IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	***27.07.2023***
Pronounced On	***03.08.2023***

Coram:

The Hon'ble Mrs.Justice R.HEMALATHA

Crl.R.C.Nos.1184, 1185 & 1186 of 2023
and Crl.M.P.Nos.9221, 9222 & 9224 of 2023

K.Vellachamy Mahendran
...Petitioner/Accused in all Crl.R.Cs

Versus

Vimala
...Respondent/Complainant in all Crl.R.Cs

Prayer in Crl.R.C.No.1184 of 2023:

This Criminal Revision Case is filed under Sections 397(1) & 401 of Cr.P.C. praying to call for records and set aside the judgment dated 22.08.2022 passed in C.A.No.201 of 2020 on the file of the III Additional District & Sessions Judge, Coimbatore confirming the order of conviction & sentence passed in judgment dated 21.10.2020 in C.C.No.256 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore and acquit him.

Prayer in Crl.R.C.No.1185 of 2023:

This Criminal Revision Case is filed under Sections 397(1) & 401 of Cr.P.C. praying to call for records and set aside the judgment dated 22.08.2022 passed in C.A.No.200 of 2020 on the file of the III Additional District & Sessions Judge, Coimbatore confirming the order of conviction & sentence passed vide judgment dated 21.10.2020 in C.C.No.255 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore and acquit him.

Prayer in Crl.R.C.No.1186 of 2023:

This Criminal Revision Case is filed under Sections 397(1) & 401 of Cr.P.C. praying to call for records and set aside the judgment dated 22.08.2022 passed in C.A.No.202 of 2020 on the file of the III Additional District & Sessions Judge, Coimbatore confirming the order of conviction & sentence passed vide judgment dated 21.10.2020 in C.C.No.257 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore and acquit him.

For Petitioner in all Crl.R.Cs	:	Mr.T.R.Sivaram
For Respondent in all Crl.R.Cs	:	Mr.C.Arunkumar

COMMON ORDER

These criminal revision cases have been filed by the petitioner seeking to set aside the judgment dated 22.08.2022 passed by the learned III Additional District & Sessions Judge, Coimbatore in C.A.Nos.201, 200 & 202 of 2020 respectively, confirming the order of conviction & sentence passed by the learned Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore vide judgment dated 21.10.2020 in C.C.Nos.256, 255 & 257 of 2018 respectively and acquit him.

2. The petitioner in these cases is an accused. The respondent/complainant filed a private complaint under Section 200 of Cr.P.C against the present revision petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act').

3. The case of the respondent/complainant in a nutshell is as follows:

The respondent/complainant is carrying on business in dealing with different types of kraft papers under the name and style of "Vimala

Packaging" for the past several years. The respondent/complainant authorized her husband Mr.Prakash Chand as Power of Attorney to file a complaint and give evidence against the petitioner/accused by way of Power of Attorney dated 03.03.2018. The petitioner/accused, Proprietor of M/s.Akshaya Traders approached the respondent/complainant and placed an order for supplying kraft papers on credit basis. The respondent/complainant also accepted the order of petitioner/accused and supplied goods on credit basis as detailed hereunder:

Sl.No.	Date	Invoice No.	Amount (in Rs.)
1	16.09.2017	013/17-18	Rs.3,04,735/-
2	19.09.2017	017/17-18	Rs.3,02,142/-
3	21.09.2017	018/17-18	Rs.4,53,629/-
4	25.09.2017	027/17-18	Rs.1,83,215/-
5	29.09.2017	031/17-18	Rs.1,76,388/-
6	05.10.2017	038/17-18	Rs.4,73,398/-
Total			Rs.18,90,507/-

3.1. Though the petitioner/accused purchased the goods, failed to pay the total amount of Rs.18,90,507/- for the above invoices. On repeated demands made by the respondent/complainant, the petitioner/accused issued 9 Cheques drawn on Equitas Bank, Theni – Periyakulam Branch, Theni towards discharge of partial liability and also, assured to honour the same on presentation for collection. The details of 9 Cheques issued by the petitioner/accused are as follows:

Sl.No.	Cheque No.	Date of the Cheque	Amount in Rs.
1	000017	31.10.2017	Rs.1,00,000/-
2	000019	31.10.2017	Rs.1,00,000/-
3	000020	31.10.2017	Rs.1,00,000/-
4	000021	30.10.2017	Rs.1,00,000/-
5	000022	30.11.2017	Rs.1,00,000/-
6	000023	30.11.2017	Rs.1,00,000/-
7	000027	31.10.2017	Rs.1,00,000/-
8	000028	31.10.2017	Rs.1,00,000/-
9	000029	31.10.2017	Rs.1,00,000/-

3.2. The balance amount payable by the petitioner/accused was Rs.9,90,507/-, out of which, the petitioner/accused paid a sum of Rs.6,25,000/- by way of Cheque and RTGS on different dates to the respondent/complainant. Those payment details are given below:

Sl.No.	Date	Particulars	Amount
1	04.10.2017	Cheque	Rs.1,00,000/-
2	17.10.2017	RTGS	Rs.1,00,000/-
3	25.10.2017	Cheque	Rs.1,00,000/-
4	25.10.2017	Cheque	Rs.1,00,000/-
5	29.11.2017	Cheque	Rs.1,00,000/-

Sl.No.	Date	Particulars	Amount
6	01.12.2017	RTGS	Rs.25,000/-
7	06.12.2017	RTGS	Rs.50,000/-
8	14.12.2017	RTGS	Rs.50,000/-
Total			Rs.6,25,000/-

3.3. As per the instructions of the accused, the respondent/complainant presented the following cheques for collection on 25.01.2018 with her banker viz., Karur Vysya Bank, Main Branch, Coimbatore.

Sl.No.	Date	Cheque No.	Amount in Rs.
1	31.10.2017	000027	Rs.1,00,000/-
2	31.10.2017	000028	Rs.1,00,000/-
3	31.10.2017	000029	Rs.1,00,000/-
Total			Rs.3,00,000/-

However, the above cheques were returned for the reason, "Insufficient Funds" on 29.01.2018.

3.4. Thereafter, the respondent/complainant issued a Legal Notice dated 07.02.2018 (Ex.P8) to the petitioner/accused and the same was received by the petitioner/accused on 12.02.2018. After receiving the legal notice, the petitioner/accused sent a Reply dated 22.02.2018 (Ex.P10) to the respondent/complainant which according to the complainant contained false allegations. The accused did not also come forward to make good the payment. Therefore, the respondent/complainant filed a private complaint against the petitioner/accused before the Judicial Magistrate, Fast Tract Court at Magisterial Level – 1, Coimbatore in C.C.No.255 of 2018.

3.5. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the NI Act and issued summons to the petitioner/accused. on receipt of summons, the petitioner/accused appeared before the learned Judicial Magistrate and he was furnished with the copies of records under Section 207 of Cr.P.C. Thereafter, he was questioned with regard to the substance of accusation made in the complaint against him. The petitioner/accused pleaded not guilty and therefore, the case was posted for trial.

3.6. During trial, the respondent/complainant examined her husband/Power Agent Mr.Prakash Chand as P.W.1 and she marked 17 documents as Ex.P1 to Ex.P17. P.W.1 in his deposition had stated that he is the husband of the respondent/complainant and that he is taking care of the business run by his wife. He also stated that he is aware of the entire facts of the present case. He reiterated all the contentions mentioned in the complaint.

3.7. The petitioner/accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313(1)(b) of Cr.P.C. However, the petitioner/accused denied of having committed any offence and he did not lead any oral or documentary evidence on his side.

3.8. After considering the rival submissions made by both the parties, the trial Court in its respective judgments dated 21.10.2020 in C.C.Nos.256, 255 & 257 of 2018 found the accused guilty of the offence under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for a period of 6 months and to pay a sum of Rs.3,00,000/- as compensation as per Section 357(3) of Cr.P.C to the respondent/complainant, in default to undergo simple imprisonment for a period of 2 months.

3.9. Aggrieved over the judgment passed by the trial Court in C.C.Nos.256, 255 & 257 of 2018, the petitioner/accused preferred appeals in C.A.Nos.201, 200 & 202 of 2020 before the learned III Additional District and Sessions Judge, Coimbatore. The learned III Additional District and Sessions Judge, Coimbatore vide judgment dated 22.08.2022, dismissed the said appeals and confirmed the judgment passed by the trial Court in C.C.Nos.256, 255 & 257 of 2018. Hence, the petitioner/accused has come up before this Court with the present civil revision cases.

4. Mr.T.R.Sivaram, learned counsel for the revision petitioner contended that the Power of Attorney holder cannot depose evidence on behalf of the respondent/complainant and that both the Courts below based on the deposition of Power of Attorney Holder had erroneously convicted the accused for the offence under Section 138 of the NI Act. In support of his contentions, he relied on the judgment passed by the Hon'ble Supreme Court in the case of ***A.C.Narayanan & Anr. Vs. State of Maharashtra & Ors.*** reported in ***CDJ 2013 SC 805*** and contended that a Power of Attorney

cannot depose for the principal in respect of the matter of which only the principal is entitled to be cross-examined. He also relied on the judgment, ***M/s.Trl Krosaki Refractories Ltd., Vs. M/s.SMS Asia Private Limited & Anr.*** reported in ***CDJ 2022 SC 222,*** wherein, the Hon'ble Supreme Court has held as follows:

> *"15. Despite our conclusion that the documents available on record would on facts satisfy the requirement relating to delegation of power and also knowledge of the transaction by the person representing the Company in the instant case, it is also necessary for us to keep in perspective that though the case in A.C. Narayanan (supra) has taken the center stage of consideration, the facts involved therein were in the background of the complainant being an individual and the complaint filed was based on the power of attorney issued by the "payee" who was also an individual. In such an event, the manner in which the power was being exercised was to be explicitly stated so as to establish the right of the person prosecuting the complaint, to represent the payee i.e., the complainant. The position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint. ....*
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> *16. Section 142 only requires that the complaint should be in the name of the payee. Where the complainant is a company, who will represent the company and how the company will be represented in such proceedings, is not governed by the Code but by the relevant law relating to companies. Section 200 of the Code mandatorily requires an examination of the complainant; and where the complainant is an incorporeal body, evidently only an employee or representative can be examined on its behalf. As a result, the company becomes a de jure complainant and its employee or other representative, representing it in the criminal proceedings, becomes the de facto complainant. Thus in every*

complaint, where the complainant is an incorporeal body, there is a complainant – de jure, and a complainant-de facto. Clause (a) of the proviso to Section 200 provides that where the complainant is a public servant, it will not be necessary to examine the complainant and his witnesses. Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and in signing and presenting the complaint, he acts in the discharge of his official duties. Therefore, it follows that in such cases, the exemption under clause (a) of the first proviso to Section 200 of the Code will be available.

19. Resultantly, when in a complaint in regard to dishonour of a cheque issued in favor of a company or corporation, for the purpose of Section 142 of the NI Act, the company will be the complainant, and for purposes of Section 200 of the Code, its employee who represents the company or corporation, will be the de facto complainant. In such a complaint, the de jure complainant, namely, the company or corporation will remain the same but the de facto complainant (employee) representing such de jure complainant can change, from time to time. And if the de facto complainant is a public servant, the benefit of exemption under clause (a) of the proviso to Section 200 of the Code will be available, even though the complaint is made in the name of a company or corporation."

4.1. According to the learned counsel for the revision petitioner, since in the instant case, the complainant is only an individual person and not a company and therefore, she cannot authorise a Power of Attorney to depose in her favour as per the abovesaid decision. Reliance was also placed upon the decision passed by the Kerala High Court in the case of ***Justin John Vs. Chacko Thomas & State of Kerala [Crl.A.No.1219 of 2007 dated***

20.02.2020], wherein, it has been held that it was the duty of the trial Court to scrutinize the complaint and to find out as to whether necessary assertions regarding the personal knowledge of the power of attorney holder about the transaction, is incorporated in the complaint. In the absence of such details, cognizance should not be taken by the Magistrate. His contention is that since there are no averments in the compliant as to the personal knowledge of the Power of Attorney with regard to the transaction between the respondent/complainant and the petitioner/accused, the Magistrate should not have been taken cognizance of the offence against the petitioner/accused. Therefore, the learned counsel prayed this Court to allow these criminal revision cases and acquit the accused.

5. *Per Contra*, Mr.C.Arunkumar, learned counsel appearing for the respondent drew the attention of this Court to Section 120 of the Indian Evidence Act and contended that a husband or wife of any party in a civil as well as criminal proceedings can be a witness and that in the instant case, the specific contention of P.W.1 is that he is actually running the business and he has personal knowledge with regard to the transaction mentioned in

the complaint and that this is also incorporated in the Power of Attorney dated 03.03.2018 (Ex.P1). His further contention is that all these aspects have been dealt with by the Courts below and therefore, the present criminal revision cases are liable to be dismissed.

6. It is an admitted fact that Mr.Prakash Chand is the husband of the respondent/complainant. The case of the respondent/complainant is that she is carrying on business in dealing with different types of kraft papers under the name and style of "Vimala Packaging" and the petitioner/accused who is the proprietor of M/s.Akshaya Traders approached the former for supply of kraft papers. During the course of business transaction between each other, the petitioner/accused handed over the following three cheques (Exs.P2, P4 & P6) to the respondent/complainant for payment of amounts repayable by him.

Sl.No.	**Cheque No.**	**Date of the Cheque**	**Amount in Rs.**
1	000021	30.10.2017	Rs.1,00,000/-
2	000022	30.11.2017	Rs.1,00,000/-
3	000023	30.11.2017	Rs.1,00,000/-

7. According to the respondent/complainant, when the above cheques were presented for collection, the same were returned for the reason, “Insufficient Funds” on 29.01.2018 and therefore, the respondent/complainant issued a Legal Notice dated 07.02.2018 (Ex.P8) to the petitioner/accused calling upon him to make good the payment. After the receipt of said legal notice, the petitioner/accused sent a Reply dated 22.02.2018 (Ex.P10) to the respondent/complainant, stating that he had handed over only signed blank cheques to the respondent/complainant and that too for security purpose.

8. The petitioner/accused's main contention is that P.W.1 has no personal knowledge about the transaction between the petitioner/accused and the respondent/complainant. Therefore, according to him, P.W.1 is not a competent person to speak about the same in the Court. It is pertinent to point out that the petitioner/accused had not denied his signatures on the Cheques (Exs.P2, P4 & P6) and therefore, there is a presumption under Sections 118 & 139 of the NI Act unless the contrary is proved. The petitioner/accused did not also deny the business transaction which he had

with M/s.Vimala Packaging. His only contention is that the Cheques handed over to the respondent/complainant for security purpose were misused for the purpose of filing the present case. Both the Courts below had concurrently held that the respondent/complainant had established her initial burden of proving that the petitioner/accused had issued cheques for discharging a 'legally enforceable debt' and the petitioner/accused had not adduced any rebuttable evidence as envisaged under Sections 118 & 139 of the NI Act.

9. In the instant case, the main arguments advanced by the learned counsel for the revision petitioner is that since there is no specific averment in the complaint to the effect that Mr.Prakash Chand (P.W.1), husband of the respondent/complainant had personal knowledge about the transaction between the respondent/complainant and the petitioner/accused and that in such circumstances, the trial Court ought not to have taken cognizance of the offence punishable under Section 138 of the NI Act against the petitioner/accused. At this juncture, it is relevant to extract Section 120 of the Indian Evidence Act hereunder:

> *"120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial. — In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness."*

Thus, in all criminal proceedings against any person, the husband or wife of such person respectively shall be a competent witness. In the instant case, the respondent/complainant had given a Power of Attorney in favour of her husband Mr.Prakash Chand (P.W.1). P.W.1 in his deposition had stated that he is taking care of the entire business run by his wife (payee) and that he has personal knowledge about the entire business transaction between his wife (respondent/complainant) and the petitioner/accused.

10. In the case of ***Justin John Vs. Chacko Thomas & State of Kerala [Crl.A.No.1219 of 2007 dated 20.02.2020],*** the Power of Attorney Holder is not a wife or husband of the complainant as envisaged under Section 120 of the Indian Evidence Act and there was no assertion in the complaint that the said person had personal knowledge about the transaction between the parties. In such circumstances, the complaint filed by the Power of Attorney Holder was dismissed. The facts of the present case are

entirely different. Similarly, in the case of ***A.C.Narayanan & Anr. Vs. State of Maharashtra & Ors.*** reported in ***CDJ 2013 SC 805,*** the Hon'ble Apex Court has held as follows:

> *"23. In the light of the discussion, we are of the view that the Power of Attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the Power of Attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous."*

11. Hence, the dictum laid down by the Hon'ble Apex Court in the case of ***A.C.Narayanan & Anr. Vs. State of Maharashtra & Ors.*** reported in ***CDJ 2013 SC 805*** would not apply to the facts of the present case since the husband is the competent person to give evidence on behalf of his wife dehors Power of Attorney.

12. As regards the merits of the case is concerned, both the Courts

concurrently held that the complainant has established her case and that the accused did not adduce any rebuttal evidence to disprove the case of the complainant. In fact, the trial Court had observed thus:

> *"On perusal of Ex.P10, the reply sent by the accused on 22.02.2018, it comes to know that the accused clearly admitted the liability claimed by the complainant in Ex.P8 Legal Notice and therefore, the defence of business transactions only for the amount of Rs.6,25,000/- and discharge of said liability is not at all believable.*
>
> *18. Further, the accused raised the defence of issuance of cheques, signed in blank at the time of business transactions. Though the accused raised this defence, the accused clearly admitted about the issuance of cheque to the complainant voluntarily. In this circumstances, it is the duty of the accused to prove that the cheques in question were not issued for the discharging any legally enforceable debt or liability as per ratio laid down in Bir Singh Vs. Mukesh Kumar, 2019(4) Crimes 149 (SC). Because, in this case, the Hon'ble Supreme Court of India held that "if the cheque is voluntarily presented to the payee towards payments, payee may fill up the amount and other particulars and it is itself would not invalidate the cheque and the onus would still be on the accused to prove that the cheque was not issued for discharge of debt or liability by adducing evidence". But in this case, the accused did not produce any material evidence either oral or documentary before this Court. Instead of producing the evidence, the accused clearly admitted the existing liability in Ex.P10 reply. Hence, the defence of issuance of blank cheque will not prove any contrary to the case of the complainant.*
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> *19. Further, in this case, the accused contended that the complainant did not take any legal steps against the accused for recovering the remaining amount of Rs.3,65,507/-. Whereas the complainant deposed that as the accused failed to pay the amount of cheque, the complainant did not take further steps to recover*

the remaining amount of Rs.3,65,507/-. Though the accused raised this defence, the accused clearly admitted the liability in Ex.P8 reply and therefore, this defence is not a valid ground to rebut the presumption available in favour of the complainant.

20. In view of the above and reasoning stated supra, this Court comes to the conclusion that unless and until the contrary is proved, the presumption shall be made of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of endorsement, as to stamps and that holder is a holder in due course and such presumption is available to the complainant under Sections 118 and 139 of the NI Act. Though the accused had taken the defence by principle of preponderance of probabilities, these are not rebutting the presumption available in favour of the complainant. Mere putting suggestion and bare denial by the accused without adducing any proper evidence is not at all acceptable and appreciable. In the light of above reasoning, this Court comes to the conclusion that the complainant proved the guilt of accused beyond reasonable doubt."

13. I do not find any infirmity in the above observation made by the trial Court. In the aforesaid circumstances, I am of the opinion that the present complaint is perfectly maintainable and the respondent/complainant had also proved the legally enforceable debt as against the petitioner/accused and that the petitioner/accused did not rebut the presumption as envisaged under Section 118 & 139 of the NI Act by adducing the acceptable evidence. The judgment passed by the Courts below are perfectly in order and I do not find any reason to interfere with the same.

14. In the result, these criminal revision cases are dismissed and the judgment dated 22.08.2022 passed by the learned III Additional District & Sessions Judge, Coimbatore in C.A.Nos.201, 200 & 202 of 2020 as well as the judgment dated 21.10.2020 passed by the learned Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore in C.C.Nos.256, 255 & 257 of 2018 are hereby confirmed. Consequently, connected miscellaneous petitions are closed.

03.08.2023

mrr
Index: Yes/No
Speaking Order (or) Non-Speaking Order

To
The Public Prosecutor,
High Court, Madras.

R.HEMALATHA, J.

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Crl.R.C.Nos.1184, 1185 & 1186 of 2023

03.08.2023