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Crl.R.C.No.1141 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1141 of 2019

Sumitkumar
Proprietor,
M/s.Lite Computers,
Kabeer Nagar, P.O.B.H.U, Durgakund,
Varanasi 221 005. ... Petitioner

Vs.

Redington (India) Ltd,
Represented by
M.Sundararajan,
Senior Legal Executive
SPL, Guindy House,
95, Mount Road, Guindy,
Chennai-600 032. ... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the Judgment dated 28.02.2019 passed by the lower appellate Court V Additional Sessions Court at Chennai in Crl.A.No.291 of 2016 confirming the Trial Court Judgment dated 18.10.2016 in C.C.No.2508 of 2012 on the file Metropolitan Magistrate, FTC-III, Saidapet, Chennai-15.

For Petitioner : Mr.K.Annamalai
for Mr.M.Anandaraj
For Respondent : Mr.V.T.Narendiran



Crl.R.C.No.1141 of 2019

WEB COPY

ORDER

This Criminal Revision case has been filed as against the Judgment passed in Crl.A.No.291 of 2016 dated 28.02.2019, passed by the V Additional Sessions Court at Chennai confirming the Judgment passed in C.C.No.2508 of 2012, dated 18.10.2016, on the file of the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai-15.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that the petitioner had placed orders for purchase of Dell Computers and Monitors, Lenova Notebooks and Carry case, Lenova Computers and Monitors, Compaq notebooks and Carry case and other accessories under various invoices on various dates. Accordingly, the petitioner duly received goods and in order to discharge his liability, he issued cheque for a sum of Rs.1,32,61,732/- in favour of the respondent. The said cheque was presented for collection and the same was returned dishonored with an endorsement "Exceeds Arrangements". Immediately, after causing legal notice, the respondent lodged a complaint and the same was duly received by the petitioner.



Crl.R.C.No.1141 of 2019

3. On the side of the respondent, he was examined as P.W.1 and marked Exs.P.1 to P.8. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidences, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and also awarded compensation of the cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner submitted that the respondent is engaged in the business of distribution of computers and its peripherals. According to the respondent, he supplied goods to the tune of the cheque amount. No prudent person would supply goods that too to the tune of Rs.1,32,61,732/- without any advance payment. The alleged cheque was issued as security purpose and it was misused by the respondent to initiate the proceedings under Section 138 of Negotiable Instruments Act. The complaint was filed without any proper authorization and there was no signature of Director of the company or Managing Director of the company to lodge the complaint. The respondent failed to prove the supply of goods. Therefore, the Courts below wrongly convicted the petitioner for the offence punishable under



Crl.R.C.No.1141 of 2019

Section 138 of Negotiable Instruments Act.

WEB COPY

5. Heard both sides.

6. A perusal of records revealed that the petitioner placed order to supply computers and other accessories to the tune of Rs.1,32,61,732/- under the invoices, which was marked as Ex.P2. The respondent supplied all the items as required by the petitioner. On receipt of the said goods, the petitioner issued cheque, dated 11.05.2012 and the same was presented for collection. However, it was returned dishonored with an endorsement “Exceeds Arrangements” and as such the respondent caused statutory notice, dated 07.06.2012, which was marked as Ex.P6. On receipt of the same, the petitioner failed neither to reply nor to repay the cheque amount. Therefore, the respondent discharged his initial burden as required under Section 138 of Negotiable Instruments Act.

7. Though, the petitioner raised grounds that there is no documents to show that the goods were received by the petitioner, the petitioner failed to produce any documents to that effect. Whereas, a perusal of Ex.P2 revealed that it consisted 25 invoices containing rubber stamp seal of the accused proprietary concern with signature. There is absolutely no evidence to show that the said



Crl.R.C.No.1141 of 2019

goods were not received by the petitioner. The petitioner also did not raise any objections with regard to the issuance of cheque and the signature found in the cheque. Therefore, the respondent discharged his initial burden with presumption under Section 118 and 139 of Negotiable Instruments Act. The standard of proof required for the petitioner to rebut the presumption is on preponderance of probabilities. If the accused failed to raise probable defence to rebut the presumption regarding legally enforceable debt or liability, the accused must suffer conviction. Admittedly, there was series of business dealings with the petitioner and the respondent herein.

8. Therefore, both the Courts below rightly found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act. That apart, while suspending the sentence, this Court directed the petitioner to pay 50% of the award amount to the credit of Trial Court. However, the petitioner failed to comply the same and as such the respondent approached the Trial Court and Non Bailable Warrant is pending as against the petitioner. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

9. Accordingly, this Criminal Revision case stands dismissed.



Crl.R.C.No.1141 of 2019

01.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The V Additional Sessions Court at Chennai.
2. The Metropolitan Magistrate, FTC-III, Saidapet, Chennai-15.

G.K.ILANTHIRAIYAN, J

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Crl.R.C.No.1141 of 2019

Crl.R.C.No.1141 of 2019

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