



WEB COPY



CrI.R.C.No.1442 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

CrI.R.C.No.1442 of 2017

1. M/s.Sarthak Investment and Finance Pvt., Ltd.,
Rep.by its Director
Rakesh Kumar Gupta,
M/aged about 58 years,
S/o.M.L.Guptha (late)
No.29A, 1st Floor, HAUZ KHAS,
New Delhi-110 016.
2. Rakesh Kumar Gupta

... Petitioners

Vs.

Anil Agarwal,
Sole Proprietor of
M/s.Agarwal Steels, being rep. by its
Power of Attorney Holder
N.Nityaanandam,
No.71, Sembedess Street, Chennai-1.

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to call for the records on the file of the learned XVIII Additional Sessions Judge, Chennai in CrI.A.No.300/2016 dated 30.10.2017 and confirming the judgement passed in C.C.No.9047/2007 on the file of the Learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai-1 dated 18.11.2016 and set aside the judgement dated 30.10.2017.



Crl.R.C.No.1442 of 2017

WEB COPY

For Petitioners : Mr.S.Senthilvel

For Respondent : Ms.V.Dhanalakshmi
Legal Aid counsel

ORDER

This Criminal Revision case has been preferred challenging the judgment of the learned XVIII Additional Sessions Judge, Chennai dated 30.10.2017 made in Crl.A.No.300 of 2016.

2. The petitioners are the accused 1 & 2 against whom the respondent/complainant has filed a complaint under Section 138 of The Negotiable Instruments Act for dishonour of cheque. The first petitioner is a Company for which the second petitioner/2nd accused is the Director. The complainant is a proprietary concern by name M/s.Agarwal Steels. The accused 1 & 2 had purchased goods from the complainant's Company on credit basis. The complainant had supplied goods for a value of Rs.2,49,840/- through invoice vide invoice No.3059/06-07 and towards the part payment of the said bill, the first accused had issued a cheque for Rs.2,25,000/- dated 26.12.2006 in favour of the complainant. When the said cheque was presented for collection on 09.03.2007, the said cheque was returned for the reason "Insufficient funds". After complying the legal mandates, the



Crl.R.C.No.1442 of 2017

WEB COPY

complaint was filed. Subsequent to that, taking cognisance of the case, trial was conducted.

3. On the side of the respondent/complainant, complainant himself was examined as PW1 and 9 documents were marked as Exs.P1 to P9. On the side of the petitioners/accused, no witness was examined and no document was marked. After the conclusion of trial and considering the materials available on record, the learned Trial Judge found the accused 1 & 2 guilty for the offence under Section 138 of Negotiable Instruments Act, and convicted the 2nd accused and sentenced him to undergo 6 months Simple Imprisonment and the accused 1 & 2 were imposed with the compensation of Rs.4,50,000/- to be payable under Section 357(3) Cr.P.C within one month. The appeal preferred by the accused challenging the above judgement in C.A.No.300 of 2016 before the learned XVIII Additional Sessions Judge, Chennai was also dismissed on 30.10.2017. Aggrieved over that, the present Revision has been preferred by the accused before this Court.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondent. Perused the entire materials available on record.

5. The learned counsel for the petitioners submitted that the mandates of Section 138 (b) has not been complied and the respondent has not produced



WEB COPY

any proof to show that notice has been served upon the petitioners; the evidence was not properly appreciated by the Courts below; there is no material produced to show that the petitioners had purchased goods and towards discharge of the sum, the impugned cheque has been issued; the respondent in his capacity as Power Agent has filed this complaint and the same itself is not maintainable.

6. The learned counsel for the respondent submitted that once the petitioner admits the execution of the cheque, the initial presumption under Section 138 of Negotiable Instruments Act goes in favour of the respondent in whose favour the cheque was issued; the 2nd petitioner did not enter into the box to rebut the initial presumption and with the evidence available on record the initial presumption has become the conclusive proof and thus the Courts below have rightly found the accused guilty.

7. The respondent is a proprietary concern and the 1st petitioner is a Company. The very case of the respondent is that the first petitioner-Company had purchased goods from the respondent through invoice No.3059/06-07 on credit basis. The said invoice has been produced as Ex.P2. The goods have been supplied by the respondent-concern and the same has been rightly represented by its Proprietor and Power Agent, who is the



WEB COPY

respondent herein. Once the execution of the cheque is not denied, it goes without saying that the initial presumption under Section 138 of Negotiable Instruments Act would go in favour of the holder of the cheque i.e., the respondent herein. But in this case, the respondent not only enjoys the benefit of presumption but he has also produced the invoice through which, the 1st petitioner-Company had purchased goods from the respondent.

8. Even though the petitioner has stated that he did not receive notice, that was not the submission of the petitioner throughout the trial and even before the Appellate Court. Even in the grounds filed, it has not been stated that he did not receive notice. If the petitioner wantonly refuses and manages to return the notice sent to the petitioners to their correct address, that will not come to their rescue. The mandate of Section 138(b) is deemed to have got complied once the respondent sent the legal notice to the correct address of the petitioners through Registered post. So the returned notice with postal cover has also been produced as Ex.P8. If the petitioners' specific stand is that the cheque was not issued for the alleged transaction involved in the invoice, he ought to have adduced rebuttal evidence to disprove the same. The petitioners, who have not chosen to send any reply, did not come to the witness box also to subject themselves for cross-examination, but they have



Crl.R.C.No.1442 of 2017

WEB COPY

chosen to take a different stand as though the complainant has not complied the mandate of sending legal notice. The learned trial Judge and the Appellate Court have rightly appreciated the facts and applied the law and found the accused guilty. In my view, the judgement dated 30.10.2017 passed by the learned XVIII Additional Sessions Judge, Chennai in Crl.A.No.300/2016 does not require any interference.

9. However, taking into consideration of the submission made by the petitioners to reduce the compensation, this Court is of the view that the 1st and 2nd accused shall jointly and severally pay a compensation to a sum equivalent to the cheque amount.

10. In view of the above, this Criminal Revision Case is partly allowed and the judgement dated 30.10.2017 made in Crl.A.No.300 of 2016 passed by the learned XVIII Additional Sessions Judge, Chennai is hereby modified to the effect that **the 1st and 2nd accused shall jointly and severally pay the compensation to a sum equivalent to the cheque amount.** The sentence imposed on the 2nd accused shall remain unaltered.

03.02.2023

Index: Yes/No
Speaking / Non Speaking Order
Neutral Citation : Yes/No.
kmi



Crl.R.C.No.1442 of 2017

To

WEB COPY

- 1.The XVIII Additional Sessions Judge,
Chennai.
- 2.The Metropolitan Magistrate,
Fast Track Court IV,
George Town, Chennai-1.



WEB COPY



Crl.R.C.No.1442 of 2017

R.N.MANJULA, J

kmi

Crl.R.C.No.1442 of 2017

03.02.2023