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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2020

PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.291 of 2020

M/s.Suryadev Alloys and Power Pvt. Ltd.,
Rep. by Authorised Signatory of Mr.P.K.Prakash,
No.497 & 498, Isana Building, 8th Floor,
P.H.Road, Arumbakkam,
Chennai-600 106.

... Appellant

-Vs-

1. M/s.Aegan Industries Pvt. Ltd.,
No.280, Bomanallur Village,
Dharapuram Palani Highway,
Dharapuram Taluk,
Tiruppur District - 638 673.
2. T.Arunkumar,
Managing Director, Authorised Signator,
M/s.Aegan Industries Pvt. Ltd.,
No.175, 10th A Main, 4th Block,
Jaya Nagar, Bangalore - 560 041.

... Respondents

PRAYER: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to call for the records relating to order of acquittal dated 18.03.2020 made in C.A.No.371 of 2019 on the file of the Ld. XVIII Additional Sessions Judge, Chennai reversal of the judgment dated 10.10.2019 made in C.C.No.3361 of 2017 on the file of the Ld. Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai and set aside the same by allowing this Criminal Appeal.

For Appellant : Mr.P.Krishnan

For Respondent : Mr.C.S.Dhanasekaran



JUDGMENT

The appellant/complainant filed a private complaint against the respondents/accused for offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881, before the trial Court (the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai) in C.C.No.3361 of 2017. After full-fledged trial, the trial Court, by judgment, dated 10.10.2019 convicted the respondents for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced the 2nd respondent to undergo two years Simple Imprisonment and the respondents 1 and 2 shall pay the cheque amount as compensation of Rs.1,26,78,120/- within one month, in default of payment the 2nd respondent to undergo six months Simple Imprisonment. Aggrieved against the Judgment of the trial Court, the respondents preferred an appeal before the lower appellate Court (the XVIII Additional Sessions Court, Chennai) in C.A.No.371 of 2019. The lower appellate Court, by judgment, dated 18.03.2020 allowed the appeal, setting aside the judgment of the trial Court, dated 10.10.2019. Against which, the present appeal filed by the appellant/complainant.

2.For the sake of convenience and brevity, the appellant and the respondents are referred as complainant and accused No.1 and 2 as shown in the complaint.

3.The brief facts of the case is that A1 is the company viz., M/s.Aegan Industries Private Limited, Tirupur incorporated under the Companies Act, 1956 and A2 is its Managing Director. The complainant was engaged in the business of power manufacturing and supplying. The accused and the complainant entered into a Power Purchase Agreement on 01.04.2013 in Chennai for supply of 2400 KWHR of power and each unit cost was Rs.5.59 for financial year 2016-17. A1 was making payment till February 2016, for purchase and utilization of power. Thereafter, the accused defaulted and delayed payments from February 2016 onwards. For consumption of 31,76,840 KW of power to the value of Rs.1,78,59,870/- became due. The accused agreed to pay the above said amount and in discharge to the liability, issued three cheques drawn by A1, signed by A2 as Managing Director for Rs.42,26,040/- each. During trial, the three cheques were marked as Exs.P2, P3 & P4. When the three cheques were presented for collection on 14.07.2017 with the complainant bank viz., Indian Overseas Bank, Royapuram Branch, Chennai, the same were returned with an endorsement "Account Closed" on 15.07.2017. Thereafter, a statutory notice dated 02.08.2017 was issued to the accused. A1 received the same and A2 failed to receive the same and the cover was returned. Ex.P6 is the legal notice dated 02.08.2017; Ex.P7 is the postal tracking receipt; Ex.P8 is the returned of notice of A2 and Ex.P9 is the reply



notice sent by accused dated 17.08.2017.

4. In the reply notice (Ex.P9), the accused had taken a stand that three undated cheques were given for the purpose of security in the year 2016 which have been filled up by the complainant. There is admission of some dispute over the said liability, raised in the statutory notice. Hence, following the statutory conditions, the complainant (PW1) has filed a private complaint before the trial Court.

5. During trial, the complainant examined himself as PW1 and marked 9 documents as Exs.P1 to P9. On the side of the accused, no evidence and no documents marked. After completion of trial, the trial Court convicted and sentenced the accused as stated above. The accused aggrieved by the conviction and sentence had preferred an appeal before the lower appellate Court in C.A.No.371 of 2019. The learned appellate Court, by judgment, dated 18.03.2020, allowed the appeal setting aside the judgment of the trial Court. Against which the present appeal.

6. The learned counsel for the appellant/complainant submitted that the accused did not deny the issuance of the three cheques and the signature found in it, thereby the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 comes into play. He further submitted that as per Section 20 of the Negotiable Instruments Act, 1881, if a negotiable instrument is signed and delivered, it gives authority to the holder to make or complete the negotiable instrument and to make his claim. In this case, handing over of the signed cheques is admitted by the accused. Further, the accused had not examined himself or any other person as witness or bring any material to rebut the statutory presumption. By merely putting up some suggestions to the complainant (PW1) during cross examination would not suffice to dislodge the statutory presumption.

7. The learned counsel for the complainant further submitted that as per Section 139 of the Negotiable Instruments Act, 1881, unless the contrary is proved, it cannot be held that the statutory presumption has been dislodged. Merely by giving some explanation without supported by any evidence and material, it cannot be said that the statutory presumption has been disproved by the accused. In the statutory notice (Ex.P6), the complainant specifically mentions the business relationship, agreement to supply power, its quantum and the due of the accused. The accused in his reply (Ex.P9) dated 17.08.2017 not denied the business relationship, the purchase of power and its liability. It had merely stated that the cheques were given as security and some dispute in the said liability. During cross examination of the complainant (PW1), some stray questions have



been put with regard to the modus of supply of power and its utilization. Further, there is no specific denial or any suggestion with regard to the supply of power and the liability. Except for a bald suggestion, no specific question was put to the complainant (PW1). During questioning under Section 313 Cr.P.C., the accused made a general denial and no explanation given. The trial Court on appreciation of the evidence and materials, after full-fledged trial, had rightly convicted and sentenced the accused and directed A1 and A2 to pay the cheque amount as compensation jointly and severally. The lower appellate Court not considered these facts and failed to look into the evidence in right perspective and merely on presumption and assumption, had set aside the conviction and sentence of the trial Court, which is not proper and sustainable.

8.The learned counsel for the complainant further submitted that the lower appellate Court had given much emphasis to the reply notice of the accused (Ex.P9), wherein the accused mentioned that on 07.05.2016, three cheques (Exs.P2 to P4) were given for the purpose of security and these cheques presented on 14.07.2017 for collection is against the provision of law. It is to be seen that during cross examination of the complainant (PW1), attention drawn, explanation given, thereafter, accused not further proceeded to substantiate the same. The covering letter dated 07.05.2016 which is the foundational basis of the defence, the accused failed to produce this letter. The learned counsel further submitted that the non production of purchase agreement dated 01.04.2013 and the license for generation of power were given undue importance. It is not the case of the accused that the complainant is not generating any power. In the statutory notice (Ex.P6), the purchase of power by the accused from the complainant, the quantum of supply and the dues are mentioned. In the reply notice (Ex.P9), there is no denial on these aspects, admitted facts need not be proved again.

9.The learned counsel for the complainant further submitted that it is a known fact that a power generating company to supply power to the intended purchasers by using the transmission lines of TANGEDCO, is a statutory body. The lower appellate Court placed emphasis on the power purchase agreement and on other documents, is unwarranted. The lower appellate Court failed to look into the fact that the above complaint was filed for offence under the Negotiable Instruments Act, 1881. Once the accused admitted the issuance of the cheque and signature found in it, it is for the accused to dislodge the statutory presumption by bringing materials and evidence to show that there is no liability. In this case, no such exercise done. Further, the lower appellate Court placing heavy reliance on the case of "Indus Airways Private Limited and others., Versus Magnum Aviation Private Limited and another reported in



2014 3 CTC 721", in acquitting the accused is palpably wrong on the facts law law. In that case, the dispute is with regard to advance payment cheques and there is no existing liability. In this case, the liability of the accused to the complainant (PW1) is not denied, the accused only raised a defence that there was some dispute over the said liability.

10.The admitted case of the accused is that the liability is in dispute. The liability herein denotes the supply of power its utilization by the accused. In view of the same, the lower appellate Court placing emphasis on the power purchase agreement, license, permission etc., are unwarranted. Further, the lower appellate Court placing reliance on the case of "Kumar Exports Versus Sharma Carpet reported in 2009(1) CTC Page 552 and M/s.Laxmi Dyechem Versus State of Gujarat and Others reported in 2013 CrI.L.J. 3288" for the proposition that the presumption are rebuttal. Thus, the accused established the probable evidence against the legally enforceable debt on the facts and circumstances of the above case is totally misplaced. The lower appellate Court without properly advertng to the materials available, failed to understand the purport of Section 118 and 139 of the Negotiable Instruments Act, 1881, wherein it is stated that the statutory presumption is very much against the accused who failed to discharge the same by plausible and cogent evidence. The finding of the lower appellate Court both on facts and law is palpably wrong, perverse and cannot be sustained.

11.In order to substantiate his arguments, the learned counsel for the complainant relied upon the following citations:-

- Uttam Ram Versus Devinder Singh Hudan and Another reported in (2020) 1 MLJ (CrI)219 (SC).
- Kishan Rao Versus Shankargouda reported in (2018) 8 Supreme Court Cases 165.
- T.P.Murugan (dead) through Legal representatives Versus Bojan reported in (2018) 8 Supreme Court Cases 469.
- Sampelly Satyanarayana Rao Versus Indian Renewable Energy Development Agency Limited reported (2016) 10 Supreme Court Cases 458.
- Bir Singh Versus Mukesh Kumar reported in (2019) 4 Supreme Court Cases 197.
- Bharat Barrel & Drum Manufacturing Company Versus Amin Chand Payrelal reported in (1999) 3 Supreme Court Cases 35.



12.The above citations referred are for the preposition that once the cheque is proved to be issued, it carries statutory presumption of consideration and the onus is on the accused to disprove the presumption. The presumption is in favour of the holder of the cheque under Section 139 of the Negotiable Instruments Act, 1881. The fact that the cheque might be post-dated does not absolve the drawer of the cheque of the penal consequences of Section 138 of the Negotiable Instruments Act, 1881. As per Section 20, 87 and 139 of the Negotiable Instruments Act, 1881, it is clear that once a person, who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption. If the cheque is otherwise valid, the penal provision of Section 138 of the Negotiable Instruments Act, 1881, would be attracted.

13.Hence, the trial Court had rightly convicted and sentenced the respondent and the lower appellate without proper analysis and appreciation of evidence and consideration of materials, wrongly set aside the judgment of the trial Court, despite the statutory presumption not dislodged. Further on the facts and materials, it is proved that the accused had committed the offence against the established principles and guidelines of the Hon'ble Apex Court in the decisions above mentioned.

14.The learned counsel for the 2nd respondent/A2 submitted that A2 only represented A1 company and the cheques were signed by A2 as Managing Director of A1 company. Now, A1 Company is under liquidation. It is the settled preposition that the Managing Director of a Company cannot absolve his liability stating that now he no more represents the company. He further submitted that the liability in question in this case is for alleged power supplied by the complainant to A1 company. During trial, the power purchase agreement dated 01.04.2013 not produced. Thus, non marking of the vital document goes to the root of the case and for withholding this document, no explanation given by the complainant (PW1). The supply of energy is unsupported with any documentary evidence. Except for the complainant, no other witnesses have been examined to prove the fact that the power was supplied by the complainant and in discharge of said liability, the three cheques to the tune of Rs.1,26,78,120/- were handed over to the complainant (PW1). The learned counsel further submitted that on the date of handing over of the cheques, no legally enforceable debt was in existence, which is admitted by the complainant (PW1) in cross examination. In this case, the license for generating power has not been produced.

15.The learned counsel for the 2nd respondent/A2 further submitted that as per Section 138 of the Negotiable Instruments Act, 1881, the debt or other liability means a legally



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enforceable debt. The complainant did not produce any material to show that there was a substantive legally enforceable debt on the date of the issuance of the cheques. The accused can probabalize his defence by way of cross examination of the witnesses and also pointing to the materials available on record. This has been rightly done in this case. The complainant (PW1) in this case was cross examined, who admits that in the reply notice (Ex.P9), there is mention about the covering letter dated 07.05.2016 handed over with the three cheques as security. These three cheques were handed over in the year 2016. These three cheques filled up for the liability as on 14.07.2017 presented by the complainant. Thus, the cheques, when handed over on that day there was no liability.

16.The learned counsel for the 2nd respondent/A2 further submitted that A2, the Managing of Director of A1 company ceases to represent A1 company which is now declared as corporate debtor and the official liquidator has been appointed by virtue of the order dated 06.07.2018 by the National Company Law Tribunal, Bangalore Branch, in C.P(IB).No.20/BB/2017. The learned counsel further submitted that the lower appellate Court had rightly on proper analysis of the materials and evidence had acquitted the accused giving clear finding that the complainant (PW1) failed to prove the existence of any debt or liability on the date when the cheques were handed over on 07.05.2016 along with the covering letter.

17.Further, the 2nd respondent placed reliance on Rangappa Versus Mohan reported in (2010) 11 Supreme Court Cases 441, for the proposition that when the accused rebut the presumption, under Section 139 of the Negotiable Instruments Act, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. In this case, the complainant (PW1) in his evidence admitted that he is not aware how long the power was supplied to the accused and also admitted no documents produced. Further, placing reliance on the case of Pandurangan Versus Sivagami reported in (2017) 3 MLJ (Cr1.) 572 laid emphasis that the accused if by preponderance of probability established its case by way of cross examination and the materials, he need not get himself examined.

18.In order to substantiate his arguments, the learned counsel for the respondents/accused relied upon the case of Mohinder Singh Versus State of Punjab reported in (2019) 3 Supreme Court Cases (Cri) 197, in which it had held as follows:-



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"15. In an appeal against acquittal, the High Court will not interfere unless there are substantial and compelling reasons to reverse the order of acquittal. The mere fact that on reappraisal of evidence the appellate court is inclined to arrive at a conclusion which is at variance with the trial court, the same cannot be the reason for interference with the order of acquittal. After referring to various judgments in Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], this Court summarised the general principles regarding the powers of the appellate court while dealing with an appeal against the order of acquittal and held as under: (SCC p. 432, para 42):-

"42

(1)

(2)

(3)

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5).....""

19. This Court considering the rival submissions and perused the materials available on record.

20. The complainant (PW1) filed a private complaint against the respondents/accused for offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881, before the trial Court in C.C.No.3361 of 2017. After full-fledged trial, the trial Court, by judgment, dated 10.10.2019 convicted the respondents for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced the 2nd respondent to undergo two years Simple Imprisonment and the respondents 1 and 2 shall pay the cheque amount as compensation of Rs.1,26,78,120/- jointly and severally within one month, in default of payment the 2nd respondent to undergo six months Simple Imprisonment. Aggrieved against the Judgment of the trial Court, the accused preferred an appeal before the lower appellate Court in C.A.No.371 of 2019. The lower appellate Court, by judgment,



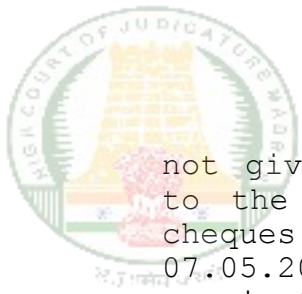
dated 18.03.2020 allowed the appeal, setting aside the judgment of the trial Court, dated 10.10.2019.

21. In this case, the complainant (PW1) was engaged in the business of power generation and supplying the same. The accused had entered into a Power Purchase Agreement for supply of 2,400 KWHR of power at the rate of Rs.5.59/- per unit. In supply of the same, the accused consumed 31,76,840 KW of power to the value of Rs.1,78,59,870/- and agreed to pay the amount. For this payment, three cheques (Exs.P2 to P4) each for Rs.42,26,040/- were given by A2 and got dishonoured. Admittedly, in this case, A2 has not denied his signature or issuance of the three cheques (Exs.P2 to P4). The only defence is that the signed and undated cheques (Exs.P2 to P4) were issued for security purpose on 07.05.2016 along with the covering letter. Hence, the defence is that the cheques were not issued towards the discharge of liability.

22. On perusal of the statutory notice (Ex.P6), it is seen that from the year 2013, the generated power has been supplied to the accused and agreement was entered on 01.04.2013 and thereafter, for the financial year 2015-16, agreement dated 27.03.2015 was entered and for the financial year 2016-17, the Power Purchase Agreement was entered on 25.03.2016. As per the terms of the agreement, the power to be supplied, and the cost are fixed. For the period from 28.02.2016 to 27.05.2016, totally 31,76,840 KW of power were supplied to the tune of Rs.1,78,59,870/-. The total due as on date of notice was to the tune of Rs.1,35,47,644/-. In discharge of the said liability, the three cheques (Exs.P2 to P4) were issued. These facts are clearly narrated in certain terms in the notice.

23. In the reply notice (Ex.P9), A2 herein had taken a stand that all the three cheques (Exs.P2 to P4) were undated and given as security purpose on 07.05.2016. It is admitted that the signed undated cheques were handed over by the complainant (PW1). As per Section 20 of the Negotiable Instruments Act, 1881, authority is given to the holder to make or complete the negotiable instrument and to make a claim by the complainant against the accused. In the statutory notice (Ex.P6), the details are given and the accused only disputed the liability and not denied the same. The supply of power generated, its utilization by the accused are not disputed. The dispute is with regard to the liability. Subsequently, in the complaint, the same facts are narrated as well as in the sworn statement, proof affidavit and in the evidence.

24. In cross examination of the complainant (PW1), the complainant admitted the details about the mode of transmission of power, from which year the accused is consuming the power are



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not given. Further, the complainant (PW1) attention was drawn to the reply notice (Ex.P9) about handing over of the three cheques (Ex.P2 to P4) along with the covering letter on 07.05.2016. Other than this, there is no other cross examination worthwhile was done with regard to the other evidence and materials produced by the complainant (PW1). This bald and formal denial has been rightly ignored by the trial Court. Further, is the admission of the accused that signed cheques were handed over to the complainant, the presumption under Section 139 of the Negotiable Instruments Act, 1881 comes into play. Thus the trial Court placing reliance of Section 20 of the Negotiable Instruments Act, 1881, found that the accused neither examined himself nor produced any material to disprove the statutory presumption and also found that the cheques (Ex.P2 to P4) were authorized to discharge the liability towards the complainant (PW1) and convicted the accused. On the contrary, the lower appellate Court had given undue importance to the bald and formal denial put to the complainant (PW1) and placed reliance on the case of "Indus Airways Private Limited and others., Versus Magnum Aviation Private Limited and another reported in 2014 3 CTC 721". In the case of Indus Airways Private Limited, the cheques were issued towards advance payment for future supply based on the contract, which was subsequently cancelled. In the facts of the case, it is not so. There have been supply of generated power, the dispute raised is with regard to this liability except for raising the same in the reply notice (Ex.P9), there is no other material produced by the accused.

25.The generated power were supplied by the complainant (PW1) and the same were utilized by the accused and there was dues. In the statutory notice (Ex.P6), the supply details and the liability amount have been clearly mentioned. In the reply notice (Ex.P9), the accused did not deny the supply of power, its utilization, it had only stated that there is dispute with regard to the liability. In the reply notice (Ex.P9), no certain terms clearly denoted the supply of power, its utilization and the due to the complainant (PW1). Further, the accused admitted that he handed over the signed three cheques (Exs.P2 to P4). Hence, as per Section 20 of the Negotiable Instruments Act, 1881 authorizes and gives authority to the complainant. Having admitted so and in absence of producing any contra material on record, the lower appellate Court finding that the complainant (PW1) answers in his cross examination would suffice in dislodging the presumption and thereby, the complainant (PW1) not proved the liability is not proper, correct and sustainable. The lower appellate Court failed to understand that the appeal is filed under the provision of the Negotiable Instruments Act, 1881, not a civil suit for recovery. The statutory presumption in this case never dislodged by the accused.



26. It is to be seen that it is the admission of the accused that three cheques handed over and the signature found in it are not disputed. Once such admission is made and further in the absence of any contrary material to disprove the liability, it is not necessary for the complainant (PW1) to produce any document further in view of the statutory notice (Ex.P6) containing details and reply notice (Ex.P9) to it not denying the statutory notice in totality. It is not a civil suit which is filed on the basis of the Power Purchase Agreement or any demand was raised for money based on the said agreement.

27. On the date of drawal of cheques (Ex.P2 to P4), there was liability to be discharged by the accused. The contention of the accused that there was dispute, what is the dispute and its quantum were not brought on record by way of cross examination or producing any materials by the accused absolutely there is no cross examination in this regard.

28. The Hon'ble Apex Court in the case of "Muddasani Venkata Narsaiah (D) through LRs. Versus Muddasani Sarojana reported in 2016 (4) CTC 888" and the relevant portion is extracted hereunder:-

"Evidence Act, 1872 (1 of 1872), Section 137 - Cross-examination - Scope of - Cross-examination is matter of substance and not of procedure - Version of party cross-examining is to be put on cross-examination - Non cross-examination of Plaintiff's Witnesses on case of defence - Consequence of - Held, when Statement of Witnesses have not been disputed and Witnesses are not cross-examined on required lines, Statements of Witnesses are to be assumed to be accepted."

29. In this case, admittedly no cross examination with regard to any liability has been done. The trial Court had rightly convicted and sentenced the accused. The finding of the lower appellate Court is erroneous and perverse. The lower appellate Court had totally misread the evidence and statutory provisions, failed to look into the fact that there is no material produced by the accused to rebut the statutory presumption and by cross examination of the complainant (PW1). Mere discrepancies with regard to the period of supply and the mode of transmission will not amount to rebutting the statutory presumption. Thus, the trial Court had rightly found that the presumption has not been rebutted by the accused. The lower appellate Court had committed perversity while deciding the appeal filed by the accused.

30. In the result, the judgment of the lower appellate Court (the XVIII Additional Sessions Court, Chennai) in C.A.No.371 of 2019 is liable to be set aside and is set aside, restoring and



confirming the judgment of the trial Court (the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai) dated 10.10.2019 in C.C.No.3361 of 2017 convicting and sentencing the accused. This Criminal Appeal is, accordingly, allowed.

31.The trial Court is directed to take appropriate steps to secure the accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The XVIII Additional Sessions Court,
Chennai.
2. The Principle Sessions Judge,
Chennai.
3. The Metropolitan Magistrate,
Fast Track Court at Magisterial Level-IV,
George Town, Chennai.
4. The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

Copy to

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

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.27624
+1cc to Mr.P.Krishnan, Advocate, S.R.No.27535

Cr1.A.No.291 of 2020

SR-II(CO)
HS(26/07/2021)