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Bail Slip

The Appellant / Accused viz., D.Chandrasekar Aged 42 years, S/o.K.Devaraj, was released on bail as per order of this Court Dated 29.04.2016 in CrI.MP.No.5301/2016 in CrI.RC.721 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2022
DELIVERED ON : 27.05.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.721 of 2016

D.Chandrasekar ... Petitioner/Accused

Versus

Tamil Nadu Industrial Development
Corporation Limited,
No.19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.
Rep by its Secretarial Officer (Legal)
Mrs.N.Sheela Devi

... Respondent/Complainant

PRAYER : Criminal Revision petition filed under Sections 397 r/w.401 Cr.P.C. praying to set aside the order dated 11.12.2015 passed in C.A.No.222 of 2014 on the file of the learned XVI Additional Sessions Judge, City Civil Court, Chennai confirming the sentence imposed in C.C.No.4595 of 2011 on the file of the Fast Track Court at Magisterial Level-II, Egmore, Chennai imposing to undergo one year SI and also directed to pay the cheque amount of Rs.42,86,309/- as compensation to the respondent/complainant in default, the appellant/accused shall undergo three months in addition to the above said period.

For Petitioner : Mr.G.Mutharasu

For Respondent : Mr.M.Vijayan
for M/s.King & Partridge

O R D E R

The petitioner/Accused in C.C.No.4595/2011 was convicted by the learned Metropolitan Magistrate, Fast Track Court at Magisterial Level-II, Egmore, Chennai by judgment dated 14.08.2014 for the offence under Section 138 of Negotiable Instrument Act and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.42,86,309/-, the cheque amount as compensation. Aggrieved against the same, the petitioner preferred an appeal before the learned XVI Additional Sessions Judge, City Civil Court, Chennai in CrI.A.No.222 of 2014. The learned Sessions Judge by judgment dated 11.12.2015,



dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the present revision.

2. For the sake of convenience, hereinafter the parties are referred to as per their respective litigative status before the trial Court.

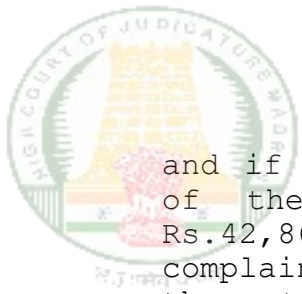
3. The gist of the case is that the complainant/Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) is a Government of Tamilnadu Enterprises, incorporated under the provisions of Companies Act, 1956. The object of TIDCO is to identify and promote large and medium scale industrial establishments in Tamil Nadu in association with private parties or with private enterprises. The complainant represented by one Mrs. Sheela Devi, the Secretarial Officer (Legal). The accused approached the complainant-Corporation for joint participation in the equity capital of the company and agreed to form a company named M/s. Devaraj Agro Industries (P) Ltd. with an intention of setting up an integrated cold chain infrastructure and agro processing plants and to act as consultant/collaborator in supply chain management for food stuffs and edible goods. The complainant-Corporation entered into an Associate Sector Agreement with the accused on 11.03.2008, as he is the co-promoter of M/s. Devaraj Agro Industries (P) Ltd., Chennai. It is a tripartite agreement, the complainant invested Rs.30 lakhs by way of investment in equity capital of M/s. Devaraj Agro Industries (P) Ltd. As per clause 18(b) of the said agreement, the accused agreed to purchase the entire equity shares held by the complainant in M/s. Devaraj Agro Industries (P) Ltd. and agreed to pay the price calculated as per the procedures contemplated under clause 19 of the said agreement and to ensure the same, he handed over the post dated cheque bearing No.022430 for a sum of Rs.42,86,309/- (Rupees Forty Two lakhs Eighty Six thousand Three hundred and Nine only) drawn on Indian Bank, Anna Nagar Branch, Chennai in favour of the complainant with lock in period of three years. On 25.04.2011, the complainant sent an advance notice to the accused to remit the sale consideration of Rs.42,86,309/- within 7 days from 05.05.2011. The accused sent a reply on 09.05.2011 seeking some more time, till the end of May, 2011 and promised to buy back the shares as per the agreement. The complainant sent a re-joinder on 11.05.2011 informing that, extension of time cannot be considered and demanded the accused to pay the amount within 7 days from 05.05.2011. Since the accused failed to make the remittance, the complainant presented the cheque on 16.05.2011. The said cheque was returned on the same day with an endorsement "Funds Insufficient". Therefore, the complainant sent a statutory notice on 31.05.2011. Though the same was received and acknowledged by the accused, no payments made and thereafter following the procedure, a complaint was filed.



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4. During trial, the complainant examined himself as P.W.1 and through her Exs.P1 to P12 marked. The accused neither examined any witness nor marked any documents. The trial Court, on conclusion of trial, convicted the petitioner as stated above and the same was confirmed by the Lower Appellate Court.

5. The contention of the learned counsel for the petitioner is that the Lower Appellate Court confirmed the order of the trial Court without applying its mind and mechanically passed the judgment. Further, submitted that the complainant relied upon Ex.P2-Associate Sector Agreement dated 11.03.2008. The said agreement was made between the complainant company, as the first part, the accused as the second part and M/s.Devaraj Agro Industries Private Limited as the third part. This agreement has not been considered by the trial Court. He further submitted that statutory notice ought to have been issued to M/s.Devaraj Agro Industries Private Limited and in the absence of the same, the complainant not complied with Section 141 of Negotiable Instruments Act. He further submitted that M/s.Devaraj Agro Industries Private Limited has to transfer the equity shares to the complainant, as could be seen from Exs.P2 and P3. He further submitted that the complainant had failed to produce the extract of Board Resolution authorising its Managing Director Mr.Ramasundaram, to enter into the Associate Sector Agreement/Ex.P2. No liability would arise in this case without any transfer of shares. The agreement is invalid without Board Resolution. Under Section 141 of the N.I. Act, the company is not arrayed as an accused. The cheque was not issued for any consideration, it is only security cheque. On a bare perusal of Ex.P2, it is seen that, Mr.Ramasundaram is not the competent person to execute Ex.P2 and there is no seal of Ramasundaram as well as TIDCO. The entire case of the complainant vested on Ex.P2, in view of Ex.P2 being disputed, and it is not a document as per the Evidence Act. The main case falls on this score alone. The Lower Appellate Court failed to consider that the complainant failed to transfer the equity share to M/s.Devaraj Agro Industries Private Limited and no steps taken for the same. On the other hand, deposited the security cheque, which was given in the year 2008. He further submitted that the complainant paid Rs.30 lakhs for subscribing equity shares to M/s.Devaraj Agro Industries Private Limited and not to the accused. Hence, the accused has no obligation on his part for the honour of Ex.P4-Cheque as security cheque. He further submitted that the cheque was not issued in discharge of a debt, on the date of issuance of the cheque, there was no subsisting debt or legally enforceable debt. The complaint failed to make out a case against the accused under Section 138 of N.I Act. As per Ex.P5, the value of the equity share of M/s.Devaraj Agro Industries Private Limited is calculated as Rs.7.32 lakhs only



and if multiplied with 3 lakhs equity shares, the total value of the share would be less than Rs.27 lakhs and not Rs.42,86,309/-, which is projected as the debt amount. The complainant on its own calculated compounding interest method at the rate of 12.63% per annum for the investment made, and fixed the share price value at Rs.42,86,309/-. He further submitted that as per Section 23 of the Indian Contract Act, the agreement is voidable, unlawful and unenforceable. The accused is not liable to pay even a single pie to the complainant. It is seen that, as per the agreement, if there is any difference or dispute arise between the parties, the only recourse is that the same to be referred to Arbitration. The accused signed in the agreement as Managing Director and not in his individual capacity. In Ex.P3/letter, it is mentioned that M/s.Devaraj Agro Industries Private Limited received Rs.30 lakhs from the complainant by way of cheque bearing No.147282 dated 06.05.2008. The accused received no money from the complainant, hence, the cheque/Ex.P4 signed by the accused cannot be used for the debt of M/s.Devaraj Agro Industries Private Limited and the accused has been falsely implicated in this case.

6. In support of his contention, the learned counsel relied upon the judgments in CrI.L.J. 3004, 2005 CrI. 13259. 2006 (3) SCC (CrI) 30, 2012 (1) MLJ (CrI) 741, 2007 (1) MWN (CrI) DCC 37, 2012 (4) MLJ (CrI) 207, (2012) 5 SCC 661, CrI.R.C.No.350 of 2017, CrI.R.C.No.617 of 2016 and CrI.O.P.No.10356 of 2011.

7. The learned counsel appearing for the respondent/complainant submitted that the complainant is a public sector undertaking, a Government of Tamil Nadu Company, created for promoting large and medium scale industrial establishments in Tamil Nadu in the name of TIDCO in the year 1965. As of 2008, 75 projects with total investment of Rs.2500 million has been made by the TIDCO. An agreement has been entered between TIDCO, D.Chandrashekhar and M/s.Devaraj Agro Industries Private Limited on 11.03.2008 for integrated cold chain facility. Apart from K.Devaraj, J.Subbamma, D.Chandrashekhar and Dr.G.Sheela had invested as associate in the business as per associate section business agreement clause 18(b) is with certain conditions. In clause 18(b), it is clearly mentioned, in the event of the First Party i.e. TIDCO intended to exercise its right to disinvest its shareholdings in the company in whole or in part at its option at the end of three years from the date of investment by the First Party to the second party, i.e. accused herein, who agree and undertake to purchase the entire equity shares indicated by the First Party. Further, the accused shall pay the price calculated as per this agreement after three years, within 7 days from the date of sale. If the price is not so paid, the First Party/TIDCO shall take all necessary actions to enforce the undertaking given



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hereunder by encashing the post dated cheques deposited with First Party/TIDCO. In paragraph 19 of the agreement, the rate of interest is mentioned as 12.63%. Understanding and agreeing to the same, the accused signed the agreement. Thereafter, Rs.30 lakhs was issued to M/s.Devaraj Agro Industries Private Limited by way of cheque dated 06.05.2008. The same was received by the accused as C.E.O of M/s.Devaraj Agro Industries Private Limited. The agreement was marked as Ex.P2. The letter for receipt of Rs.30 lakhs was marked as Ex.P3. By letter dated 25.04.2011, TIDCO had informed the accused its intention to proceed as per clause 18(b) and 19 of the agreement. After receiving this letter, the accused sent a reply on 09.05.2011, not disputing any other facts, except seeking time till end of May, 2011. Thereafter, by letter dated 11.05.2011, again the payment of Rs.42,86,309/- reiterated, referring to letters earlier sent by both accused and complainant. Further, on 31.05.2011, statutory notice issued, which was served to the accused and acknowledgement received. Thus, Exs.P2, P3, P5, P7, P8, P10 and P11 would confirm the transactions, wherein, the accused not denied the liability or raised any objection, which was being raised before the Trial Court, Lower Appellate Court and now before this Court. Further vide communication dated 15.06.2011/Ex.P12, the accused had sought for three months time to make the payment for the cheque amount. Thus, right from beginning, the accused by giving one reason or other seeking time and delaying payment and finally failed to make the payment. Now makes an attempt to wriggle out from the case on technical plea that Ex.P2 does not bear the seal and the Board Resolution for Ex.P2 not produced. This agreement was entered during March, 2008. From the year 2008 till the demand for payment of cheque amount of Rs.42,86,309 was made in the year 2011, the accused neither raised any objection, nor questioned the authority of Mr.Ramasundaram. Thereafter, for the purpose of defence and to escape from his legal liability, he is making such defence. It is pertinent to mention that Ex.P4/Cheque is signed by the accused in his individual capacity and the said cheque got dishonoured and hence, proceedings initiated against the accused. Further, he submitted that the complaint was filed against the accused in its individual capacity and not as Managing Director of M/s.Devaraj Agro Industries Private Limited. The other contention of the accused that non complying of Section 141 of Cr.P.C. will not be applicable to the above case. He further submitted that the petitioner's/accused defence is one and the same even before the trial Court and Lower Appellate Court. Both the Courts after analysing the evidence, compartmentalised petitioner's/accused defence, given detailed reasons and convicted the petitioner/accused. The Lower Appellate Court independently assessed the evidence and materials and confirmed the trial Court judgment. The petitioner/accused is suffering two concurrent findings and at



this stage, cannot go into evidence and merits, unless the petitioner/accused proves any perversity. In this case, there is no perversity and prayed to dismiss the revision. He further relied upon the decision of the Hon'ble Apex Court in the case of Kishan Rao Vs. Shankargouda reported in (2018) 8 SCC 165, wherein, the Apex Court had given guidelines and principles in exercising revisional jurisdiction of the High Court.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Considering the submissions and on a perusal of materials, it is seen that the complainant is a Government Company, which was incorporated for development of large and medium scale entrepreneurs and it was formed in the year 1965. From the year 1965, it has facilitated formation of several business. The petitioner/accused intended to run a cold chain facility company in the name of M/s.Devaraj Agro Industries Private Limited. He approached the respondent/complainant and on his project report, the respondent/complainant gave a loan for Rs.30 lakhs, which was a buy back arrangement, wherein, the money is invested by way of shares with lock in period of three years time for the entrepreneur to develop his business and to stabilise. Thereafter, the shares would be re-conveyed, in the associate sector agreement/Ex.P2 all these conditions are given in detail. It is a tripartite agreement. The petitioner signed the agreement and issued the cheque in his individual name. One of the condition is that the interest rate at 12.63% for Rs.30 lakhs which works out around Rs.42,86,309/- is fixed as liability, for which, a post-dated cheque handed over by the petitioner/accused. After three years, when the petitioner/accused called for to buy back the shares and to pay the amount, he was giving one reason or other and delayed. Finally, the cheque was presented and got dishonoured and thereafter, proceedings initiated. P.W.1 examined and through her Exs.P1 to P12 marked. From Ex.P7-letter written by the accused, it is seen that the accused not raised any objection for the cheque amount or about the issuance of cheque by the accused in his individual capacity. The respondent/complainant indicated its intention to exercise its right to disinvest its shareholdings in M/s.Devaraj Agro Industries Private Limited to the petitioner/accused by its letter/Ex.P5 dated 25.04.2011 vide reference No.Lr.No.300(3)/Sect/2011 for which, the accused sent a reply by both Exs.P7 and P8/letter, the above reference number is recorded in all these letters. Till then, the accused not raised any objection with regard to issuance of post-dated cheque, later he questions the validity of Ex.P2 and takes a defence that it is a post-dated cheque given for the purpose of security, further claiming the petitioner/accused being an individual, has nothing to do with the liability of M/s.Devaraj



Agro Industries Private Limited. This defence is far-fetched, as could be seen from the admission in his letters Ex.P7 and P12. He admits his liability and as Managing Director of M/s.Devaraj Agro Industries Private Limited writes several letters seeing sometime. It is to be seen that the petitioner/accused while signing Ex.P2 handed over the cheque Ex.P4 in his individual capacity. In none of the communication he raised any objection. For the purpose of the case now, such defence is attempted. Further, the citations relied upon by the petitioner's, except four decisions, all the other citations already placed, argued in detail before the trial Court. The trial Court considered the same and finally convicted the petitioner/accused. With regard to four decisions, all pertains to Section 141 of the Negotiable Instrument Act, viz., the leading case is Aneeta Hada Vs. Godfather Travels and Tours Private Limited.

10. In this Case, Ex.P4/cheque issued in his individual capacity by the petitioner and that is the reason, the petitioner alone prosecuted under Section 138 of Negotiable Instrument Act and the question of following Section 141 of the Act does not arise.

11. Further, both the Courts below by a well reasoned and detailed judgment confirmed and found the petitioner/accused guilty and convicted him. This Court finds no reason or any perversity to interfere with the judgment of conviction passed by the trial Court.

12. Hence, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The XVI Additional Sessions Judge,
City Civil Court, Chennai.
- 2.Do Through The Principal Sessions Judge,
City Civil Court, Chennai.
- 3.The Metropolitan Magistrate,
Fast Track Court at Magisterial Level-II,
Egmore, Chennai.



4.The Chief Metropolitan Magistrate,
Egmore, Chennai.

5.The Inspector of Police,
Avadi.

+2cc to Mr.G.Mutharasu, Advocate, S.R.No.31830

+1cc to Mr.King & Pastridge, Advocate, S.R.No.31844

Cr1.R.C.No.721 of 2016

CA(CO)
SB(14/06/2022)