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Crl.R.C.No.166 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.166 of 2018

P.N.Somaskandan

...Petitioner

-Vs-

P.Esswara Gupta,
Proprietor
M/s.Vassavi Enterprises,
No.168, Govindappan Naicken Street,
Chennai – 600 001.

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to call for the records in C.A.No.50 of 2015 on the file of the learned I Additional Sessions Judge, Chennai and allow the revision and set aside the order dated 30.08.2017 in C.A.No.50 of 2015 on the file of the learned I Additional Sessions Judge, Chennai confirming the order in C.C.No.2499 of 2010 dated 02.02.2015 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

For Petitioner : Mr.R.Ganesh kumar

For Respondent : Mr.Ma.Pa.Thangavel



Crl.R.C.No.166 of 2018

ORDER

This criminal revision is filed as against the order passed in C.A.No.50 of 2015 dated 30.08.2017 on the file of the I Additional Sessions Judge, Chennai, thereby confirming the judgment passed in C.C.No.2499 of 2010 dated 02.02.2015 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, thereby convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The crux of the complaint is that the petitioner had purchased electrical goods from the respondent and in order to discharge his liability, he issued a cheque for a sum of Rs.2,13,090/- on 03.03.2010. When it was presented for collection the same was returned for the reason “opening balance insufficient”. Thereafter, the respondent caused statutory notice to the petitioner and lodged a complaint.

3. On the side of the respondent PW1 was examined and Exs.P1 to 9 were marked and on the side of the petitioner DW1 was examined and no document was marked.

4. On perusal of oral and documentary evidence the trial Court found the



petitioner guilty for the offence under Section 138 of NI Act and sentenced him to undergo one year simple imprisonment and also awarded compensation to the tune of cheque amount payable by the petitioner to the respondent. Aggrieved by the same the petitioner preferred an appeal and the same was dismissed confirming the order passed by the trial Court. Hence this revision.

5. The learned counsel for the revision petitioner would submit that admittedly the cheque was issued in the name of proprietorship however, the complaint was not filed by the proprietorship, it was filed by the proprietor concerned. Therefore, the complaint itself is not maintainable and in support of his contention he relied upon the judgment reported in **2011 (3) CTC 234** in the case of **Milind Shripad Chandurkar Vs. Kalim M.Khan and Another**, wherein the Hon'ble Supreme Court of India held that when the complainant failed to prove that he is the proprietor of the proprietorship, the complaint is not maintainable. The provision under Section 142 provides for taking cognizance of the offence notwithstanding anything contained in Cr.P.C. Accordingly, no Court shall take cognizance of any offence punishable under Section 138 of NI Act except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque.



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6. It further held that where the “payee” is a proprietary concern the complaint can be filed (i) by the proprietor of the proprietary concern describing himself as the sole proprietor of the “payee”, (ii) the proprietary concern describing itself as the sole proprietary concern represented by its proprietor; and (iii) the proprietor or the proprietary concern represented by the Attorney Holder under the Power of Attorney executed by the sole proprietor. Therefore, the payee is a company or a sole proprietary concern, such issue cannot be adjudicated upon taking any guidance from Section 142 of NI Act. The case shall be governed by the general law namely The Companies Act, 1956 or by Civil law where an individual carries on business in the name or style other than his own name.

7. Admittedly, the petitioner purchased electrical goods from the respondent. The only contention of the petitioner is that though the respondent marked invoices there was no proof to show that the petitioner received electrical goods from the respondent. The cheque which was issued for security purpose at the time of business transaction was misused by the respondent to initiate proceedings under Section 138 of NI Act. Therefore, the petitioner categorically



admitted that the respondent is the proprietor of payee namely M/s.Vassavi Enterprises. The respondent marked all the invoices as Exs.P series. After passing of the cheque, the respondent caused statutory notice which was marked as Ex.P8. The statutory notice is very clear that the complainant Mr.P.Esswara Gupta is the proprietor of M/s.Vassavi Enterprises namely the payee. The said notice was duly acknowledged by the petitioner on receipt of the same the petitioner never disputed that the respondent is the proprietor of M/s.Vassavi Enterprises.

8. Further, the petitioner did not even put a situation to that effect that the respondent was not a proprietor of M/s.Vassavi Enterprises. Therefore, the respondent categorically proved that he is the proprietor of M/s.Vassavi Enterprises. Therefore, the respondent rightly filed complaint and the judgment cited by the learned counsel for the petitioner is not applicable to the case on hand.

9. That apart, the petitioner never denied the signature found in the cheque and as well as the issuance of cheque. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of NI Act and the Courts below



Crl.R.C.No.166 of 2018

rightly convicted the petitioner and this Court finds no infirmity or illegality in the judgments passed by the Courts below.

10. Accordingly, the criminal revision case stands dismissed. However, the learned counsel for the petitioner submitted that if the petitioner deposited the remaining cheque amount the conviction imposed can be set aside.

11. Considering the above submission, if the petitioner deposit the remaining 50% of the cheque amount to the credit of the trial Court on or before 12.12.2022, the conviction and sentence imposed by the Courts below shall set aside. On such deposit, the respondent is permitted to withdraw the entire amount, which is deposited by the petitioner by way of filing appropriate application. The trial Court is directed to permit the respondent to withdraw the amount without ordering any notice to the petitioner.

15.11.2022

Index : Yes/No

Speaking/Non Speaking order

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Note: Issue order copy on 29.11.2022



Crl.R.C.No.166 of 2018

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1. The I Additional Sessions Judge,
Chennai
2. The Metropolitan Magistrate, Fast Track Court No.IV,
George Town, Chennai.



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Crl.R.C.No.166 of 2018

G.K.ILANTHIRAIYAN. J,

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Crl.R.C.No.166 of 2018

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