



Crl.R.C.Nos.394 to 396, 403 & 406 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.Nos.394 to 396, 403 & 406 of 2020

and

Crl.M.P.Nos.2973, 2974, 2981, 2982, 2989, 2991, 3190, 3191, 3219 & 3222 of 2020

1.M/s.S.S.Production  
Represented by its Proprietor  
Mr.S.Subbaiah  
S/o.P.Shanmugam

.. 1<sup>st</sup> Petitioner in  
Crl.R.C.Nos.394, 395, 403 & 406/2020

2.Tr.S.Subbiah  
S/o.P.Shanmugam  
Proprietor M/s.S.S.Production  
Karpagam Cinemas,  
No.161, Hundred Feet Road,  
Gandhipuram,  
Coimbatore-641 612.

.. 2<sup>nd</sup> Petitioner in  
Crl.R.C.Nos.394, 395, 403 & 406/2020  
... Petitioner in Crl.R.C.396/20

Vs.

Tr.Pavithran Prasanth,  
S/o.Mr.C.K.Pavithran,  
Rep., by its Specific Power Agent,  
Mr.A.Muthu  
S/o.Arumugam

..Respondent in all cases



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**COMMON PRAYER :** Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the Judgment dated 31.10.2019 made in Crl.A.Nos.383, 381, 380, 382 & 384 of 2017 respectively, on the file of the VII Additional Sessions Judge, City Civil Court, Chennai, confirming the Judgment dated 31.10.2017 made in C.C.Nos.140, 138 137, 139 & 141 of 2016 respectively on the file of the Metropolitan Magistrate (Fast Track Court III), Saidapet, Chennai and to allow the above Criminal Revision.

For Petitioners : Mr.C.Prabakaran (in all cases)

For Respondent : Mr.D.Thanigaivasan (in all cases)

### **COMMON ORDER**

Heard the learned counsel for the petitioners and the learned counsel for the respondent.

2. These five Criminal Revision Cases are filed by the accused against the judgment of the trial Court confirmed by the lower appellate Court holding the accused guilty of issuing the following five cheques bearing Nos.500830 for Rs.10,20,000/-, 500831 for Rs.10,20,000/-,



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500832 for Rs.10,20,000/-, 500833 for Rs.10,20,000/- and 500834 for Rs.1,28,000/- dated 29.09.2015. On presentation, the accused not made arrangement to honour the cheques, hence the same were bounced for want of funds. After causing statutory notice dated 12.11.2015, five complaints for each of the above five cheques laid before the XVII Metropolitan Magistrate Court, Saidapet, Chennai and same have been taken on file in C.C.Nos.140, 138 137, 139 & 141 of 2016.

3. The Power Agent of the complainant was examined as PW.1 and 6 exhibits were marked in each of the case and the accused had not chosen to mark any document or let oral evidence.

4. The trial Court held the accused guilty, convicted and sentenced him to undergo 6 months Simple Imprisonment and to pay the cheque amount as compensation. Aggrieved by the trial Court conviction and sentence, the accused has preferred appeal and the appeal was also confirmed by the learned VII Additional Sessions Judge, Chennai.



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5. The case of the complainant is that the accused borrowed a total sum of Rs.42,08,000/- in five instalments and handed over a promisory note to repay the money on demand with 2% interest per month and also executed 5 cheques to discharge his liability, but had failed to honour the cheques.

6. Per contra, the accused, by way of cross examining of PW.1, the Power Agent of the complainant, has projected his defence that the said money was given to the accused in the course of producing a film jointly by the complainant and the accused. Since the film failed to hit the box office, the cheques and receipt for the cheques been misused by the complainant. Further, through the cross examination of PW.1, the Power Agent of the complainant, the accused has elucidated that the source to advance the money not been proved by producing the statement of accounts and income tax returns. Further, claimed that the document marked as Ex.P2 is not a promisory note, but only a receipt.



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7. These contentions were rejected by the Courts below on the ground that having admitted the signature found in the cheques and issuance of the cheques and also candidly admitting by way of suggesting in the cross examination that the said sum was given for producing a film and not a loan, the accused ought to have probabilise his defence by aducing evidence, but having failed to produce evidence to that effect, a presumption under Negotiable Instruments Act has to be drawn.

8. The learned counsel for the revision petitioner vehemently argued that the complainant has to establish the foundational fact of passing of consideration for the Court to draw presumption that the subject cheques were issued to discharge enforceable debt. Admittedly in this case, the complainant has not discharged the foundational fact of passing of consideration. Therefore, the conclusion of the Courts below is erroneous and perverse, which requires interference.



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**9.** *The point for consideration is whether the complainant has proved the foundational fact that the subject cheques were given for discharging and existing debt.*

**10.** In this case, the accused claims that the subject cheques were not given to discharge debt, but given as security in the course of producing the film jointly with the complainant. He had not denied the receipt of the alleged sum of Rs.42,08,000/-. The only contention is that, it is not the money borrowed with promise to repay with interest and the cheques were not given to discharge the said promise.

**11.** As far as this case is concerned, now the foundational fact is the passing of consideration of Rs.42,08,000/- to the accused is candidly admitted by the accused. In the cross examination of PW.1 that he received Rs.42,08,000/- for producing a film jointly with the complainant. Therefore, it cannot be construed as the complainant not established the foundational fact.



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**12.** Having established the foundational fact of passing of consideration *prima facie* through the admission by the accused by way of suggestion to the witness for the complainant, the onus to rebut the statutory presumption against him by preponderance of probability fall on the accused.

**13.** This Court finds that the accused had not produced any document to show that he and the complainant were engaged in film production and in the course of producing the film, the transaction, which is subject matter of the five cheques and five pro-notes were given to the complainant. Therefore, the issue boils down to the facts whether the failure on the part of the complainant to explain his source to advance Rs.42,08,000/- is fatal to the case of the complainant in the light of the evidence available.

**14.** The learned counsel for the respondent/complainant submitted that the admitted facts need not be proved. There is no denial by the accused regarding receipt of Rs.42,08,000/- from the complainant.



He had not replied to the statutory notice issued to him before filing the complaint. He had not let in any evidence to probabalise his defence that he and the complainant were engaged in film production. His suggestion to PW.1 in this regard is an emphatic denial.

**15.** While so, proof of source to advance Rs.42,08,000/- on the side of the complainant is needless, when the accused himself has admitted the receipt of the said money. In the light of the judgments rendered by the Hon'ble Supreme Court in this regard, particularly, presumption and the burden of proof in compliance under Section 139 of N.I.Act. No doubt, the complainant has to prove the foundational fact of passing of consideration, which culminate in issuing the cheques. If the accused himself admits the passing of consideration, but claims that the consideration was received in different context or for different purpose, the burden shifts on the accused.

**16.** In this case as rightly pointed out by the learned counsel for the respondent, the accused has failed to discharge the burden. In the



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absence of material evidence both oral and documents, the defence raised by the accused cannot be countenance, more particularly, when there is an admission of receiving of Rs.42,08,000/-. Therefore, the Court finds no perversity or illegality in the order of the Courts below. Hence the Criminal Revision Cases deserve to be dismissed.

**17.** Accordingly, these Criminal Revision Cases are dismissed. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

**15.06.2023**

Internet : Yes/No

Index: Yes/No

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To

1.The VII Additional Sessions Judge, City Civil Court, Chennai

2.The Metropolitan Magistrate (Fast Track Court III), Saidapet, Chennai.



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**Dr.G.JAYACHANDRAN, J.**

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