IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.01.2023**

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.R.C.No.1137 of 2017

Z.Thavakal Ali ... Petitioner

Vs.

M/s.Sujana Metal Product Limited,
Rep by Mr.Kannan,
Nija Padam No.6/9, Dhamodharan Street,
Spur Tank Road, Chetpet,
Chennai – 600 031. ... Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to set aside the order of conviction, dated 10.04.2017 passed in C.A.No.185 of 2016 by the XV Additional Session Judge, City Civil Court at Chennai in dismissing the Appeal by confirming the order of conviction, dated 30.05.2016 in C.C.No.3799 of 2012 passed by the learned Metropolitan Magistrate, Fast Track Court II, Egmore, Chennai by allowing this Criminal Revision petition.

For Petitioner : Mr.A.Balasingh Ramanujam

For Respondent : Mr.G.Paul Benneth
Legal Aid Counsel

ORDER

This Criminal Revision has been preferred challenging the order made in C.A.No.185 of 2016, dated 10.04.2017, passed by the XV Additional Session Judge, City Civil Court at Chennai which confirmed the Judgment of conviction and sentence imposed by the learned Metropolitan Magistrate, Fast Track Court II, Egmore, Chennai made in C.C.No.3799 of 2012 dated 30.05.2016.

2. The petitioner is the sole accused against whom the respondent company had filed a private complaint under Section 138 of the Negotiable Instruments Act for dishonour of cheque. The respondent is the proprietary concern by name M/s.Sujana Metal Product Limited who involved in suppling of TMT Iron Bars. The petitioner approached the respondent during the month of April 2009 and requested for supply of TMT bars on credit basis and he promised to pay the invoice bill amount properly within 20 days from the date of delivery. By accepting the request of the petitioner, the respondent company supplied the TMT Iron bars to the tune of Rs.7,05,406/- vide invoice Bill No.00094, dated 09.04.2009. As agreed, the petitioner did not pay the invoice amount. He paid only a part payment of

Rs.3,05,406/-, withholding a balance of Rs.4 lakhs. After repeated demands, the petitioner had issued two cheques bearing Nos.982904 and 982905 dated 30.04.2009 and 01.05.2009 respectively, for sum of Rs.2lakhs each drawn on ICICI Bank Limited, Tiruvannamalai Branch, towards part payment. The cheque number involved in the present case is 982905.

3. When the above cheque was presented for collection with his bank namely Indian Overseas Bank, Anna Salai, Chennai, it was returned as "insufficient fund" and the said fact was informed to the petitioner. However, he requested to represent the same during third week of July 2009 for collection. Hence the said cheque was presented once again on 16.07.2009, but, it was returned with an endorsement "funds insufficient". After causing legal notice on 30.08.2009, the respondent has filed a private complaint under Section 138 of the Negotiable Instruments Act.

4. After trial, the trial Court found the petitioner guilty under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.2

lakhs. Aggrieved over the same, the petitioner has preferred an appeal in C.A.No.185 of 2016 and the said appeal was also dismissed, confirming the Judgment of the trial Court. Challenging the said Judgment, dated 10.04.2017, the petitioner has preferred this present revision.

5. Heard the learned counsel for the petitioner and the learned legal aid counsel appearing for the respondent.

6. The learned counsel for the petitioner submitted that immediately after receiving information from the respondent about the dishonour of cheque, on 08.05.2009, the petitioner made a part payment of Rs.1 lakh towards discharge of the cheque amount through RTGS. Even though the same was admitted by the respondent, he had presented the cheque for Rs.2 lakhs and filed a case by misrepresenting that the impugned cheque is enforceable for Rs.2 lakhs liability. The respondent has not come to Court with clean hands and the same was not properly appreciated by the Courts below and hence the Judgment of the learned XV Additional Sessions Judge, Chennai is liable to be set aside.

7. The learned counsel for the respondent submitted that even though

the petitioner had paid the part consideration of Rs.1 lakh towards the cheque amount, he did not pay the remaining sum of Rs.1 lakh and the respondent had got no other option except to present the cheque once again for collection as instructed by the petitioner on 16.07.2009. Since the cheque got dishonoured once again, the case was filed for the offence under Section 138 of the Negotiable Instruments Act.

8. The relationship between the petitioner and the respondent is not denied. Even the transaction made with regard to supply of TMT iron bars from the respondent was also not denied. The respondent has supplied the TMT bars to the tune of Rs.7,05,406/- vide invoice No.00094, dated 09.04.2009. There is no quarrel on the initial payment of Rs.3,05,406/- towards the invoice amount. The cheques in dispute is pertains to the remaining sum of Rs.4 lakhs, for which the petitioner had issued two cheques, dated 30.04.2009 and 01.05.2009 respectively. The respondent had admitted in his evidence about the payment made by the petitioner on 08.05.2009 for a sum of Rs.1 lakh, partly discharging the cheque which was presented on 02.05.2009. Even though the cheque was dated 30.04.2009

once again the cheque was presented on 16.07.2009 for Rs.2 lakhs and that time also, the cheque was returned. Even according to the evidence of the respondent in connection with the cheque No.982904, the petitioner is liable to pay Rs.1 lakh and not Rs.2 lakhs. In the Judgment of the trial Court, there is an observation that there are some entries in the petitioner's bank account on 16.05.2009 that some amounts have been transferred in favour of the respondent but again it has been reversed to the petitioner account. Since the Bank officer who is in-charge of the entries was not examined, the relevancy of those entries cannot be appreciated. However, the fact remain that the petitioner had made Rs.1 lakh towards the part payment of cheque No.982904.

9. Section 56 of the Negotiable Instruments Act speaks about the Negotiable Instruments on which part sum is due. The said provision reads as under:

> *"56. Indorsement for part of sum due:- No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount*

has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."

10. In view of the above provision, it is clear that whenever the part payment is made towards the cheque, due indorsement can be made by the holder of the cheque with regard to the receipt of the same and thereafter the cheque can be negotiated for the balance. In the case in hand, no such indorsement has been made. Hence, the respondent found it convenient to represent the cheque for Rs.2 lakhs itself. But the respondent ought to have been honest enough to make due endorsement on the cheque and should have presented it for Rs.1 lakh only. Even though the cheque amount is shown to be Rs.2 lakhs, there is an option provided under Section 56 of the Negotiable Instrument Act to present the cheque for the balance in the Negotiable Instrument, after deducting the payment already made. However, in the complaint, has not stated anything about the part payment received towards the impugned cheque. The respondent had suppressed that material fact.

11. Even though the said fact was proved before the Courts below,

the Courts have found the accused guilty and convicted him for the offence under Section 138 of the Negotiable Instruments Act.

12. No doubt Section 139 of the Negotiable Instruments Act pre-supposed a presumption whenever the signature on the Negotiable Instruments is not denied. When contrary evidence is adduced, the said initial presumption gets rebutted and hence the respondent cannot be said that he had made out an offence under Section 138 of the Negotiable Instruments Act in the instant case. The records would show that the respondent is liable only for Rs.1 lakh. Since the Courts below have failed to do the complete exercise of appreciating the evidence by considering the rebuttal or contrary circumstances borne by records and had chosen to convict the accused, I feel the Judgment is liable to be set aside.

13. In view of the above stated reasons, this Criminal Revision Petition stands allowed and the order, dated 10.04.2017 passed in C.A.No.185 of 2016 on the file of the XV Additional Session Judge, City Civil Court at Chennai is set aside. However for the amount already paid

towards the balance of Rs.1 lakh that is the portion of the impugned cheque bearing No.982904, the respondent shall file an appropriate application before the trial Court to withdraw the same.

25.01.2023

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

To

1. The XV Additional Session Judge,
   City Civil Court at Chennai.

2. The Metropolitan Magistrate,
   Fast Track Court II, Egmore,
   Chennai.

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

R.N.MANJULA,J.

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