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Crl.R.C.No.1138 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.R.C.No.1138 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.186 of 26016 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.3800 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



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ORDER

This Criminal Revision has been preferred challenging the order made in C.A.No.186 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.3800 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 involves 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 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



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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.2 lakhs each drawn on ICICI Bank, 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 respondent's bank namely Indian Overseas Bank, Anna Salai, Chennai, it was returned as “insufficient fund” and the said fact was informed to the petitioner / accused. However, he requested to represent the same during the third week of July 2009, but the same was again returned as “funds insufficient”. Again the accused requested to deposit the cheque during first week of September 2009 for collection. Hence the said cheque was presented once again on 10.09.2009, but, again it was returned with an endorsement “funds insufficient”. After causing legal notice on 22.09.2009, 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



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138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.4lakhs. Aggrieved over the same, the petitioner has preferred an appeal in C.A.No.186 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



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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 the above submission made by the learned counsel for the petitioner is with regard to the Cheque No.982904 towards a sum of Rs.2 lakhs and not in connection with the Cheque bearing No.982905. Insofar as the present case is concerned, the cheque bearing No.982905 for a sum of Rs.2 lakhs, has been deposited thrice during the months of May, July and September 2009. Since on all the three occasions the cheque got dishonoured, 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 two cheques dated 30.04.2009 and



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01.05.2009 were issued towards clearing the remaining sum of Rs.4 lakhs.

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 bearing No.982904, which was presented on 02.05.2009. However, there is no evidence of fully or partly discharging the amount of 2 lakhs towards the Cheque bearing No.982905. Since the said cheque which was drawn for Rs.2 lakhs was proved and it was enforceable for Rs.2 lakhs, the Courts below have rightly appreciated the evidence on record and found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act. In my considered opinion, the Judgment of the first appellate Court does not warrant any interference.

9. With the above observation, this Criminal Revision Petition stands dismissed.

25.01.2023

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

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

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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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