



CRL A Nos.1011, 1012, 1014, 1015 and 1016 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal Nos.1011, 1012, 1014, 1015 and 1016 of 2022

United Steel Corporation
The Partnership Firm Carrying it's Business
is registered before the Government of Tamil Nadu
in the Registrar of Firms in (REG No.528/2014)
Having it's registered office at
No.60, Mugappair Road
Padi, Chennai- 600 050

Represented by its Manager & Power Attorney;
Sanjay Modi
Manager
United Steel Corporation
No.60, Mugappair Road
Padi, Chennai – 600 050

... Appellant in all Criminal Appeals

Vs.

1. GNT Engineering Works
Represented by its Proprietor
G.N.Thangadurai
No.18, Bharathiyar Street,
Srinivasa Nagar, Padi
Chennai-600 050



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2. Plant-II Address:-

GNT Engineering Works (PLANT-II)

Represented by its Proprietor

G.N.Thangadurai

No.71, SIDCO Industrial Estate

Kakkalur, Thiruvallur – 602 003

(Thiruvallur District)

... Respondents in all Criminal Appeals

Common Prayer : Criminal Appeal filed under Sections 378 of Criminal Procedure Code, praying to call for the records from the file of the learned Judicial Magistrate, Fast Track court, (Magisterial Level) Ambattur, Thiruvallur District in C.C.Nos.81 to 85 of 2019 and sentence the accused/respondent to imprisonment and pay compensation to the appellant/complainant and set aside the acquittal Judgment/order passed by the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, Thiruvallur District in C.C.Nos.81 to 85 of 2019 on 19.04.2022 and punish the accused under Section 138 of Negotiable Instruments Act.

in all Criminal Appeals

For Appellant : Mr.R.Muthukumar

For Respondents : Mr.R.Thanigai Arasu



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COMMON JUDGMENT

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These Criminal Appeals have been filed seeking to set aside the Judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, Thiruvallur District in C.C.Nos.81 to 85 of 2019 dated 19.04.2022 and punish the accused under Section 138 of Negotiable Instruments Act.

2. The appellant company is the complainant. The appellant filed five private complaints against the respondents company under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate Fast Track Court, (Magistrate Level) Ambattur, Thiruvallur District. The said complaints were taken cognizance in C.C.Nos.81 to 85 of 2019.

3. Before the trial Court, in order to prove the case of the complainant, on the side of the complainant, the complainant was examined as P.W.1 and 10 documents were marked as Ex.P.1 to Ex.P.10 in each case. On the side of the respondent, no oral evidence was let in however, 5 documents were marked as Exs.D1 to D.5 in each case. The



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trial Court, after hearing both sides, dismissed the complaints by order dated 19.04.2022 and acquitted the respondents. Aggrieved over the said Judgment of acquittal, the complainant has filed the present appeals before this Court.

4. The specific case of the complainant is that the complainant had supplied steel materials to the accused on various dates for a total worth of Rs.30,73,099/- and accused repaid a sum of Rs.2,39,787/- to the complainant and there was outstanding of Rs.28,33,312/- and in order to repay the said amount, the accused had issued 5 cheques for a sum of Rs.24,33,312/- as stated below;

S.No.	Cheque No.	Date of Cheque	Amount	Case No.
1	412375	10.01.2019	Rs.5,00,000/-	C.C.No.81 of 2019
2	412374	10.01.2019	Rs.5,00,000/-	C.C.No.82 of 2019
3	412378	10.01.2019	Rs.4,33,312/-	C.C.No.83 of 2019
4	412377	10.01.2019	Rs.5,00,000/-	C.C.No.84 of 2019
5	412376	10.01.2019	Rs.5,00,000/-	C.C.No.85 of 2019

Thereafter, the said cheques were presented for collection by the complainant before his banker namely State Bank of India, SME Branch,



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Ambattur, on 10.01.2019 and the same were returned on 11.01.2019 for the reason “funds insufficient”. Therefore, the complainant issued legal notice to the accused on 20.01.2019 and the same was received by the accused on 21.01.2019 for which, the accused sent false reply on 02.02.2019. Since the accused did not repay the money for the dishonoured cheques and sent false reply, the complainant filed five separate private complaints against the accused before the Magistrate. The learned Magistrate after conclusion of trial, dismissed the complainants and acquitted the respondents. Hence, the present appeals have been filed before this Court.

5. The learned counsel for the appellant would submit that though the accused stated that they have paid the amount over and above the invoices and the cheques were issued only towards the earlier transaction invoices and not towards the disputed transaction invoices, the complainant has showed the liability of the accused in their Income Tax statement. Therefore, the complainant has proved the transactions between the complainant and the accused. Further, the accused have admitted the signatures in the cheques and also the execution of the



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cheques. Since the complainant has proved that the cheques were issued towards the discharge of legally enforceable debt, the complainant has proved the initial burden then the onus has been shifted to the accused and it is for the accused to rebut the presumption in the manner known to law. Further, though the learned Magistrate has observed that after completion of the proceedings under Section 313 Cr.P.C., the complainant filed a petition under Section 311 Cr.P.C., seeking to adduce additional evidence to bring the documents related to the previous invoices for which, the alleged payment of Rs.1,40,98,070/- were paid by the accused, but there was no such petition filed by the complainant under Section 311 Cr.P.C. After seeing such observation made in the Judgment of the trial Court, the complainant sent a petition under RTI to the Judicial Officer namely the Chief Judicial Magistrate, Tiruvallur, who has sent a reply dated 29.06.2022 stating that there was no such petition filed under Section 311 Cr.P.C. and hence, there was no order passed in respect of the said petition in the C.C.No.81 of 2019 which itself, would clearly show that the trial Court has not properly appreciated the evidence and wrong facts have been elicited in the Judgment of the trial Court. The signatures in the cheques are admitted and the execution of the cheques



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are also admitted and when the accused take the defence that they have paid over and above the invoice amount, then it is for the accused to prove that they have already discharged the cheque amount. Once the accused not proved the plea of discharge, then the accused have not rebutted the presumption in the manner known to law. It is settled proposition of law that once the execution is admitted and the transaction is also admitted, the initial burden of the complainant is proved then, the onus is shifted on the accused and it is for the accused to rebut the presumption in the manner known to law, whereas the learned trial Judge has failed to follow the settled proposition and wrongly appreciated the facts and dismissed the complaints which warrants interference.

6. The learned counsel for the accused would submit that the accused used to purchase raw materials namely Steel Bright Bars and Black Bars from the complainant who used to supply the same through any one of their three sister concerns. At the time of placing order of supply, the complainant used to get signed blank cheques from the accused and only on receipt of the cheque, they would supply the materials. He would submit that the complainant would supply materials



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from one company and would raise invoice in another company and would demand payment in the name of other company. This is the procedure adopted by the complainant. Even after clearing the payments for the supplied materials, the complainant did not return the cheques. He would submit that in the due course of business over a period of time, the accused issued total of 63 signed blank cheques and out of which, 21 cheques have been misused and 21 complaints have been filed against the accused by the complainant and his sister concerns. After the receipt of legal notice from the complainant for the said 5 cheques, the accused sent reply on 14.01.2019 and subsequently, he also sent notice dated 15.01.2019 demanding the appellant to return 57 blank cheques which were already discharged and till now, the complainant has not returned the cheques and the complainant also not chosen to reply. Though the complainant admitted the receipt of money from the accused stating that it was paid towards other transaction and not for this transaction, the complainant has not proved that the money paid by the accused was only towards previous transaction and not for this transaction. Though the complainant stated that the cheques were issued towards outstanding invoices, none of the cheque is tallied with any of the invoice amount



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which clearly shows that the cheques were not issued for repayment of any particular invoice. Therefore, it is clear the complainant has made use of the non returned cheques of the accused and filed the false complainants against the accused as if, the accused have liability to pay to the complainant. The trial Court rightly appreciated the materials and found that the cheques were not issued towards discharge of any legally enforceable debt or liability and therefore, dismissed the complaints. Therefore there is no merit in the appeals and the same are liable to be dismissed.

7. Heard the learned counsel for the complainant and the learned counsel for the accused and perused the materials available on record.

8. Admittedly the appellant is the supplier of goods viz., Steel Materials based on the invoices and the respondents are the purchasers. This fact is not denied by both the parties. The transactions between the complainant and the accused are admitted. The signatures in the cheques and the execution of cheques are also admitted.

9. According to the complainant, as per the invoice, there were



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outstanding of Rs.28,33,312/- and when the complainant asked the accused to pay the invoice amount, the accused issued 5 cheques. Thereafter, when the complainant presented the said cheques in his bank on 10.01.2019, the same were dishonoured for the reason “funds in sufficient” on 11.01.2019. Hence, notice was sent to the accused and subsequently, the accused sent reply with false averments and also not paid the cheque amount. Hence, the complainant filed private complaints before the trial Court. But the trial Court dismissed the complaints stating that the complainant not proved that the cheques were issued for legally enforceable debt. Hence, the present appeals have been filed by the complainant before this Court challenging the Judgments of acquittal passed by the trial Court.

10. According to accused, the cheques were not issued to the complainant towards discharge of any legally enforceable debt. At the time of placing orders with the complainant, the complainant used to receive signed blank cheques from the accused and only on receipt of the cheques, they would supply materials and even after making payment towards the supplied goods, the complainant was not in the habit of



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returning the cheques. Now, by making use of those cheques, the complainant has filed false complaints against the accused.

11. Once the complainant filed a complaint for the outstanding debt, then it is for the complainant to prove the debt and the very transactions and also the total outstanding. Even assuming that there was outstanding of Rs.28,33,312/- towards supply of steels, the complainant could have obtained a single cheque for the said amount of Rs.28,33,312/- since there is no upper limit for issuance of cheque. But the complainant has not stated as to why they obtained 5 separate cheques from the accused for the outstanding amount with same date. Further, all the said 5 cheques are stated to have been obtained on the same day, presented on the same day and dishonoured with the return memo on the same day viz., 10.01.2019 which itself creates doubt.

12. Further, as per the accused, at the time of placing orders, the complainant used to receive unfilled blank signed cheques from the accused and even after repayment of the amount towards the supplied goods, the complainant did not return the cheques. The said statement



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was not denied by the complainant and they have also not denied that there is no such cheques are available with them.

13. Admittedly, once the signatures are admitted and the execution of cheques are also admitted then there is a statutory presumption under Section 139 of the Negotiable Instruments Act that the initial burden of the complainant is proved. No doubt the accused has to rebut the statutory presumption in the manner known to law. For rebutting the presumption, the accused need not come into the witness box and let in any direct evidence, he can always prove his defence by preponderance of probabilities in the manner known to law.

14. This Court being an Appellate Court as a final Court of fact finding, it has to necessarily re-appreciate the entire evidence and to give its findings independently. Accordingly, this Court re-appreciated the entire evidence and gives its findings independently.

15. No doubt the accused admitted the signatures in the cheques and also the execution of cheques. However, the main defence taken by the accused is that, at the time of placing order, the complainant used to



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get signed unfilled blank cheques from the accused and even after making payments, the complainant did not return the cheques to the accused. The complainant not denied that at the time of supply of materials, they did not receive any cheque from the accused. Further, the complainant have not proved as to how many cheques they received from the accused at the time of placing of orders by the accused and how many cheques were returned to the accused in the earlier transactions after the accused made payment towards the invoices and the complainant has also not proved that the said outstanding amount is only for the subsequent transaction. Under these circumstances, this Court finds that the accused have rebutted the presumption by preponderance of probability and the complainant has not proved his case beyond all reasonable doubts.

16. Normally, in the appeal against acquittal, the appellate Court will not interfere unless there is perversity in the appreciation of evidence by the trial Court or compelled circumstances to interfere with the judgment of acquittal. In this case, this Court does not find any reason to interfere with the Judgment of acquittal passed by the trial Court. Therefore, these Criminal Appeals are liable to be dismissed.



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17. Accordingly, these Criminal Appeals are dismissed.

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Index:Yes/No



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The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Ambattur, Thiruvallur District



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P.VELMURUGAN, J

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