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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NOS.540,541, 542 & 543 OF 2021

AND

CRL.M.P.NOS.8981, 8978, 8984 & 8988 OF 2021

Shine Kumar,  
Proprietor,  
M/s.Chillies,  
1362, LIG-1, TNEB, 8<sup>th</sup> Street,  
Velacherry,  
Chennai - 600 042.

... Petitioner/Accused in all CrI.R.Cs.

Versus

M/s.Tea & Tiffin Stall,  
Rep by its Proprietor,  
V.Sampath,  
Son of Valli Gounder,  
No.7, Reddy Street,  
Athipet, Ambattur,  
Chennai - 600 058.

... Respondent/Complainant in all CrI.R.Cs.

COMMON PRAYER: Criminal Revision Petitions filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, to call for the records and set aside the judgment in CrI.Appeal.Nos.204, 201, 202, 205 of 2018 by III Additional District & Sessions Judge, Tiruvallur at Poonamallee dated 17.03.2021 confirming the order of conviction in C.C.Nos.233, 230, 231, 234 of 2017 passed by the Judicial Magistrate, Fast Track Court at Ambattur(ML) dated 26<sup>th</sup> October 2018, 8 months simple imprisonment sentence and direction to pay Rs.220,000/- as compensation to the Complainant, in default one month simple imprisonment.



For Petitioner : Mr.V.Arunagiri

COMMON ORDER

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The Criminal Revision Petitions have been filed to call for the records and set aside the judgment passed in CrI.Appeal.Nos.204, 201, 202, 205 of 2018 on the file of the III Additional District & Sessions Judge, Tiruvallur at Poonamallee, confirming the order of conviction dated 26.10.2018 passed in C.C.Nos.233, 230, 231, 234 of 2017 on the file of the the Judicial Magistrate, Fast Track Court (Magisterial Level) Ambattur.

2. The petitioner is the accused and respondent is the complainant.

3. The respondent filed a private complaints against the petitioner under section 190(1) (a) r/w 200 Cr.P.C, for the offence under section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur. The learned Magistrate taken cognizance of the complaints in C.C.Nos.233, 230, 231, 234 of 2017 and after the enquiry, convicted the petitioner for the offence under section 138 of the Negotiable Instruments Act and sentenced him to undergo eight months Simple Imprisonment and to pay compensation of Rs.2,20,000/- within two months in default to pay the compensation, to undergo further period of one month simple imprisonment.

4. Challenging the said judgment of conviction and sentence, the petitioner has filed the appeal before the Principal District and Sessions Judge, Thiruvallur. The learned Principal District and Sessions Judge taken the appeals on file in CrI.Appeal.Nos.204, 201, 202, 205 of 2018 and made over the same to the III Additional District and Sessions Judge, Tiruvallur at Poonamalle. The learned Additional District and Sessions Judge, after hearing the arguments advanced on either side, considered the materials and also the judgment of the learned Magistrate, dismissed the appeals and confirmed the conviction and sentence passed by the Magistrate. Aggrieved over the same, the accused has filed the present revision before this Court.



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5. The learned counsel for the petitioner would submit that the beneficiary of the cheque is only M.V.S.Tea & Tiffin Stall, whereas the complaint is not filed by the M.V.S.Tea & Tiffin Stall. Therefore, it is fatal to the case of the complainant. Further, it is not a legally enforceable debt and given only liability to pay only to M/s.Chillies and where as the proprietor of M/s.Chillies is not added as accused and further he would submit that statutory notice was not served to the petitioner and in the complaint itself, the respondent has stated that the postal cover was returned as "no such person". Therefore, the required statement is not being complied with the respondent/complainant. Both the Magistrate as well as the Additional Sessions Judge failed to consider the legal as well as the factual position and failed to appreciate the evidence in the proper aspects and convicted the petitioner. Therefore, findings of both the Courts below are erroneous and perverse and the same are liable to be set aside.

6. Though it is a concurrent judgment made by both the Courts below, the revision court has to see only the perversity in the appreciation of the evidence and findings and since it is a concurrent judgment, heard the learned counsel for the petitioner and perused the records and judgment of both the Courts below. A reading of the materials, it is found that the petitioner admitted the signature in the cheque and also the execution of the cheque. Hence, it is for the petitioner has to rebut the presumption under Section 139 of N.I Act. Further, the defence taken by the petitioner regarding the real beneficiary has not filed the complaint and proprietor only has filed the complaint. It is a well settled proposition of law, the proprietorship concerned is not the legal entity and the proprietor alone has got every right to file the suit and defend the suit. Therefore, the finding that the complaint by the proprietor is not fatal to the case of the complainant. Both the Courts have also discussed the legal position of the proprietorship as well as the partnership concerned and regarding the service of notice, both the Courts below have rightly observed that the petitioner has admitted the franchise agreement Ex.P6 and also in Ex.P6 having clearly seen that the address mentioned in the returned cover Ex.P5 is the address mentioned in Ex.P6 franchise agreement. Therefore, if once properly addressed, the cover has returned as no such person, the petitioner has to give the reason for it and therefore both



the Courts below rightly appreciated the evidence and the revision court cannot revisit or re-appreciate the factual finding. Therefore, this court does not find any perversity in the appreciation of the evidence. In the complaint regarding 138 of N.I Act as execution is admitted, signature admitted and the liability is also admitted. Both the courts below draw the prosecution case under section 139 of N.I Act, it is for the petitioner has to rebut the presumption. A reading of the entire materials, this Court does not find any perversity in the appreciation of the evidence by the both the Courts below since it is only finding regarding the factual aspects and no reason to interfere with the findings of the both the Courts below. There is no merit in the revision and the same is liable to be dismissed. Accordingly, the Criminal Revision Cases are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

mfa

To

1. The Principal District and Sessions Judge,  
Thiruvallur.
2. The III Additional District and Sessions Judge,  
Tiruvallur at Poonamallee.
3. The Judicial Magistrate,  
Fast Track Court (Magistrate Level)  
Ambattur, Chennai.

CRL.R.C.Nos.540,541, 542 & 543 of 2021  
and  
CrI.M.P.Nos.8981, 8978, 8984 & 8988 of 2021

PCH(CO)  
RLP(13/10/2021)