IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.01.2023**

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.R.C.No.1046 of 2017 and
Crl.M.P.Nos.9929 and 9931 of 2017

1. M/s.Subi Network Communication,
   Represented by Proprietor
   Raveendran Sukesh,
   Door No.1, I Floor, Wood Green City,
   Ganapathipuram Colony,
   St.Thomas Mount,
   Chennai – 600 016.

2. Raveendran Sukesh ... Petitioners

Vs.

M/s.Calibre Network Solutions Private Limited,
Represented by:-
Authorised Signatory Raja,
Having office at:
Plot No.55, Flat No.F3,
Newel Silver Apartments,
3rd Street, Vedha Nagar,
Chinmaya Nagar Stage II Extn.,
Koyambedu, Chennai – 600 092. ... Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to admit the Criminal Revision Petition on file, to call for the records in C.A.No.23 of 2015 and set aside the Judgment passed by the Principal Sessions Court, Kancheepuram at Chengalpattu, dated 27.04.2017 confirming the conviction and sentence imposed by the learned Fast Track Court, Magisterial Level, Alandur, Chennai on 26.05.2015 in C.C.No.91 of 2013 and allow this revision petition.

For Petitioners	: Ms.J.Hemavathy for Mr.P.Suresh
For Respondent	: Mr.N.Berlin prabhu, Government Advocate (Crl. Side)

ORDER

This Criminal Revision has been preferred challenging the order made in C.A.No.23 of 2015, dated 27.04.2017, passed by the learned Principal Sessions Judge, Kancheepuram at Chengalpattu which confirmed the Judgment of conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur made in C.C.No.91 of 2013 dated 26.05.2015.

2. The respondent viz., M/s.Calibre Network Solutions Private, represented by the Authorized Signatory, Raja has filed a private complaint against the petitioners viz., M/s.Subi Network Communication, (A1)

represented by Proprietor Raveendran Sukesh (A2) for the offence under Section 138 of the Negotiable Instruments Act by alleging that the respondent company had business dealing with the petitioner company and in that course, the respondent had supplied goods to the accused vide invoice bearing No.049 dated 30.09.2011 for a sum of Rs.2,20,500/- and that the petitioners had given a cheque for the said sum of Rs.2,20,500/- drawn on Central bank of India, Nandambakkam Branch, Chennai dated 29.03.2013 and when the cheque was presented for collection by the respondent on the same day through his bank viz., Indian Overseas Bank, Ashok Nagar Branch, Chennai, the Cheque was returned as "insufficient fund" on 05.04.2013. After trial, the learned Judicial Magistrate, FTC, Magisterial Level, Alandur convicted the petitioners and sentenced them to undergo one year Rigorous Imprisonment each under Section 138 of the Negotiable Instruments Act and to pay a compensation of Rs.2,20,500/- to the complainant under Section 357 of Cr.P.C. Aggrieved over the same, the petitioners preferred an appeal before the learned Principal Sessions Judge, Kancheepuram at Chengalpattu in C.A.No.23 of 2015 and the same was dismissed on 27.04.2017 by confirming the Judgment of the learned Judicial

Magistrate. Now the petitioners had filed this Revision challenging the Judgment of the appellate Court.

3. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

4. The learned counsel for the petitioners submitted that the notice sent by the respondent on 12.04.2013, was not represented by any individual and it is a defective notice. There is no transaction between the petitioners and the respondent and Ex.P2, invoice, dated 30.09.2011 is concocted one. The impugned cheque was stolen by the respondent and it was misused by someone. The learned trail Judge and the learned appellate Judge have failed to appreciate the facts of the case and proceeded to convict the accused and hence it should be set aside.

5. The learned counsel for the respondent submitted that the cheque, dated 29.03.2013 has been issued to the respondent by the petitioners in

respect of purchasing goods. Even though it is alleged that the cheque issued by them was misused, no criminal complaint has been given by the petitioners so far. The e-mail communication sent by the petitioners to the respondent on 15.09.2011 would show that it was with regard to the purchase order and Ex.P2, invoice is relevant to the said purchase order. The petitioners have not let in any evidence to demolish the initial presumption that had arisen in favour of the respondent. As the Courts below had rightly appreciated the evidence on record, the present Criminal Revision is liable to be dismissed.

6. The fact that the 2nd petitioner had signed the impugned cheque, is not in dispute. The one and only contention of the revision petitioners is that the cheque was stolen by the respondent, when the office of the petitioners and the respondent were situated adjacent to each other at some point of time. It is a specific contention of the petitioners that the impugned cheque was stolen by the respondent when A2 was out of station. It is needless to point out that as per Section 138 of the Negotiable Instruments Act, once the execution of the cheque is admitted, the initial presumption as to the legally

enforceable consideration in the cheque is in favour of the holder of the cheque. In that case, the burden is upon the petitioner to disprove the initial presumption by adducing sufficient rebuttal evidence.

7. The 2nd petitioner had examined himself as R.W 2 and he has stated that no purchase order has been placed by him with the respondent company. But his statement is falsified with his own mail, dated 15.09.2011 that was sent to the respondent's company. The learned trial Judge and the appellate Judge have rightly compared the invoice with that of the purchase order and had given a clear finding regarding the genuineness of the order placed and the related invoice issued.

8. Even though it is contended that the respondent has stolen the petitioners' cheque when he was away from the station, no criminal action has been initiated against the respondent so far. The respondent's evidence would prove the business transaction that was held between the petitioners and the respondent and during that course, the purchase order was placed by the petitioners. Only in pursuant to the goods supplied to the petitioners,

the cheque has been issued by them. Since these facts have been proved before the trial Court, the trial Court found the accused guilty under Section 138 of the Negotiable Instruments Act. Even though the initial presumption can be rebutted, the petitioners failed to rebut the same with acceptable original documentary evidence. Since, the initial presumption has become conclusive, the Courts below had decided accordingly. The first appellate Court has properly appreciated the evidence produced. Hence, I do not find any infirmity in the Judgment passed by the first appellate Court.

9. In the result, this Criminal Revision Petition is dismissed, by confirming the Judgment of the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu, dated 27.04.2017. Consequently, connected miscellaneous petitions are closed.

25.01.2023

Index: Yes/No
Speaking order/Non speaking order
vum

R.N.MANJULA,J.

vum

To

1. The Principal Sessions Court,
   Kancheepuram at Chengalpattu.

2. The Judicial Magistrate,
   Fast Track Court,
   Magisterial Level,
   Alandur, Chennai

3. The Section Officer,
   Criminal Section,
   High Court, Madras.

Crl.R.C.No.1046 of 2017 and
Crl.M.P.Nos.9929 and 9931 of 2017

25.01.2023