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Crl.RC.No.1151 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.RC.No.1151 of 2023

&

Crl.MP. No. 9035 of 2023

1. Sri Krishna Krishna Plastic Industry
Rep. by its Partner Mr.Krishnakumar
No.31-B, Samy Nagar, Salem Main Road
Bharathipuram, Dharmapuri Town & Taluk,
Dharmapuri District.

2. Krishnakumar

...Petitioners

vs.

Kumar

...Respondent

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code, 1973 praying to call for the entire records pertaining to the order of dismissal dated 23.01.2023 in Crl. Appeal No.9 of 2021 passed by the Additional District and Sessions Judge, Dharmapuri, confirming order in CC No.119 of 2016 on the file of Judicial Magistrate (FTC), Magisterial Level, Dharmapuri.

For Petitioners : Mr.L. Sriram

for Chennai Law Firm.



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ORDER

The present Criminal Revision Petition is filed against the order of dismissal dated 23.01.2023 in Crl. Appeal No.9 of 2021 passed by the Additional District and Sessions Judge, Dharmapuri, confirming the order in CC No.119 of 2016 on the file of Judicial Magistrate (FTC), Magisterial Level, Dharmapuri.

2. The brief facts of the case are as follows:

- i. The revision petitioners are the 1st and 2nd accused in C.C.No.119/2016 on the file of the Judicial Magistrate Fast Track Court (ML), Dharmapuri.
- ii. The respondent/complainant filed the above case under Section 138 of the Negotiable Instruments Act (hereinafter referred to as NI Act), against the present revision petitioners and also against one Kalaiyarasi (A3).
- iii. According to the complainant, the 2nd and 3rd accused approached the complainant and borrowed a sum of Rs.11,00,000/- and handed over two cheques drawn on IDBI Bank, Dharmapuri Branch bearing No.031554 and 031555. They also executed a loan agreement in favour of the complainant on the



same date.

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- iv. When the complainant insisted the accused for repayment of the loan amount in the month of November 2015, the 2nd and 3rd accused requested the complainant to receive a part of the loan amount and issued two cheques (Ex.P3 and Ex.P4) dated 18.11.2015 each for Rs.4,00,000/-. Both the cheques were signed by the 2nd accused on behalf of the first accused, which is a company. The contention of the complainant is that the 2nd and 3rd accused are responsible for the day to day affairs of the company.
- v. When the complainant presented the above cheques through his banker, namely Bank of India, Dharmapuri branch, on 20.11.2015, the same was returned for the reason "Insufficient funds" on 24.11.2015 as is seen from the cheque return memo Ex.P5.
- vi. Thereafter, the respondent/complainant issued a legal notice dated 01.12.2015 (Ex.P6) to the accused calling upon them to make good the payment due under the cheques(Ex.P3 and Ex.P4).
- vii. The 3rd accused received the said notice on 04.12.2015, as is seen from the postal acknowledgment card (Ex.P7), and issued a reply dated 17.12.2015 (Ex.P9), which according to the complainant



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contained false allegations. He therefore filed the present
WEB COPY complaint.

3. The learned Judicial Magistrate, Fast Track Court (ML), Dharmapuri, after receipt of the complaint recorded the sworn statement of the complainant. However, the complaint was dismissed as against the 3rd accused as there is no prima facie case against her and the case was taken on file against the 1st and 2nd accused alone. After the appearance of both the accused (A1 and A2), the copies of the case records were furnished to them under Section 207 Cr.P.C. Both the accused pleaded not guilty and therefore, the case was posted for trial.

4. In the trial court, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P10. Thereafter the second accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the circumstances appearing against him in evidence. The accused denied of having committed any offence. However, no evidence was adduced on the side of the accused. However, they marked Ex.B1 through PW1, which is a copy of the FIR.



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5. After analysing the oral and documentary evidence adduced on both sides, the learned trial court judge held that both the accused are guilty of the offence punishable under Section 138 of the NI Act and sentenced A2 to undergo simple imprisonment for a period of six months. The trial Court further held that A1 and A2 are jointly liable for paying compensation of Rs.8,00,000/- to the complainant within a period of two months, in default, A2 is liable to undergo simple imprisonment for a period of one month.

6. Aggrieved over this both the accused filed an appeal in Criminal Appeal No.9 of 2021 before the Additional District and Sessions Judge, Dharmapuri. The learned Additional District and Sessions Judge, Dharmapuri, after considering the oral and documentary evidence adduced on both sides confirmed the findings of the trial court and also directed the Judicial Magistrate to take necessary steps to commit the 2nd accused to prison to suffer the unexpired portion of the sentence imposed by the trial court. The period of imprisonment undergone by the second accused was ordered to be set off under Section 428 Cr.P.C.



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7. Now the present Criminal Revision Petition is filed by the 1st and 2nd accused in CC No. 119 of 2016.

8. Heard Mr.L. Sriram, learned counsel for the Revision Petitioners. His contention is that both the courts below have not properly analysed and appreciated the evidence in the present case and that though the 2nd accused repaid the entire amount, the complainant had filed the instant case against them under Section 138 of NI Act. His another contention is that though the accused was about to hand over the original cheque to the complainant, he filed the complaint without any basis against the accused. According to him, the 1st accused, which is a company need not pay compensation of Rs.8,00,000/- as directed by both the courts below.

9. According to the complainant the 2nd and 3rd accused are the land owners in which the complainant is running a printing press along with his partners in the name and style of Airmax ArtPrint. The case of the complainant is that the 2nd and 3rd accused borrowed a sum of Rs.11,00,000/- and an agreement dated 07.11.2013 was entered into between them. When the complainant insisted the accused for repayment



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of the loan amount the 2nd and 3rd accused requested the latter to receive a part of the loan amount and handed over two cheques (Ex.P3 and Ex.P4) signed by the 2nd accused on 18.11.2015 for Rs.4 lakhs each. When the said cheques were presented with the complainant bank, namely Bank of India, Dharmapuri, on 20.11.2015, the same was returned for the reason "Insufficient funds" on 24.11.2015. Hence the complainant issued a legal notice (Ex.P6) to all the accused dated 01.12.2015 calling upon them to make good the payment of Rs.8,00,000/- due under the cheques. The 3rd accused alone sent a reply (Ex.P9) dated 17.12.2015, which according to the complainant contained false allegations. Thereafter he filed the complaint under Section 138 of NI Act. The trial court and the first appellate Court had appreciated the evidence on record and came to a definite conclusion that the revision petitioners did not adduce any acceptable oral/documentary evidence to show that the entire amount due under both the cheques were repaid by them. They would have taken immediate steps to get back the cheques if really they had repaid the entire amount to the complainant. In the instant case, no steps have been taken and no police complaint has also been lodged by them. On the contrary, the 1st and 2nd accused did not choose to send any reply to the legal notice issued by the complainant. It



is also pertinent to point out that the signature of the 2nd accused on the cheques was not denied. In the circumstances, there is a presumption under Section 118 of the NI Act unless the contrary is proved by the revision petitioners/accused. All the defence taken in the reply notice (Ex.P9) had been considered by both the courts below and the first appellate court had observed thus:

"d) As the second accused admits the issuance of cheques with signature, the burden lies upon second accused to prove that Ex.P3 and Ex.P4 cheques were misused by the complainant. The second accused has not examined himself or any independent witnesses in this case and Ex.D1. First information report was marked on accused side through cross examination of complainant.

e) The defence of accused as found in his Ex.P9 reply statement is that second accused received only Rs.8,00,000/- on 30.05.2013, he handed over cheques to complainant, he repaid amount to complainant when he vacated the premises, believing the words of complaint that he would return cheques at later point of time, he kept quiet, while so on 19.10.2015, complainant along with Madankumar and his persons came to his premises and demanded Rs.5,00,000/- as interest for Rs.8,00,000/-, failing which he would initiate criminal complaint using cheques handed over to him, accused lodged complaint in



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Adyiamankottai Police Station and FIR was lodged in Crime No.460/2015 and he never handed over cheques to complainant in November, and there is no legally enforceable debt. It is made from Ex.P9 reply notice that second accused admits borrowing of money from complainant, but alleges that he has repaid it. Per contra, it is the case of complainant that accused issued the cheques towards part payment of amount borrowed and accused has not repaid the amount. No documents have been produced by accused for repayment of amount or any witness has been produced in proof of same. Admittedly second accused is an advocate, who is well versed with law and not an lay man. There is no explanation on the part of him as to why he has not chosen to obtain any documents for repayment of amount. In the absence of any evidence, his contention that amount was repaid cannot be accepted.

f) It is case of accused that complainant vacated premises in one year. In such circumstances, there is no explanation forthcoming from accused as to why no steps were taken any steps to get back the cheques. The accused did not give any notice or file any complaint against the complainant, when it is claimed that amount was repaid. The second accused did not raise a demur even on the presentation of the cheques and its dishonour. Any man of ordinary prudence would also have approached his



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bankers for stoppage of payment on the cheques. It is not clear why the accused have not chosen to seek cheques back on file any complaint with respect to the same, when it is contended that amount borrowed was repaid.

g) The accused had every right to give stop payment instructions to banker against the alleged cheques, but accused have remained silent. If accused have not issued the questioned cheques to the complainant for discharge of legally recoverable debt, then accused could not have kept silent without taking any action against the complainant. The prolonged silence on the part of accused without taking any action creates doubt over case of accused.

x) On perusal of the material placed before the court, perusal of judgment of the trial court, this court is of the opinion that trial court committed no error in recording of conviction and that there is evidence in support of the factual findings reached by the trial court. The trial court has properly analysed and appreciated the evidence in the case and reached the correct conclusion regarding the issuance of the cheques by the accused to the complainant and the inability of the accused to rebut the presumption under Section 139 of the Act. The trial court has directed the accused to pay amount to the complainant, which is equal to the amount of the cheques, as compensation. It is



now settled by various decisions of the Apex Court that a direction to the accused to pay amount, which is equivalent to the amount of the cheque or more, as compensation to the complainant is legal and proper. The gravity of a complaint under the Negotiable Instruments Act cannot be equated with a offence under the provisions of the Indian Penal Code or other criminal offences. This court does not find any illegality,impropriety or perversity in the appreciation of evidence and the findings entered by the trial court. The judgment of trial court does not require any interference in an the same is confirmed. Hence point for consideration are answered against appellants."

10. All the observations made by both the Courts are perfectly in order and I do not find any reason to interfere with the same.

11. In the result,

i. the Criminal Revision Petition is dismissed. No costs.

Consequently, connected Criminal Miscellaneous Petition is closed.

ii. The order dated 23.01.2023 in Crl. Appeal No.9 of 2021 passed by the Additional District and Sessions Judge, Dharmapuri, and the order dated 11.03.2021 in CC No.119 of 2016 on the file of Judicial Magistrate (FTC), Magisterial Level, Dharmapuri, are confirmed.



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iii. The 2nd petitioner in Crl.RC. No.1151 of 2023 (second accused in C.C. No. 119/2016), shall surrender before the learned Judicial Magistrate Fast Track Court (ML), Dharmapuri, within 15 days from the date of receipt of the order copy, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

03.07.2023

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Index : yes/no

Speaking /Non speaking Order



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To
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1. The Additional District and Sessions Judge, Dharmapuri
2. The Judicial Magistrate (FTC), Magisterial Level, Dharmapuri.
3. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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