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Crl.RC.Nos.1159 & 1160 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.RC.Nos.1159 & 1160 of 2017

- 1)M/S.Sri Vishwa Foundries Pvt. Ltd.,
Rep. by its Managing Director,
S.A.Balasubramaniam
- 2)S.A.Balasubramaniam,
Managing Director,
M/s.Sri Vishwa Foundries Pvt. Ltd.,
- 3)K.Parvathavarthini,
Director,
Sri Vishwa Foundries Pvt. Ltd.,
1 to 3 are having Office at S.F.No.791/1B,
Gas Company Road, Idigarai,
Coimbatore – 641 022. ... Petitioners/Accused in both Revisions

Vs.

- 1.M/s.MBN Engineering and Marketing Pvt. Ltd.,
Rep. By Mr.Bibin Cheri Mathew,
Director,
Corporate Office at Namboorimadathil Centre,
Edappaly, Cochin – 682 024,
Marketing Office at No.11, Kalloori Nagar,
Peelamedu,
Coimbatore – 641 004. ... Respondent/complainant in both Revisions



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Prayer in Crl.RC.No.1159: Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, against the judgment and order of confirming the conviction passed by the I Additional District and Sessions Judge, Coimbatore, in C.A.No.171 of 2016 dated 10.05.2017 by dismissing the appeal filed by these petitioners and modified the sentence imposed to the 1st petitioner herein set aside the conviction and ordered to pay a fine of Rs.50,000/-, further in so far as the 2nd and 3rd petitioners herein confirming judgment of conviction under Sections 138 and 141 of N.I. Act and sentenced to one year simple imprisonment and directed to pay a sum of Rs.23,85,122/- by way of compensation under Section 357 of Cr.P.C, failing which six month simple imprisonment by the Judicial Magistrate, Fast Track Court No.II at Magistrate Level, Coimbatore in C.C.No.406 of 2013.

Prayer in Crl.RC.No.1160: Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, against the judgment and order of confirming the conviction passed by the 1st Additional District and Sessions Judge, Coimbatore, in C.A.No.170 of 2016 dated 10.05.2017 by dismissing the appeal filed by these petitioners and modified the sentence imposed to the 1st petitioner herein set aside the conviction and ordered to pay a fine of Rs.50,000/-, further in so far as the 2nd and 3rd petitioners herein confirming judgment of conviction under Sections 138 and 141 of N.I. Act and sentenced to one year simple imprisonment and directed to pay a sum of Rs.16,23,694/- by way of compensation under Section 357 of Cr.P.C, failing which six month



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simple imprisonment by the Judicial Magistrate, Fast Track Court No.II
at Magistrate Level, Coimbatore in C.C.No.405 of 2013.

For Petitioners
in both Revisions : Mr.K.Sathish Kumar
For Respondent
in both Revisions : Mr.C. Arun Kumar

COMMON ORDER

The Revision petitioners who are accused in C.C.Nos.405 and 406 of 2013. Both the cases, the revision petitioners were facing trial, who were convicted by the Trial Court for the offences under Section 138 of the Negotiable Instrumentats Act and they were sentenced to one year simple imprisonment and directed to pay an amount of Rs.23,85,122/- and Rs.16,23,694/- respectively. Against their conviction, they have preferred an appeal in C.A.Nos.170 & 171 of 2015, the Lower Appellate Court by judgment dated 10.07.2017 had dismissed the appeal.

2. The Lower Appellate Court modified the conviction against the first accused viz., since the company is only a non-living



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person, hence the sentence of imprisonment for the company alone was set aside. As regards A2 and A3, the Managing Director and the Director which have confirmed against which the present revision has been filed.

3. Mr.C.Arun Kumar, learned counsel for the respondent/complainant submits that the case is of the year 2013 and successfully the petitioners were dragging the trial by giving one reason or other and at times falsely showing interest to settle the cheque amount. Even before this Court, the same representation was made and it was referred to the Mediation Centre and finally no compromise arrived and case sent back. The case is successfully delayed and kept pending criminal revision for the past 4 years.

4. The gist of the complaint is that the complainant is a Limited Company engaged in the business of Tata Metalics, Fig Iron and raw materials for foundry business and other business incidental thereto. The first accused is a Private Limited Company and engaged in foundries business producing Grey Iron and SG Iron Castings. The



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second accused is the Managing Director and the third accused is the Director of the first accused firm actively engaged and participating in the day-to-day business affairs of the firm. In such course of business, the accused 2 and 3 on behalf of accused No.1 had placed orders for supply of fig iron, the material for production of castings under credit basis. The order was placed by the accused on the factory address of the complainant. The accused have also agreed to pay interest at the rate of 24% per annum for the delayed payment. The complainant has delivered the materials to the accused on credit basis to the value of Rs.45,45,122.08 and the invoice raised for the period from 24.11.2012 to 24.12.2012. Of the total value of the materials supplied to the accused the first accused is liable to pay a sum of Rs.19,94,407.90/- and delayed interest of Rs.1,85,645.58 after adjusting the payment made by the accused. In order to discharge a portion of the liability due to the complainant the accused 2 and 3 on behalf of the 1st accused had issued four cheques drawn on City Union Bank Limited Saibaba Colony Branch, Coimbatore. The details of the cheque are:



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<i>Sl.No.</i>	<i>Date of Cheque</i>	<i>Cheque No.</i>	<i>Amount in Rs.</i>
1	10/01/2013	006595	7,96,838,-
2	13/03/2013	006833	3,95,723,-
3	13/03/2013	006835	3,50,000,-
4	20/03/2013	006890	4,51,847,-

5. These cheques when presented for payment got dishonoured and later statutory notice was issued. A reply was given admitting the issuance of the cheque and also the signature found in the cheque. The only defence is that they sought some time for deferred payment. Thus, the liability was not in dispute. The accused were questioned under Section 313(1)(b) Cr.P.C., they denied the evidence, neither examined any witness nor marked any documents. Finding no reasons and petitioners unable to produce any material, the Trial Court convicted the petitioners.

6. The Lower Appellate Court except for slight modification confirmed the order of Trial Court.

7. The learned counsel for the petitioners submit in a business transaction the cheques which were given as security, is



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misused by the respondent/complainant. In their complaint, the respondent/complainant admitted that it is a running business, transaction in purchase by raw materials for foundries, which were supplied by the respondent on credit basis with interest clause. At that time some of the cheques were retained by them as security. These security cheques latter utilized false case filed. The petitioners business has run into rough weather. Hence, the payments could not be made immediately. The petitioners were taking all the effective steps to resolve the issue with the respondent. The respondent company to fleece the petitioners using the case and making unreasonable demands. Further, the petitioners filed a petition under Section 311 Cr.P.C to recall and further cross-examine PW1 which regard to certain important documents and facts. The Trial Court dismissed the same, against which the petitioners filed a petition before the High Court listing of the petition got delayed. In the meanwhile, the Trial Court convicted the petitioners and that too directing the petitioners to pay compensation of twice the cheque amount, without giving any reason.



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8. It is submitted by the respondent/complainant that at that time of admission, this Court directed the petitioners to deposit a sum of Rs.1,00,000/- in each case to the credit of C.C.Nos.405 & 406 of 2013. In view of the same, both the petitioners in C.C.Nos.405 & 406 of 2013 have deposited a sum of Rs.1,00,000/- in each case i.e. total amount of Rs.2,00,000/- and the deposited amount of Rs.2,00,000/- is lying in the credit of C.C.Nos.405 & 406 of 2013. This amount is to be returned to the respondent/complainant by filing an appropriate petition.

9. This Court finds that no reason to interfere with the well reasoned, judgment of the trial Court as well as the Appellate Court. In view of the same, this Court is not inclined to entertain this petitions. Accordingly, these Criminal Revision Petitions are dismissed.

Index : Yes / No
Internet : Yes/No
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The Judicial Magistrate, Fast Track Court No.II
at Magistrate Level, Coimbatore.



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M.NIRMAL KUMAR, J.

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