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Crl.R.C.No.1500 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

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

CRL.R.C.No.1500 of 2018
and Crl.M.P.Nos.17567 & 17569 of 2018

S.M.Logistic,
Rep. by its Authorized Sign.
A.R.Sulthan Mohideen,
No.4/500, 4th Block,
JJ Nagar, Mogappair East,
Chennai – 600 037.

... Petitioner

Vs.

M/S. Opus Dei Logistics India Pvt., Ltd.,
Rep. by its Manager,
B.Porchezian,
No.111/54, 2nd Floor,
Linghi Chetty Street,
Chennai – 600 001.

... Respondent

Prayer: The Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records pertaining to C.C.No.1401 of 2016 on the file of the learned Metropolitan Magistrate FTC-IV, GT., Chennai, dated 02.01.2018 and Crl.A.No.39 of 2018 on the file of the XIX Additional City Civil and Sessions Court, Chennai, dated 01.10.2018 and set aside the same.

For Petitioner : Ms.K.Akshaya
for Mr.S.Manoharan

For Respondent : Mr.S.Rajendrakumar
for M/S. Norton and Grant



Crl.R.C.No.1500 of 2018

WEB COPY

ORDER

This petition has been filed to set aside the Judgment 01.10.2018 passed in Crl.A.No.39 of 2018 on the file of the XIX Additional City Civil and Sessions Court, Chennai, confirmed the conviction of sentence dated 02.01.2018 in C.C.No.1401 of 2016 on the file of the Metropolitan Magistrate FTC-IV, GT., Chennai.

2. This Revision has been filed against the judgment passed in Crl.A.No.39 of 2018 on the file of the XIXth Additional City Civil and Sessions Court, Chennai, dated 01.10.2018, thereby confirmed the sentence imposed by the Metropolitan Magistrate FTC-IV, GT., Chennai, in C.C.No.1401 of 2016, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

3. The respondent lodged a complaint against the petitioner alleging that the respondent is NVOCC operators/forwarders and engaged in the business of support service to export and import. While so, the petitioner approached the respondent on 29.06.2015 to book open top container for transporting live plants from Chennai port to Doha port. The respondent had acted as an



Crl.R.C.No.1500 of 2018

intermediary between the accused and M/S. Panlloyd Logistics Pvt., Ltd., who used to supply containers and further facilitated to book container with them.

As instructed by the petitioner, the said M/S. Panlloyd Logistics Pvt., Ltd., booked the consignor name in the Bill of Lading as Burg International and the consignee name as Masthal Al Hadaf, Quatar, UAE. As requested by the petitioner, the respondent had paid the ocean freight charges to the said M/S. Panlloyd Logistics on their behalf and instructed to raise invoice including their charges. Accordingly, they raised invoice in the joint name. It is the fact that only when entire amount is paid then alone the Bill of Lading will be handed over to the consignor. The original bill of lading was also handed over to the petitioner on 20.11.2015 and the respondent raised invoice inclusive of their charges on M/S. Burg International which was undertaken to be paid by the petitioner. Accordingly, the petitioner had signed a post-dated cheque for the sum of Rs.1,50,209/- and when it was presented for collection, the same was returned for the reason "funds insufficient". After causing statutory notice to the petitioner the respondent lodged a complaint.

4. On the side of the respondent, PW1 was examined and Exs-P1 to P10 were marked and on the side of the petitioner, DW1 was examined and no documentary evidence was marked.



Crl.R.C.No.1500 of 2018

WEB COPY

5. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty and convicted him for the offence under Section 138 NI Act and sentenced him to undergo simple imprisonment for the period of six months and also ordered compensation to the tune of cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed by confirming the judgment passed by the trial Court. Hence this Revision.

6. The learned counsel for the petitioner would submit that the cheque was issued as security purpose and not issued for any valuable consideration. The goods sent by the respondent were ought to have been delivered at Doha, Qatar. However, the delivery has not been made to the consignee in Doha. Therefore, there is absolutely no legal enforcement of a liability in favour of the respondent herein. The alleged cheque was issued as security and it was not meant to be encashed without delivering the goods to the consignee at Doha, on whose name only the bill has been raised by the respondent herein. She would further submit that there is no liability while entering into the agreement for rendering service through handing over the articles to consignee at Doha. Such service having not been performed, thereby failing to perform



Crl.R.C.No.1500 of 2018

what they have accepted, amounts to "no liability" to honour the cheque handed over as security.

7. Per contra, the learned counsel for the respondent would submit that the petitioner failed to rebut the case of the respondent herein. The respondent facilitates the consignment from one place to another place therefore, the petitioner ought to have paid the freight charges and later on got reimbursed him.

8. In so far as, the agreement for supply of consignment is concerned, the obligation has been well done and accomplished by the respondent herein. Therefore, both the Courts below have rightly convicted the petitioner for the offence under Section 138 of NI Act.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the entire materials available on record.

10. The case of the respondent is that he was engaged by the petitioner to transport live plants from Chennai Port to Doha Port. Accordingly, the respondent facilitated to book containers to export the plants. In fact, the



Crl.R.C.No.1500 of 2018

petitioner and M/S.Panlloyd Logistics, who used to supply containers and further facilitated to book container with them. As instructed by the petitioner, the said M/S. Panlloyd Logistics booked the consignor name in the bill of lading as Burg International and the consignee name as Masthal Al Hadaf, Quatar, UAE. As Requested by the petitioner, the respondent had paid ocean freight charges to the said M/S. Panlloyd Logistics Pvt., Ltd., on their behalf and instructed to raise invoice to the tune of Rs.1,50,209/- for which the petitioner already issued post dated cheque. The only stand taken by the petitioner is that the cheque was issued as security for the goods sent through the respondent ought to have delivered at Doha, Quatar, the delivery has not been made to the consignee in Doha. Therefore, the petitioner is not liable to pay the said amount.

11. It is seen from the records revealed that the cheque had been admittedly issued for the liability and it is not the factum of supply that is the concern but it is the factum of monetary liability which caused upon the petitioner whether the goods were consigned at the consignee's end in a rotten state is not the concern of the respondent herein. Even according to the petitioner, the respondent, who facilitated the consignment from Chennai Port to Doha Port. As per the agreement for supply by way of consigning is



Crl.R.C.No.1500 of 2018

concerned, the obligation had been well done and accomplished by the respondent herein. The respondent is not concerned about the kind of goods that are consigned. If the goods are perishable in nature, it should have been taken care of, not by the logistics people but by the consignor and consignee as to the manner in which the goods should be packed, taking utmost care that the goods do not rot while in transit.

12. Admittedly, the plants were not insured and as such the respondent is no way liable for any happening to the consignment. Therefore, it cannot be a reason to dishonour the cheque issued for a legally enforceable liability and the obligations which was already performed by the respondent herein. Therefore, the cheque issued by the petitioner is only for liability and not for security purpose. Hence, the Court below rightly convicted the petitioner for the offence under Section 138 of NI Act, this Court finds no infirmity or illegality in the judgment passed by the Court below.

13. Accordingly, the Criminal Revision case stand dismissed. Consequently, connected miscellaneous petitions are closed.

11.10.2022



Crl.R.C.No.1500 of 2018

Index : Yes / No

Speaking / Non Speaking order

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To

1. The Metropolitan Magistrate FTC-IV,
G.T.Chennai.
2. The XIX Additional City Civil and Sessions Court,
Chennai.



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Crl.R.C.No.1500 of 2018

G.K.ILANTHIRAIYAN, J.
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Crl.R.C.No.1500 of 2018

11.10.2022