



Crl.R.C.No.478 of 2014
& Crl.R.C.No.978 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.06.2022

Pronounced on : 22.06.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.478 of 2014
& Crl.R.C.No.978 of 2016

Crl.R.C.No.478 of 2014

Raja Gounder, M/69,
S/o.Marappa Gounder,
No.3/87, Kaliannor Post,
Erode.

... Petitioner/Accused

/versus/

1. C.Palanisami, M/53, (died)
S/o.Late Chinna Gounder,
Owner of Sri Deepa Enterprise,
Shop No.10, M.G.R.Complex,
Cinema Nagar, Salem – 9.

2. C.Priya,
W/o.C.Palanisamy.

3. Manikandan,
S/o.Palanisamy.

4. Master C.Naveen Kumar,
S/o.C.Palanisamy.
All are residing at No.80/A, Palanisamy Apartment,
Bungalow Nagar,
Chinna Thirupathi, Salem.

R2 to R4 implead as per order in Crl.R.C.No.478 of 2014 dated 18.11.2021



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5. Mrs.Shanmuga Priya, (Legal heir),
W/o.Late.C.Palanisami,
No.80/1A, Bungalow Chinnapan Koil Nagar,
Kannan Kurichi,
Salem – 8.

... Respondents/Complainant
in Crl.R.C.No.478 of 2014

R5 Suo motu impleaded as per order in Crl.R.C.No.478 of 2014
in Crl.R.C.No.978 of 2016., dated 26.04.2022.

Crl.R.C.No.978 of 2016:-

Raja Gounder, M/69,
S/o.Marappa Gounder,
No.3/87, Kaliannor Post,
Erode.

... Petitioner/Accused

/versus/

1. C.Palanisami, M/53, (died)
S/o.Late Chinna Gounder,
Owner of Sri Deepa Enterprise,
Shop No.10, M.G.R.Complex,
Cinema Nagar, Salem – 9.

2. Mrs.Shanmuga Priya.

W/o.Late C.Palanisamy.

R2 impleaded as 2nd respondent as per order of this Hon'ble Court dated
09.09.2016 in Crl.M.P.No.9621 of 2016 in Crl.R.C.No.978 of 2016

3. C.Priya,
W/o.C.Palanisamy.

4. Manikandan,
S/o.Palanisamy.



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5. Master C.Naveen Kumar,

S/o.C.Palanisamy.

All are residing at No.80/A, Palanisamy Apartment,
Bungalow Nagar,
Chinna Thirupathi, Salem.

... Respondents/Complainant

R5 Suo motu impleaded as per order in Crl.R.C.No.478 of 2014 in Crl.R.C.No.978 of 2016., dated 26.04.2022.

Prayer in Crl.R.C.No.478 of 2014: Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C., to call for the records pertaining to the judgment dated 06.01.2014 in C.A.No.122 of 2012 on the file of the Learned II Additional Sessions Judge, Salem in S.T.C.No.219 of 2009, Judicial Magistrate No.2, Salem by exercising revision petition and set aside the same and pass order.

Prayer in Crl.R.C.No.978 of 2016: Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C., to call for the records pertaining to the judgment dated 06.01.2014 in C.A.No.122 of 2012 on the file of the Learned II Additional Sessions Judge, Salem in S.T.C.No.218 of 2009, Judicial Magistrate No.2, Salem by exercising revision petition and set aside the same and pass order.

For Petitioner
in both cases

: Ms.Jayshree Dharbar, for
Mr.Mohamed Riyaz.

For R5
in Crl.R.C.No.478 of 2014

: Ms.M.P.Bharathi

For R2
in Crl.R.C.No.978 of 2016

: Ms.M.P.Bharathi

For R1
in both cases

: Died



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For R2 to R4 : No appearance
in Crl.R.C.No.478 of 2014

For R3 to R5 : No appearance
in Crl.R.C.No.978 of 2016

COMMON ORDER

The revision petitioner and the respondents in these two criminal revision petitions are one and the same. The subject matter of the revision petitions is dishonour of cheques purportedly issued by the revision petitioner in favour of the respondents to discharge the loan.

2. The case of the complainant is that, the accused purchased the film HOST for 10% commission basis. The complainant sold the distribution right to one AKR Film Distributors. The accused advanced Rs.1,70,000/- for purchase of that movie and for balance, the accused borrowed from him Rs.4,00,000/- on different dates and gave 4 cheques for Rs.1,00,000/- each. He paid only one lakh and got back one cheque. The remaining cheques when presented for collection, same got bounced. Hence after statutory notice, private complaint under section 138 of Negotiable Instruments Act, 1881 filed and numbered as



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S.T.C.No.219/2009 on the file of Judicial Magistrate No.II, Salem, for dishonouring cheque bearing No.LKB 008682 dated 20/11/2007 for Rs.1,00,000/- and S.T.C.No.218 of 2009 filed for dishonour of two cheques bearing Nos.008683 dated 20/12/2007 and 008684 dated 20/01/2008 each for Rs.1,00,000/-.

3. The accused took a defence that, the alleged transaction is not true.

The complainant had misused the cheques left in the office of ARK Films Distributors which shares common office with the accused at Salem. In fact, the distribution right of the said film “THE HOST” was purchased by the accused from M/s.Scorpio Screens. The accused entered into an agreement with the complainant on 22/08/2007 wherein the complainant had paid Rs.4,00,000/- and agreed to pay 10% commission. Suppressing the real fact and the agreement, since the movie did not run as expected and earned profit, to make good his loss the complainant has misused the cheques not given to him for any discharge of enforceable debt.

4. To prove his defence, during the cross examination of the complainant, the accused marked 2 documents as defence exhibits. Ex.D-1 the



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agreement dated 22/08/2007 entered between the complainant and the accused.

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Ex.D-2, the hand written account slip by the complainant.

5. To counter this defence, the complainant had relied upon the Guarantee letter dated 09/09/2007 signed by the accused, wherein the liability of Rs.4,00,000/- and issuance of 4 cheques drawn by the accused in favour of the complainant with date and amount mentioned. The witness to this document also examined on behalf of the complainant.

6. The Trial Court while holding that the signatures in the cheques are admitted by the accused and also he admits that it is drawn from the account maintained by him. Therefore, the fundamental burden has been discharged by the complainant and the accused is cast upon the burden to discharge the statutory presumption that the cheque was not issued for legally enforceable debt. For the said purpose, the Trial Court has analysed the Agreement Ex.D-1 dated 22/08/2007 entered between the accused and the complainant and the guarantee letter dated 09/09/2007.



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7. The agreement dated 22/08/2007 was marked during the cross examination of the complainant (P.W-1). He had admitted it as true and valid. The recital of the agreement says the accused is the distribution right holder for the movie “THE HOST” for Salem, Dharmपुरi, Nammakal and Krishnagiri Districts. The right to screen conveyed to the complainant for consideration of Rs.5,70,000/-. Five polyester prints of the movie and 5 trailer prints handed over to the complainant. The complainant has agreed to pay 10% commission as per the trade practise and both the parties have agreed to settle the accounts within 15 days from the last day of screening. While this agreement say that the distribution right of the film is admittedly with the accused and the screening right was sold to the complainant on specific terms, the claim of the complainant that, he is the owner of the film and he sold it to one ARK Film Distributor and from ARK Film Distributor, the accused purchased the right and to meet out the shortage, he borrowed Rs.4,00,000/- held to be false and contrary to the recital of the agreement to which he is a signatory.

8. Further, the Trial Court, after analysing the guarantee letter dated 09/09/2007, which was relied by the complainant, had rightly observed that, this



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document not disclosed in the statutory notice. Only on receipt of the reply notice from the accused and knowing his defence, this letter is introduced as a document on the side of the complainant. In this document, prior agreement between the parties referred but not produced. The alignment and spacing of the writing create doubt about its genuineness and gives an impression that, it should have been filled on a blank signed paper so as to adjust the signature made on revenue stamp at the bottom of the paper. Further, the Trial Court observing that while the document appears to be a letter from the accused to the complainant. On the back of the letter, three persons have signed as witnesses. After some unexplained gap, endorsement made above the signature of the accused considering the defence nor in the complaint. In S.T.C.No.219/2009, 2 out of 3 witnesses to the document dated 09/09/2007 were examined. One Mr.Sekar, the third signatory to the document dated 09/09/2007, admits in his cross examination that, the subject cheques were obtained from the accused after there was dispute between the accused and the complainant. He does not remember the date on which the accused gave the cheques. He signed this document on 20/10/2007. Therefore, considering these contradictions in the depositions of the witnesses and the documents relied upon, the Trial Court dismissed both the complaints.



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9. Aggrieved by that, the complainant preferred appeals, C.A.No.121/2012 against S.T.C.No.218/2009 and C.A.No.122/2012 against S.T.C.No.219/2009. The Learned II Additional Sessions Judge, Salem reversed the order of acquittal and convicted the accused/appellant and sentenced him to pay the respective cheque amount in default to undergo 3 months S.I.

10. These two revision petitions are by the accused against the order of conviction and sentence.

11. The facts in these two cases are one and the same, except the date of the cheques, date of presentation and date of notice in Crl.R.C.No.478/2014, the subject matter is the cheque bearing No.LKB 008682 dated 20/11/2007 is for Rs.1,00,000/-. The said cheque was presented for collection on 12/05/2008 and same got bounced on 14/05/2008. Statutory notice dated 30/05/2008 received by the accused on 31/05/2008. As far as in Crl.R.C.No.978/2016 is concern, the subject matter is the cheque bearing No.008683 dated 20/12/2007 for Rs.1,00,000/- and cheque bearing No.008684 dated 20.01.2008 for Rs.1,00,000/-. These two cheques were presented for collection on 17/06/2008. Bounced on



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18/06/2008. The statutory notice dated 23/06/2008 received by the accused on
25/06/2008..

12. According to the complaint, all these three cheques were given by the accused in connection with same transaction namely finance advanced in connection with the distribution right of English to Tamil dubbing movie by name HOST. Therefore, except the subject cheques and the respective Bank advice, memo, statutory notice and reply notice, the cause of action for issuance of these three cheques were one and the same and most of the documents are common in both the cases.

13. For the said reason, common order is passed.

14. The Learned Counsel for the revision petitioners/accused submitted that the Appellate Court judgment is perverse on many counts. The Appellant Court while reversing the well consider judgment of the Trial Court, without proper appreciation of fact and law, had held the appellant guilty of offence under Section 138 of the Negotiable Instruments Act, 1881, by saying the



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accused failed to discharge the burden of presumption under Section 139 of the Negotiable Instruments Act. While the Trial Court held that the letter of guarantee dated 09/09/2007 is not a genuine document and assigned valuable reason for such conclusion, the Appellate Court relying upon this document has held the accused is guilty. The Appellate Court not even discussed about the contradictions in the evidence of the so called witnesses to the document dated 09/09/2007.

15. This Court, on analysing the documents and depositions, find that the Trial Court has appreciated the law and evidence properly and applied his mind judiciously to arrive at the finding. The reasoning given by the Trial Court appeals both to common sense and law. The presumption under Section 139 of the Negotiable Instruments Act, 1881 is not an irrebuttable presumption, it is sufficient if the accused rebut the presumption by preponderance of probability. In this case, the accused through the agreement dated 22/08/2007 entered between him and the complainant has established that the money alleged to have been paid by the complainant was towards the screening right of the film “THE HOST” and for the 10% commission, it is not a loan as alleged in the complaint.



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16. The Trial Court for reasons recorded, had held that the alleged letter of guarantee dated 09/09/2007 is shrouded with suspicious and the witnesses contradictory version about its execution render this document unreliable. Shockingly, the Appellate Court has not even examined the documents but mechanically held that the accused is guilty of the offence under Section 138 of Negotiable Instruments Act, in the light of the admission of the signature in the cheques and in view of the letter of guarantee dated 09/09/2007.

17. The perversity in the order of the Appellate Court is explicitly exhibited by not appreciating the evidence and apply the correct law. Therefore, the Appellate Court judgment in C.A.No.121/2012 and C.A.No.122/2012 are hereby set aside. The Trial Court order of acquittal passed in S.T.C.No.218/2009 and S.T.C.No.219/2009 restored and confirmed. As a result, the Crl.R.C.No.No.478 of 2014 & Crl.R.C.No.978 of 2016 are allowed. Fine amount paid, if any, ordered to be returned to the petitioner/accused.

22.06.2022



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Index :Yes/No.

Internet :Yes/No.

Speaking order/Non-speaking order
bsm

To,
The II Additional Sessions Judge, Salem.



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Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery common order in
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