



Crl.R.C.Nos.567, 568, 569, 570 and 571 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.567, 568, 569, 570 and 571 of 2016

1.M/s.Padma Printing and Packaging,
Partnership Firm, Represented by its Partners.

2.P.Gurusamy, Partner,
No.49, Nelson Manickam Road,
Aminijikarai, Chennai 600 029

... Petitioners in all Criminal Revision Cases

-Vs.-

M/s.Industrial Paper Corporation,
No.17, Anderson Street, First Floor,
Chennai 600 001, by its Alleged
Power Agent, Sri.G.Damodharan

.. Respondent in all Criminal Revision Cases

Common Prayer:

Criminal Revision Petition filed under Section 397 read with
Section 401 of Code of Criminal Procedure to call for the records in



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C.A.No.28, 30, 26, 27 and 29 of 2015 respectively dated 24.02.2016 on the file of the learned XVI Additional Sessions Judge, Chennai and confirming the order/judgment passed in C.C.No.6218, 6217, 6216, 6219 and 6215 of 2003 respectively, dated 06.01.2015 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai and set aside the same by allowing this Criminal Revision Petition.

For Petitioners
in all Revisions :Mr.B.R.Shankaralingam

For Respondent
in all Revisions :Mr.A.Babu

COMMON ORDER

These Criminal Revision Cases have been filed to call for the records in C.A.Nos.28, 30, 26, 27 and 29 of 2015 respectively dated 24.02.2016 on the file of the learned XVI Additional Sessions Judge, Chennai and confirming the order/judgment passed in C.C.Nos.6218, 6217, 6216, 6219 and 6215 of 2003 respectively, dated 06.01.2015 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai and set aside the same by allowing this Criminal Revision Petition.



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2. The revision petitioners herein are the Partnership firm and its partner. They had business transaction with the respondent, who is a wholesale dealer in paper products. In the course of the business, the petitioners herein, who has purchased Y-Duplex Boards from the complainant/respondent on credit basis was due to the tune of Rs.14,86,138/-. To discharge the debt, the first petitioner/partnership firm issued 14 cheques for Rs.1,00,000/- each and one cheque for Rs.86,138/-, totally for a sum of Rs.14,86,138/-. The cheques on presentation bounced and hence after causing Statutory notice, five complaints, for three cheques each, were filed in C.C.Nos.6218, 6217, 6216, 6219 and 6215 of 2003 before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, arraying the partnership firm as first accused and the partners as second and third accused. Pending trial, one of the partner arrayed as the second accused died.

3. The details of the 15 cheques issued by the first accused/partnership firm is as below:



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<i>S.No</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
1	086501	21.05.2003	Rs.1,00,000/-
2	086502	21.05.2003	Rs.1,00,000/-
3	086503	21.05.2003	Rs.1,00,000/-
4	086504	21.05.2003	Rs.1,00,000/-
5	086505	21.05.2003	Rs.1,00,000/-
6	086506	21.05.2003	Rs.1,00,000/-
7	086507	21.05.2003	Rs.1,00,000/-
8	086508	21.05.2003	Rs.1,00,000/-
9	086509	21.05.2003	Rs.1,00,000/-
10	086510	21.05.2003	Rs.1,00,000/-
11	086511	21.05.2003	Rs.1,00,000/-
12	086512	21.05.2003	Rs.1,00,000/-
13	086513	21.05.2003	Rs.1,00,000/-
14	086514	21.05.2003	Rs.86,138
15	725646	21.05.2003	Rs.1,00,000/-

4. The trial Court in all the five complaints held that the first accused/Partnership firm liable for the offence under Section 138 of the Negotiable Instruments Act [hereinafter “NI Act”] and directed the first accused/Partnership firm to pay fine and convicted partner of the firm viz., the third accused to undergo simple imprisonment for a term of one year.



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5. Aggrieved by the conviction and sentence, five appeals were preferred before the learned XVI Additional City Civil Court, Chennai in C.A.Nos.28, 30, 26, 27 and 29 of 2015 respectively. Those appeals were considered and the evidences were re-appreciated by the Lower Appellant Court and confirmed the order of conviction and sentence passed by the trial Court.

6. Being aggrieved, these revision petitions have been filed stating that the Courts below erred in not considering the rebuttal evidence let in by the accused. The foundational facts that the first accused/Partnership firm is liable to pay the cheque amount, has not been substantiated by the complainant through proper statement of accounts maintained in the course of business. The trial Court erred in holding the third accused as Partners of the first accused/Partnership firm without any documentary proof.



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7. Per Contra the learned counsel for the respondents would submit that in all the five cases common evidence was recorded by the trial court and the third accused, who is the partner of the first accused/partnership firm mounted the witness box and he have been cross examined as DW3 and he admitted the cheques belong to the Partnership firm and in few cheques, which are the subject matter of the complaint he has signed as Partner of the firm. Having admitted the issuance of cheque on behalf of the first accused/partnership firm as one of the partners, the plea that the complainant should proved his partnership in the first accused/partnership firm is unsustainable defence, since the admitted fact need no proof. Regarding the debt, the learned counsel appearing for the respondents submitted that Ex.P2 series are the invoices raised for supply of goods and the cheques were issued for the price of goods. Therefore, the Courts below have rightly appreciated the evidence particularly Ex.P2 series/invoices and Ex.P14/statement of accounts maintained by the complainants.



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8. This Court on perusing the evidence and reasoning given by the Courts below for convicting the first petitioner/firm and its partner/the third petitioner found that there has been business transaction between the complainant and the first accused/firm. They were maintaining open mutual running account for the goods sold, since a huge amount of over and above Rs.14,86,138/- was outstanding for a long time, the complainant has requested the first accused/firm to clear the debt by issuing the cheques. Accordingly the subject cheques were given, which is spoken by PW1, the authorised representative of the complainant/firm and the said fact has also been substantiated by the invoices and the statement of accounts.

9. From the records, it is clear that when the Statutory notice was issued after cheques got bounced, the reply on behalf of the first accused/firm was not sent. However, on behalf of the second accused/one of the partners in the first accused/firm, a reply notice through lawyer has been sent and the same has been marked as Ex.P11. This reply, denying



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the liability and transaction, has been refuted by the complainant through the rejoinder notice, which is marked as Ex.P12. Again the second accused has sent the reply to the rejoinder and the same is marked as Ex.P13. Pending trial, the second accused, who caused reply notice, died and the case against him got abated.

10. In the said factual background, during trial the third accused/second petitioner herein has mounted witness box and admits that he is the partner of the first accused/firm but only the second accused was actively carrying on the business and he alone was interacting with the complainant. He has also deposed that after induction of the sons of V.G.Kuppusamy, as partners in the firm, he got relieved from the partnership and therefore he is not responsible for the cheques, which is subject matter of the trial. However there is no evidence produced by this accused to substantiate that he got relieved from the partnership firm and same made known to general public. The three documents relied by the accused are not proof for his retirement from the partnership firm and more so, when few cheques were signed by him on behalf of the



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partnership firm and when an opportunity was given to him to reply, he has remained silent. Therefore, this Court finds no error or illegality in the judgement of the Courts below as confirmed by the lower Appellate Court.

11. The learned counsel for the petitioner submitted that when this batch of criminal revision petitions came for admission, the matter was referred to Mediation by the order of this Court and in Mediation, the complainant agreed to receive Rs.8,00,000/- and settle the dispute amicably as against the total cheque amount of Rs.14,86,138/- and pursuant to the agreement the second petitioner has so far paid Rs.6,00,000/-.

12. This Court, on perusing the proceedings of this Court, finds that Mediation was referred in the year 2017, wherein this petitioner has agreed to pay Rs.8,00,000/- towards full quit and settlement within a period of four months, which lapse many years ago. Till date, he has not paid the full amount as agreed in the compromise. When the matter was



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taken up for consideration on the earlier occasion, time was sought to pay the balance amount and to settle the dispute. Unfortunately, in spite of several adjournment, the petitioner has not come forward to pay the balance Rs.2,00,000/-, even after the lapse of 5 years of the settlement arrived.

13. The learned counsel appearing for the respondent/complainant submitted that in the year 2017 when the matter was referred to Mediation the complainant thought it is wise to strike a compromise and agree to receive Rs.8,00,000/- towards the full quit and satisfaction. However, in the past five years, the petitioner has been paying the agreed amount in piecemeal as and when he thought fit. The last two payments were on 01.06.2019 for a sum of Rs.1,00,000/- and thereafter on 03.02.2022 for a sum of Rs.50,000/-. Still a sum of Rs.2,00,000/- is due. This clearly prove that the petitioner not inclined to pay even the agreed amount, which is a little above half the amount payable. Therefore, the learned counsel seeks to confirm the judgment of the trial Court.



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14. This Court, after appreciating the last limb of the argument, holds the petitioner guilty of offences under Section 138 of the NI Act, for issuing 15 cheques, for total sum of Rs.14,86,138/-, without adequate fund. Considering the fact that the 15 cheques, for total sum of Rs.14,86,138/-, reflects the value of the goods Rs.10,36,138/- and the balance towards the debit note charges and tax and interest of Rs.4,33,424/- and the fact that the second petitioner has paid a sum of Rs.6,00,000/- pending revision petition, pursuant to the compromise, this Court confirms the conviction imposed by the trial Court, however, as far as the third accused/second petitioner is concerned, the sentence against him is modified as to pay compensation of 60% of the cheque amount i.e., Rs.8,89,682.80 rounded to Rs.8,89,680/- within a period of 45 days from today (15.11.2022). The sum of Rs.6,00,000/-, already paid pending revision petition, shall stand adjusted towards the compensation amount. In case of failure to pay the balance compensation within 45 days, for default the second petitioner/third accused is liable to undergo default sentence of 3 months simple imprisonment.



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Dr.G.JAYACHANDRAN.J.,

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