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Crl.R.C.No.1145 & 1165 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

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

Crl.R.C.Nos.1145 & 1165 of 2020

Jayapal

... Petitioner in both Crl.R.C's

Vs.

M/s.Jeevan Fruits Company
Represented by its Proprietor,
P.Pramod Kumar

... Respondent in both Crl.R.C's

PRAYER in Crl.R.C.No.1145 of 2020: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the conviction imposed in the judgement dated 29.10.2020 made in C.A.No.194 of 2019 on the file of the XVI Additional Sessions Judge, Chennai confirming the conviction imposed in judgment dated 16.04.2019 made in C.C.No.444 of 2018 on the file of the learned Metropolitan Magistrate FTC-II, Egmore, Chennai, by allowing this Criminal Revision Petition.

PRAYER in Crl.R.C.No.1165 of 2020: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the conviction imposed in the judgement dated 29.10.2020 made in C.A.No.193 of 2019 on the file of the XVI Additional Sessions Judge, Chennai confirming the conviction imposed in



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judgment dated 16.04.2019 made in C.C.No.442 of 2018 on the file of the learned Metropolitan Magistrate FTC-II, Egmore, Chennai, by allowing this Criminal Revision Petition.

For Petitioner
in both Crl.R.C's : Mr.R.Thirumoorthy
M/s.R.Sindhu
Mr.E.Balamurugan
M/s.T.Kalpanadevi
Mr.T.Lingaraj
-No Appearance

For Respondent
in both Crl.R.C's : Mr.S.Thangamani
for Mr.K.Boomuraj

COMMON ORDER

These Criminal Revision Petitions have been directed as against the Judgment dated 29.10.2020 made in C.A.No.193 of 2019 and C.A.No.194 of 2019 on the file of the learned XVI Additional Sessions Judge, Chennai, thereby confirming the conviction imposed by the trial Court in Judgement dated 16.04.2019 in C.C.No.442 of 2018 and C.C.No.444 of 2018 for the offence under Section 138 of Negotiable Instruments Act (hereinafter referred as "N.I Act").

2. Learned Counsel for the petitioner had already handed over the



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entire bundle to the petitioner along with change of vakalat. To that effect, he had also filed a Memo dated 18.01.2021 before this Court. However, the petitioner did not engage the counsel to represent on his behalf and when the matter is taken up for hearing today, neither the petitioner nor his counsel appeared before this Court. Therefore, this Court is inclined to pass orders on merits.

3. The petitioner is an accused in the complaint lodged by the respondent alleging that the petitioner was doing fruits business and approached the respondent for purchase of fruits in various dates at worth about Rs.11,12,673/- and Rs.12,00,000/-. In order to discharge his liability, he had issued cheques for the said sale. All the cheques were presented for collection by the respondent. However, all those cheques were returned as "Funds Insufficient". After causing legal notice, the respondent lodged the complaint as against the petitioner. On the side of the respondent, he was examined as P.W.1 and marked Ex.P.1 to Ex.P.7. On the side of the petitioner, no one was examined and no documents were marked. On a perusal of oral and documentary evidences, the trial Court found the petitioner guilty for the offence under Section 138 of N.I



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Act and sentenced him to undergo one year simple imprisonment and also directed him to pay compensation to the complainant. Aggrieved by the same, the petitioner preferred appeal and the first Appellate Court had dismissed the appeal and confirmed the conviction imposed by the trial Court in C.A.No.193 of 2019 and C.A.No.194 of 2019.

4. It is the averment of the petitioner made in the affidavit that the complaint itself is barred by limitation and that there was no CD file produced by the respondent. Further, the statutory notice was received by the petitioner on 11.04.2017, whereas the complaint was filed only on 09.10.2017. However, the Courts below without considering the above vital legal lacuna have convicted the petitioner. Though the respondent avert that the petitioner had purchased fruits from the respondent and in order to discharge his liability, he had issued cheques, it is seen that except those cheques, no other documents have been produced to prove the said transaction and moreover, the alleged debt is not legally enforceable.

5. On a perusal of the materials available on records, it revealed that the respondent was the proprietor of Jeevan Fruits Company and the



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petitioner was the proprietor of Sathiya Fruits, Koyambedu, Chennai. It is seen that the petitioner had approached the respondent for purchase of fruits on various dates and towards the discharge of the said liability, the petitioner had also issued cheques for a sum of Rs.11,12,673/- and subsequently a sum of Rs.12,00,000/-. All the cheques were presented for collection and were returned as unpaid due to the reason "Funds Insufficient". Therefore, the respondent caused legal notice on 11.04.2017, called upon the petitioner to pay the cheque amount. The said notice was duly received by the petitioner on 13.04.2017. On receipt of the same, the petitioner neither sent any reply nor paid the cheque amount. However, the petitioner did not deny the signature found in the cheques and also issuance of cheque. Even that he failed to make any statement under Section 313 Cr.P.C. Though the petitioner raised grounds that the cheques were not issued towards any consideration, the petitioner failed to produce any piece of evidence to dispute the case of the respondent herein. Insofar as the delay is concerned, the petitioner never raised the ground before the trial Court. Therefore, it is evident that there was no delay in lodgement of the complaint. Immediately after lodgement of the complaint, the trial Court had also taken cognizance and



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issued summons to the petitioner. Therefore, the respondent has fulfilled the requirements as contemplated under Section 138 of N.I Act.

6. Section 118 of N.I Act permits the Court to raise the presumption that when signatures in the cheques are admitted, it is for valid consideration. Similarly, the provision under Section 139 of N.I Act enable the Court to raise presumption that the holder of the cheque received it for the discharge of any debt or liability. However, these twin presumptions are rebuttable in nature. The accused can very well rebut the said presumptions by leading cogent and clear evidence. However, the petitioner failed to rebut the presumptions as contemplated under Section 118 and 139 of N.I Act. In fact, the petitioner after receipt of the legal notice failed to sent any reply notice, denying the allegations made in the notice.

7. In view of the above, both the Courts below have rightly convicted the petitioner for the offence punishable under Section 138 of N.I Act and this Court finds no infirmity or illegality in the orders passed by the Courts below.



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8. Accordingly, this Criminal Revision Case is dismissed.

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Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.,

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