



CRL.R.C(MD)No.54 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.54 of 2022

R.Neelamegam

... Petitioner

Vs.

Seveseas Plymers Private Limited,
Rep. through its Director,
P.V.Prabhu,
S/o.Sengoda Gounder Palanisamy,
No.37/A-1, Madakulam Main Road,
Near GRT Hotel,
Palanganatham,
Madurai-625 003.

... Respondent

Prayer: This Criminal Revision Case filed under Section 397(2) r/w 401 Cr.P.C., to call for the records and to set aside the order made in Crl.A.No.77 of 2021 dated 23.11.2021 on the file of the IV th Additional District and Sessions Judge, Madurai, confirming the order of conviction made in S.T.C.No.394 of 2012 dated 15.03.2021 on the file of the Judicial Magistrate No.1, F.T.C at M.L, Madurai.

For Petitioner : Mr.S.I.Muthiah
For Respondent : Mr.R.D.Ganesan



CRL.R.C(MD)No.54 of 2022

ORDER

WEB COPY This Criminal Revision Case has been filed as against the judgment passed in Crl.A.No.77 of 2021 dated 23.11.2021 on the file of the IV th Additional District and Sessions Judge, Madurai, Confirming the order of Conviction passed in S.T.C.No.394 of 2012 dated 15.03.2021 on the file of the Judicial Magistrate No.1, F.T.C at M.L, Madurai.

2.The petitioner is the accused and the respondent is the complainant. The respondent alleged a complaint against the petitioner for the offence punishable under Section 138 of Negotiable Act.

3.The complainant is doing business of plastic granules and the accused also engaged in a similar plastic business. The accused purchased 400 bags of plastic granules weighing 10,000 Kgs, at the rate of Rs.92/- per Kg. Which comes to Rs.9,20,000/- and VAT Tax 5% , which comes to Rs.46,000/-. Thus, a sum of Rs.9,66,000/- was due under invoice No.81 dated 04.04.2012. The accused, once again, on 07.04.2012 purchased another 400 bags of plastic granules weighing 10,000 Kgs at the rate of Rs.92/- per kg. Totalling Rs.9,20,000/- and adding 5% VAT



CRL.R.C(MD)No.54 of 2022

Tax the amount comes Rs.9,66,000/-. Which was due under invoice No. 132 dated 07.04.2012. For the above two purchases, the accused is liable to pay a total sum of Rs.19,32,000/- for which the accused had issued a cheque bearing No.312686 dated 05.06.2012 for Rs.19,32,000/- and the same was presented before the Tamilnadu Mercantile Bank Limited., Madurai for collection. It was returned as dishonored and the complaint demanding the cheque and issued a statutory notice to the accused/petitioner on 12.06.2012 and the same was duly received by the accused on 26.06.2012. The accused instead of paying the cheque amount, caused a reply notice dated 26.06.2012.

4. On the side of the respondent, the complainant was examined as P.W.1 and marked 9 documents as Ex.P1 to Ex.P9. On the side of petitioner, no oral and documentary evidence was marked.

5. After perusing the oral and documentary evidence, the trial Court convicted the petitioner for the offence under Section 138 of Negotiable Instrument Act and also awarded compensation of Rs.19,32,000/-. Aggrieved by the same, he preferred an appeal in Crl.A.No.77 of 2021 and the first appellant Court had confirmed the judgment passed by the Court below. Aggrieved by the same, the present Civil Revision Petition has been filed.



WEB COPY

6.The learned counsel for the petitioner submitted that the respondents failed to prove the signature of the petitioner in the manner known to law and the respondent ought to have been proved the dishonoured cheque issued in favour of the respondent by the petitioner produced the several judgments.

7.Ex.P2 is the Invoice No.81 dated 04.04.2012 and Ex.P3 is the Invoice No.132 dated 07.04.2012. Ex.P4 is the cheque, Ex.p8 is the reply notice issued to the complainant.

8. On perusal of the reply notice, it shows that nothing on record to rebut the case of transaction herein, though the petitioner alleged that the respondent is not a director of the said company. Admittedly, the petitioner did not examined any witness and no documents were marked on behalf of the petitioner and the petitioner failed to prove the contention raised in the reply notice on the ground raised by the petitioner that there is no transaction between the petitioner and the respondent.



9. On perusal of Ex.P2 and Ex.P3 it is revealed that the respondent raised for the amount against the petitioner on supply of goods. However, Ex.P1/Board Resolution, revealed that the respondent is the director of the company.

10. Though the petitioner raised the ground that the signature found in Ex.P4 denied, the petitioner did not take any steps to prove the said contention. The petitioner failed to stop the payment or alleged any police complaint. Therefore, the judgment rendered by the petitioner is not applicable in this case and the relevant paragraph is extracted hereunder:-

"14. Adverting to the case in hand, we find on a plain reading of its judgment that the trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn Under Section 118 and Section 138 of NI Act. The Statute mandates that once the signature(s) of an Accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystallized by this Court in Rohitbhai Jivanlal Pate Vs. State of Gujaraj MANU/SC/0393/2019:(2019) 18 SCC 106, P.18 in the



following words:

In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial Court proceeded to question the want of evidence loan to the Accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial Court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the Accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant-Accused..... "

11. Therefore, the Court below rightly convicted the petitioner for the offence punishable under Section 138 of NI Act and this Court does not find any illegality of infirmity in the order passed in Crl.A.No.77 of 2021 dated 23.11.2021 on the file of the IV th Additional District and Sessions Judge, Madurai.



CRL.R.C(MD)No.54 of 2022

12.In the result, this Criminal Revision Case is dismissed and the judgment passed in Crl.A.No.77 of 2021 dated 23.11.2021 on the file of the IV th Additional District and Sessions Judge, Madurai, confirming the order of conviction made in S.T.C.No.394 of 2012 dated 15.03.2021 on the file of the Judicial Magistrate No.1, F.T.C at M.L, Madurai is confirmed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

22.03.2022

Index : Yes / No

Internet : Yes/ No

tta

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The IV th Additional District and Sessions Judge,
Madurai,
- 2.The Judicial Magistrate No.1, F.T.C at M.L, Madurai



WEB COPY



CRL.R.C(MD)No.54 of 2022

G.K.ILANTHIRAIYAN,J.

tta

Cr1.R.C.(MD)No.54 of 2022

22.03.2022