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Crl.R.C.No.1226 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

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

Crl.R.C.No.1226 of 2018
and Crl.M.P.Nos.14492 & 14497 of 2018

1.T.K.Karthikeyan

2.M/s.Logesh Enterprises,
No.2, VI Cross Street,
Venkata Subramaniyam Nagar,
Valasaravakkam,
Chennai – 600 087.

... Petitioners

Vs.

Sailash Kumar

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the order of the Appellate Court in C.A.No.214 of 2016 dated 10.10.2017 on the file of the XVIII Additional Sessions Court, Chennai, confirming the order of the trial Court in C.C.No.3015 of 2013 dated 27.06.2016 on the file of the Metropolitan Magistrate Court, FTC IV, George Town, Chennai, by allowing this revision.

For Petitioners : Ms.R.Aparna

For Respondent : Ms.Shyamala Gayathri
for Mr.Ralph.V.Manohar



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ORDER

This Criminal Revision has been filed against the judgment passed in C.A.No214 of 2016 dated 10.10.2017 on the file of the XVIII Additional Sessions Court, Chennai, thereby confirming the order passed by the Metropolitan Magistrate Court, FTC IV, George Town, Chennai, in C.C.No.3015 of 2013 dated 27.06.2016 thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The petitioners are accused in the complaint lodged by the respondent for the offence under Section 138 of NI Act.

3. The respondent lodged a complaint alleging that the petitioner had borrowed a sum of Rs.5,00,000/- for his business purpose on 07.03.2011 through RTGS clearing and executed a promissory note to and in favour of the respondent herein. In order to discharge the said due to the respondent, the petitioners had issued two cheques for a sum of Rs.2,00,000/- and Rs.3,00,000/- respectively. On instruction, when the cheques were presented for collection and the same were returned dishonoured for the reason "insufficient funds".



After causing statutory notice to the petitioners, the respondent lodged a complaint.

4. On the side of the respondent PW1 was examined and Exs.P1 to 9 were marked and on the side of the petitioners no one was examined and no document was marked.

5. On perusal of oral and documentary evidence, the trial Court found the first petitioner guilty for the offence under Section 138 of NI Act, and sentenced him to undergo one year simple imprisonment and both the petitioners were ordered jointly and severally to pay compensation of cheque amount along with interest at the rate of 9% percent per annum. Aggrieved by the same, the petitioners preferred an appeal and the same was dismissed and confirmed the judgment passed by the trial Court.

6. The learned counsel for the petitioners raised grounds that after issuance of the cheques a partial amount was repaid to the respondent and it was not accounted by the respondent and without deducting the said amount, the respondent presented the cheques for the entire amount. After receipt of the



statutory notice, the petitioners were called upon to produce the statement of accounts. Even then the respondent failed to produce any statement of accounts and it would reveal the payment made by the petitioners. She further submitted that the petitioners could not mark the statement of accounts since it was not available. Now it is available and filed petition before this Court to mark additional affidavit. Further, it was returned with endorsement to file the said petition with condone delay petition and it was not filed and produced the statement of accounts before this Court. Therefore, once the part of the cheque amount was paid and presented the cheque for the entire amount, the petitioners cannot be convicted for the offence under Section 138 of NI Act.

7. In support of her contention, she also relied upon the judgment reported in **2022 Live Law (SC) 830** in the case of ***Dashratbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and Others.***

8. On perusal of records revealed that the petitioner borrowed a sum of Rs.5 lakhs on 07.03.2011 through RTGS from the respondent herein. He also executed a promissory note in favour of the respondent. The said promissory note was marked Ex.P1 the cheques were marked as Exs.P3 and 4 when the



said cheques were presented for collection, the same were returned dishonoured for the reason "funds insufficient". After causing statutory notice which was marked as Ex.P5. On receipt of the same, the petitioners reply which was marked as Ex.P7.

9. Though, the petitioners raised specific grounds that a part of the cheque amount were paid, the petitioners did not even produce any iota of evidence to prove the same. Though a copy of the statement of accounts is produced before this Court for reference, it does not reveals anything that the petitioner made part of the payment to the respondent herein, after issuance of cheque before presenting the same for collection. That apart, the petitioners categorically admitted that the receipt of the amount by way of RTGS from the respondent. Therefore, he cannot raise grounds that the cheque was issued from the partnership firm and the petitioners are not the proprietor concern.

10. On perusal of Exs.P2 and P3 revealed that it was issued by the petitioners in the capacity of proprietor of its authorised signatory represented by the second petitioner. That apart, the petitioners failed to produce any documents to show that they are the partnership firm. The petitioners also failed



to produce any oral or documentary evidence to prove that they are the partnership concern.

11. The Hon'ble Supreme Court, held in the case of ***Dashratbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and Others*** wherein, it held that if any part payment of the debt in the cheque is paid after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the NI Act. The said cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

12. In the case on hand, there is no oral or documentary evidence produced by the petitioners that a part payment was made after issuance of the cheque and before it was encashed. Therefore, the case cited above is not applicable to the case on hand. That apart, the entire amount was paid through RTGS and the same was also categorically admitted by the petitioners.



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Therefore, the Court below rightly convicted the petitioner and this Court finds no infirmity or illegality in the orders passed by the Courts below.

13. Accordingly, the criminal revision case stands dismissed.

Consequently, connected miscellaneous petitions are closed.

18.10.2022
(3/3)

Index:Yes/No
Speaking/Non speaking order
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To

1.The XVIII Additional Sessions Court,
Chennai.

2.The Metropolitan Magistrate Court,
FTC IV, George Town,
Chennai,



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G.K.ILANTHIRAIYAN. J.

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