reduced from six months to three months and the fine amount as awarded by the trial Court is hereby confirmed.

18. Accordingly, the criminal revision case is partly allowed to the limited extent as indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

AT

To

1. The V Additional District Sessions Judge,
Coimbatore.
2. The Judicial Magistrate,
Fast Track Court, Level-II,
Coimbatore.

+1cc to M/s.B.Vijayakumar, Advocate, S.R.No.55899

Cr1.R.C.No.430 of 2015 and
M.P.No.3 of 2015

KG(CO)
RLP(02/12/2021)