IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.01.2023**

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.627 of 2020 and
Criminal Original Petition No.7044 of 2020 and
Crl.M.P.No.4695 and 4697 of 2020

In Crl.RC.No.627 of 2020

Sanjay Singh Khuswa
Proprietor
M/s.Bhagya Lakshmi Textiles
Son of Daramraj Maurya
63, Gali No.3, South Anarkali
Krishna Nagar
East Delhi
Delhi – 110061 ... Petitioner

Vs.

Sharmila Singh
Wife of Sudhir Kumar Singh
Proprietor
M/s.Pragathi Textiles,
Rep. by Power Agent Sudhir Kumar Singh
Son of Badrinarayan Singh
No.8, Devendrapuram, 3rd Street
Salem-636001 ... Respondent

Prayer : Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the conviction imposed in the order dated 26.11.2019 made in C.A.No.103 of 2017 & C.R.P.No.37 of 2017 on the file of the I Additional District and Sessions Judge, Salem confirming the conviction imposed in Judgment dated 19.08.2017 made in S.T.C.No.367 of 2016 on the file of the Judicial Magistrate III, Salem by allowing this Criminal Revision Case.

In Crl.O.P.No.7044 of 2020

Sharmila Singh
Propreitrix : M/s.Pragati Weaving Mills
Rep. by her Husband Power of Attorney Holder
Sudhir Kumar Singh
No.8, Devendrapuram, 3rd Street, 1st Floor,
Salem – 636001 ... Petitioner

Vs.

Sanjay Singh Kushwaha
Proprietor: M/s.Bhagya Lakshmi Textiles
Mandate Holder: M/s.Jaya Ambey Exports
S/o.Dharmadev Maurya
B-35, Old Gobindpura Extension
Gali No.4, Parwana Road,
Delhi- 600 051 ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the Judgment dated 26.11.2019 in C.R.P.No.37 of 2017 on the file of I Additional District and Sessions Judge, Salem by confirming the sentence punishment passed in the Judgment passed in STC.No.367 of 2016 dated 19.08.2017 on the file of the Judicial Magistrate No.III, Salem and allow the above Criminal Original Petition.

For Petitioner in Crl.RC.No.627 of 2020 &
Respondent in Crl.O.P.No.7044 of 2020 : Mr.M.Guruprasad

For Respondent in Crl.RC.No.627 of 2020 &
Petitioner in Crl.O.P.No.7044 of 2020 : Mr.R.Nalliyappan

COMMON ORDER

This Criminal Revision Case has been filed by the accused seeking to set aside the conviction and sentence imposed against him and the Criminal Original Petition has been filed by the complainant seeking for enhancement of sentence in the Judgment dated 26.11.2019 made in C.A.No.103 of 2017 & C.R.P.No.37 of 2017 on the file of the I Additional District and Sessions Judge, Salem, confirming the conviction imposed in Judgment dated 19.08.2017 made in S.T.C.No.367 of 2016 on the file of the Judicial Magistrate III, Salem, by allowing this Criminal Revision Case.

2. The complainant filed a private complaint under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act before the Judicial Magistrate-III, Salem and the same was taken on file in STC No.367 of 2016 and after trial, the learned Magistrate found the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced to undergo six months simple imprisonment and to pay fine of Rs.5,000/- in default of payment of fine, to undergo simple imprisonment for one month.

3. Aggrieved over the said Judgment of conviction and sentence, the complainant had filed a Civil Revision Petition in C.R.P. No.37 of 2017 before the Principal District and Sessions Judge, Salem, for enhancement of sentence and at the same time, the accused had filed an appeal in C.A.No.103 of 2017 to set aside the conviction and sentence passed by the trial Court and both the cases were made over to the I Additional District and Sessions Judge, Salem. Since both the cases arose out of a common Judgment, the learned Sessions Judge, who dealt with both the Revision and the appeal, after hearing the arguments on either side, dismissed the appeal filed by the accused and partly allowed the revision petition filed by the complainant by confirming the conviction and modified the Judgment by directing the accused to pay fine of Rs.13,66,112/- which is double the cheque amount to be paid to the defacto complainant as compensation, indefault, to undergo 3 months simple imprisonment.

4. Challenging the said Judgement, the complainant has filed the present Crl.O.P.No.7044 of 2020 for enhancement of sentence and the accused has filed the present Crl.RC.No.627 of 2020 to set aside the said Judgment.

5. Since both the cases are arisen out of a common Judgement, both the Criminal Revision Case and the Criminal Original Petition are heard and disposed of together by the common order.

6. The parties are referred as per their ranking mentioned before the trial Court for better understanding.

7. The complainant was carrying the business of manufacturing and suppliers of Export fabrics in the name and style as M/s.Pragathi Weaving Mills and the complainant's husband Mr.Sudhir Kumar Singh Proprietor of M/s.Pragathi Textiles was looking after the management and day to day affairs of both the concerns along with the complainant. Since the complainant is not able to attend the proceedings of the Court because of her family affairs, she has appointed her husband Mr.Sudhir Kumar Singh as Power of Attorney by way of deed dated 11.01.2013 to appear and plead on her behalf in this case. The case of the complainant is that the accused approached the complainant for supply of materials on the assurance that prompt payment will be made without any default. Believing the representation and assurance made by the accused, the complainant supplied

goods through transport operators namely Pankaj Mohan Associates and at one stage, a sum of Rs.6,85,827/- was due to be paid by the accused. Thereafter, on the repeated efforts of the complainant, the accused agreed to settle the amount and agreed to compensate the complainant by way of interest for default period as per the regular course of business transaction and the accused also issued 4 cheques in favour of the complainant's concern namely M/s. Pragati Weaving Mills in discharge of the legally enforceable liability bearing No.059912 dated 22.10.2012 for Rs.2 lakhs, No.059913 dated 29.10.2012 for Rs.2 lakhs, No.059914 dated 05.11.2012 for Rs.2 lakhs and No.058184 dated 12.11.2012 for Rs.83,056/- (in total Rs.6,83,056/-) drawn on Union Bank of India, Chander Nagar, New Delhi. Thereafter, when the cheques were presented on 12.11.2012 based on the receipt of a telegram from the accused requesting the complainant's husband to present all the cheques on 12.11.2012, the same were returned as “account closed”. Subsequently, statutory notice was issued to the accused to the last known address. But the accused voluntarily did not receive the same and hence, the same was returned as unserved. Therefore, the present complaint was filed by the complainant.

8. The learned counsel for the accused would submit that the cheque leaves were given only for security purpose during the course of business transaction between the complainant and the accused. The accused was supplied materials of inferior quality that too belatedly due to which, the accused suffered a huge loss and hence, the accused gave debit notes to the complainant and also sent back the goods to the complainant and the same were also delivered to the complainant. Therefore, the accused is not liable to pay any money to the complainant and that the cheques were not issued for any legally enforceable debt. Further, no notice was served to the accused. Unless the complainant proves that the statutory notice was served on the accused and within the stipulated time, the accused not replied for the same or not paid the amount, the offence under Section 138 of Negotiable Instruments Act would not attract. In this case, the complainant has failed to prove that the ingredients of Section 138 of Negotiable Instruments Act were made out and both the Courts below have failed to appreciate and re-appreciate the materials properly and wrongly convicted the accused. Therefore, the Judgments of both the Courts below are liable to be set aside and the Criminal Revision Petition filed by the accused has to be allowed and the accused has to be acquitted. He would further submit that though

the trial Court imposed sentence of imprisonment, the lower appellate Court modified the sentence in the form of payment of compensation by allowing the Civil Revision Petition filed by the complainant. He would submit since the complainant already filed a revision against the order of the Magistrate, he cannot file another revision by way of Criminal Original Petition for further enhancement of sentence and therefore, the Criminal Original Petition filed by the complainant is liable to be set aside as not maintainable.

9. The learned counsel for the complainant would submit that the business transaction between the complainant and the accused are not in dispute and the supply of goods are also not in dispute. Though the accused has stated that due to inferior quality and belated supply, the goods were returned back to the complainant, there is no evidence or material to show that the materials were of inferior quality and the accused has sent them back to the complainant. Once the transaction and receiving of goods by the accused are admitted, then it is for the accused to prove that he has returned the goods to the complainant, whereas the accused has not produced any evidence to show that he has sent back the goods received from the

complainant due to inferior quality and delayed supply. Further, the issuances of cheques is also admitted by the accused. Though the accused has stated that the cheques were issued only for security purpose, after receiving the goods from the complainant, the accused has not paid the money for the supplied goods. Once the transaction is admitted and the execution of cheques is also admitted, then there is a presumption under Section 139 of Negotiable Instruments Act that the cheques were issued towards discharge of legally enforceable debt and it is for the accused to rebut the presumption in the manner known to law. In this case, the accused has not rebutted the presumption that the cheques were not issued towards discharge of legally enforceable debt and the supplied goods were returned to the complainant. Therefore, both the Courts below rightly appreciated the evidence and convicted the accused. Though the trial Court ordered only sentence of imprisonment of six months and fine of Rs.5,000/-, the lower appellate Court set aside the sentence of imprisonment and ordered to pay double the cheque amount as compensation to the complainant. However, since the cheques are dated of the year 2012 and the cause of action arose in the year from the year 2013, the order of the trial Court and the lower appellate Court are not sufficient to meet the ends of justice as the complainant has suffered a huge loss due to the non payment of amount by the accused. Further, the accused has dragged the complainant from pillar to post in order to escape from the liability and also from the clutches of law. Therefore, the sentence has to be enhanced.

10. Heard the learned counsel for the accused and the learned counsel for the complainant and also perused the materials available on record.

11. According to the accused, there was a business transaction between the complainant and the accused and during the course of transaction, the complainant supplied goods on several occasions to the accused and the accused also received the same. The accused has further admitted that during the course of business transaction, he issued cheque leaves to the complainant for security purpose. Subsequently, since the goods supplied by the complainant were of inferior quality and they were also not supplied in time, the accused returned the goods to the complainant and therefore, there is no question of payment of any money to be paid to the complainant and therefore, the offence under Section 138 of Negotiable Instruments would not attract. But, a careful perusal of the records and also

the deposition the accused show that the accused has admitted that the telegram was sent by him to the complainant wherein, he has tendered apology and made request to present all the cheques on a particular date and nowhere in the said telegram, the accused has stated that he has already returned the goods to the complainant and requested for return of his cheque leaves. Therefore, once the transaction is admitted and the issuance of cheques is also admitted, then the law presumes that the cheques were issued for legally enforceable debt. No doubt that the presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and it is for the accused to rebut the presumption in the manner known to law, whereas in this case, the accused has not rebutted the presumption in the manner known to law. But the complainant has proved the foundational fact that the cheques were issued towards discharge of legally enforceable debt by way of oral and documentary evidence. Therefore, the onus of proof is shifted to the accused.

12. A reading of the entire materials, this Court finds that the accused has not rebutted the presumption in the manner known to law and this Court also finds that both the Courts below have not committed any perversity in

the appreciation of evidence and there is no illegality or infirmity or any violation of any provisions of law. Under these circumstances, this Court finds that there is no merit in the Criminal Revision Case filed by the accused and therefore, the same is liable to be dismissed

13. In sofar as the Criminal Original Petition filed by the complainant for enhancement of sentence is concerned, as per Section 138 of Negotiable Instruments, the punishment for the offence under Section 138 of Negotiable Instruments Act is "imprisonment for a term which may extend to two years or with fine, which may extend to twice the amount of the cheque, or with both." Though the trail Court rightly convicted the accused, as far as imposing of sentence is concerned, it is purely the discretionary power of the Magistrate. The Magistrate who found the guilt of the accused, sentenced him to undergo six months simple imprisonment and to pay fine of Rs.5,000/- indefault of payment of fine, sentenced to undergo simple imprisonment for one month. Thereafter, when the accused filed an appeal seeking to set aside the conviction and sentence, the complainant also filed a revision seeking for enhancement of sentence and the lower appellate Court who dealt with both the cases, dismissed the appeal filed by the

accused and allowed the Civil Revision Petition filed by the complainant and modified the sentence by way of payment of compensation which is double the cheque amount. Therefore, this Court does not find any mitigating circumstances to interfere with the Judgment of the appellate Court. Therefore, there is no merit in the Criminal Original Petition filed by the complainant and the same is also liable to be dismissed.

14. Accordingly, both the Criminal Revision Case and the Criminal Original Petition are dismissed. Consequently, connected Miscellaneous Petition are closed.

20.01.2023
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To

1. The I Additional District and Sessions Judge,
   Salem

2. The Judicial Magistrate III, Salem

P.VELMURUGAN,J.

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Criminal Revision Case No.627 of 2020

and

Criminal Original Petition No.7044 of 2020

20.01.2023

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