



*Crl.RC.No.628 of 2018*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HON'BLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.628 of 2018

M.Boopalan

...

Petitioner

Vs

The General Manager,  
Tamil Nadu Industrial Explosives Ltd.,  
Rep.by Assistant Manager,  
P.Thamizhazhagan,  
Purchase and Electrical  
TEL, Katpadi,  
Vellore.

...

Respondent

**Prayer :** Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records on the file of the learned Principal District and Sessions Judge, Vellore, Vellore District in Crl.A.No.73 of 2017 dated 11.04.2018 and confirming the judgment passed in C.C.No.81 of 2016 on the file of the learned Judicial Magistrate (Fast Track Court), Vellore, Vellore District dated 06.06.2017 and set aside the judgment dated 11.04.2018.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Abdul Wahab  
For M/s.K.M.Subramanian Associates

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## **ORDER**

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This Criminal Revision Case has been filed to set aside the Judgement dated 11.04.2018 passed in Crl.A.No.73 of 2017 on the file of the Principal District and Sessions Judge, Vellore, Vellore District and thereby confirming the Judgment dated 06.06.2017 passed in C.C.No.81 of 2016 on the file of the learned Judicial Magistrate (Fast Track Court), Vellore, Vellore District, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. The petitioner is an accused in the complaint lodged by the respondent. The respondent is a Government undertaking Company and is engaged in production of explosives, slurry, explosive emulsion, detonators, detonating fuse and other explosive substances. The petitioner is the proprietor of M/s.TECHNO PROFILES. The petitioner engaged in the production of PVC products. While being so, the respondent floated a tender to supply Poly Propylene Yarn and PVC Spools, in which the petitioner also participated in the tender and he succeeded in the bid. Accordingly, an agreement was entered into between them and on 06.10.2015, the petitioner agreed to supply of 300 Nos of PVC Spools on daily basis. After commitment for supply of PVC Spools, the petitioner failed to supply the same and the



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respondent managed by procuring the necessary PVC Spools from an alternate source. Therefore, the respondent requested to refund the balance amount or supply PVC Spools. However, the petitioner failed to adhere to their request. Thus, the petitioner is liable to pay a sum of Rs.2,28,000/-. Hence, no other option, then the present cheque was issued for security purpose for a legally enforceable debt. When the said cheque was presented for collection and the same was returned dishonour for the reason 'fund insufficient'. After causing legal notice, the respondent lodged complaint.

3. On the side of the respondent, they examined P.W.1 and marked Exs.P1 to P24. On the side of the petitioner, no one was examined and no document was marked to rebut the evidence of the respondent.

4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty and sentenced him to undergo Simple Imprisonment for a period of one year and also ordered compensation to the tune of Rs.2,26,894/-. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and the judgment passed by the Trial Court stood confirmed.



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5. The learned counsel appearing for the petitioner submitted that as per the demand notice dated 15.12.2015, the respondent stated as follows :

*“The advance payment and the refund details are furnished below for your reference.*

- |                                                                                              |                   |
|----------------------------------------------------------------------------------------------|-------------------|
| (1) 50% advance paid for supply of 5000 Nos. of PVC Spools                                   | : Rs.1,14,000.00  |
| (2) 50% of advance for the Mould                                                             | : Rs. 20,000.00   |
| (3) Total advance paid                                                                       | : Rs.1,34,000.00  |
| (4) Cost towards 408 Nos. of PVC Spools supplied:                                            | Rs. 18,605.00 (-) |
| (5) Balance amount to be refunded                                                            | : Rs.1,15,395.00  |
| (6) Risk purchase clause amount for 8,500 Nos of PVC Spools procured from alternative source | : Rs. 68,000.00   |
| (7) Penalty for no supply of material to the tune of 5% maximum for the P.O. quantity        | : Rs. 43,050.00   |
| (8) Cheque Bouncing Charges                                                                  | : Rs. 449.00      |
| (9) Total amount to be refunded                                                              | : Rs. 2,26,894.00 |

*Hence, you are advised to refund an amount of Rs.2,26,894/- on or before 24.12.2015 otherwise we have not option but to take legal action against you.”*

6. Even according to the respondent, the petitioner received only Rs.1,34,000/- as advance and supplied PVC Spools to the tune of Rs.18,605/-. Therefore, the remaining advance amount to the tune of Rs.1,15,395/- alone to be repaid. Insofar as, the purchase of the materials from the other source to the tune of Rs.68,000/- is concerned, it cannot be claimed by the petitioner. Since, there is no loss to the respondent due to purchase of PVC Spools from other source. Insofar as the penalty is concerned, the petitioner is not liable



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to pay any penalty. The mould was not properly supplied by the respondent and as such, the petitioner was not able to supply the PVC Spools as required by the respondent herein. He further submitted that at the time of execution of sureties he deposited 20,000/- and while suspending the sentence imposed, this Court directed the petitioner to deposit Rs.95,000/-. Both the conditions were duly complied with and so far Rs.1,15,000/- had been deposited which is lying in the Trial Court. He further submitted that the petitioner lost both his hands and he is a retired Military person. Thus, he lost all his financial abilities and he has no means to pay anything.

7. Per contra, the learned counsel for the respondent would submit that the respondent is a Government Company and only because of all these losses to the respondent, now, he had closed the entire production and only one person is working in the respondent herein. The liability and issuance of cheque is categorically admitted by the petitioner and as such, the Trial Court and the First Appellate Court were right in convicting the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

8. Heard, Mr.E.Kannadasan, learned counsel appearing for the petitioner and Mr.A.Abdul Wahab, learned counsel appearing for the respondent and perused the materials available on record.



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9. A perusal of the records reveals that the petitioner was an accused and he was offered contract to supply PVC Spools. He supplied materials only to the tune of Rs.18,605/- out of the advance received by him to the tune of Rs.1,34,000/-. There was a grievance over the petitioner with regard to supply of PVC moulds. However, the advance received by the petitioner is lying with the respondent. A perusal of the notice dated 15.12.2015 reveals that the respondent claimed risk purchase amount of Rs.68,000/- from other source. Admittedly, there was no loss by the respondent by purchasing the PVC Spools from other source. Insofar as the penalty is concerned, the petitioner stated so many reasons for non supply of PVC moulds such as the Spool was not properly supplied by the respondent to produce PVC Spools. Further, the petitioner is also present before this Court and it could be seen that he lost both his hands and had stated that he also lost his entire business. So far, he had deposited a sum of Rs.1,50,000/- and it is lying on the file of the Trial Court. That apart, even according to the respondent, for all these amounts he had deposited the cheque, which was given as security, as there is an agreement between the petitioner and the respondent. Therefore, the cheque was not issued for any claim made by the respondent to the tune of

Rs.2,26,894/-.



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10. Considering the facts and circumstances of the case, this Court is not inclined to set aside the conviction for the offence punishable under Section 138 of Negotiable Instrument Act. However, this Court is inclined to set aside the sentence alone on condition that the petitioner shall deposit another sum of Rs.25,000/- to the credit of C.C.No.81 of 2016 on the file of the Judicial Magistrate (Fast Track Court), Vellore, within a period of four weeks from the date of receipt of a copy of this order, failing which, the sentence imposed by the Court below stands automatically restored. On such deposit, the respondent is permitted to withdraw the entire amount (i.e., 95,000/- + 20,000/- + 25,000/- = Rs.1,40,000/-) by filing appropriate application. It is made clear that the Trial Court shall permit the respondent to withdraw the amount, without issuing notice to the petitioner herein.

11. In the result, this Criminal Revision Case is allowed.

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Index: Yes/No

Speaking / Non Speaking Order

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**G.K.ILANTHIRAIYAN, J**

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To

- 1.The Principal District and Sessions Judge, Vellore, Vellore District.
2. The Judicial Magistrate (Fast Track Court), Vellore, Vellore District.

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