



Crl.RC.No.1587 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 15.06.2023	Date of Pronouncing Order 21.06.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.RC.No.1587 of 2017

1.M/s.Divya Fashions,
8/1, Sivasakthi Nagar 2nd Street,
Sellam Nagar Pirivu,
Muruganpalayam, Tirupur.

2.Balu,
Partner, M/s.Divya Fashions,
8/1, Sivasakthi Nagar 2nd Street,
Sellam Nagar Pirivu,
Muruganpalayam, Tirupur.

... Petitioners

Vs.

M.Selvaraj,
S/o.Makali,
Proprietor of Bharathi & Co.,
Muthugopal Nagar, Tirupur.

... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 of Cr.P.C.,
against the Judgment dated 17.11.2017 passed in C.A.No.35/2017 on the file of
the I Additional District Sessions Judge, Tirupur, confirming the Judgment



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dated 09.12.2014 passed in C.C.No.71/2012 on the file of the Judicial Magistrate (FTC), Tirupur.

For Petitioners : Mr.R.Saravanan
Legal aid counsel

For Respondent : Mr.S.Kolandasamy

O R D E R

This Criminal Revision Petition has been filed against the Judgment dated 17.11.2017 passed in C.A.No.35/2017 on the file of the learned I Additional District Sessions Judge, Tirupur, confirming the Judgment dated 09.12.2014 passed in C.C.No.71/2012 on the file of the learned Judicial Magistrate (FTC), Tirupur.

2.On the direction issued by this Court, the Legal Services Committee of this Court has appointed one Mr.R.Saravanan as learned counsel for the Revision Petitioners.

3.The Respondent herein is the private complainant in C.C.No.71 of



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2012, which was filed for commission of offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Fast Tract Court, Tiruppur. The first accused is the company and the second accused is the Managing Partner of the said company.

4.The brief facts of the case is as under:

The complainant is conducting his business in the name and style of Bharathi & Co., The accused had borrowed a sum of Rs.2,25,000/- on 26.03.2005, for the business purpose and he agreed to repay the debt amount within two weeks from the date of borrowel. Both the accused have not complied the obligation, which they agreed at the time of borrowel. Inspite of several requests, the accused had issued cheque bearing No.793549 dated 27.06.2005 drawn from Punjab National bank, Tiruppur Branch to discharge the said debt. When the complainant presented the cheque for collection on 12.08.2005 before Indian Overseas Bank, Tirupur branch, it was returned unpaid for the reason “Exceeds arrangements”. The complainant issued legal notice to the accused on 27.08.2005 and both accused were received the same. But the accused had not given any reply notice. Thereby, the complainant



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initiated legal proceedings u/s.138 of Negotiable Instruments Act. On the side of the complaint PW1 was examined, Ex.P.1 to Ex.P.6 were marked. On the side of the accused, DW1 & DW2 were examined and no documentary evidence was produced. After considering the evidence and documents and arguments of both sides, the learned Judicial Magistrate delivered judgment, against the same, Appeal was preferred. On appeal, the learned Additional Sessions Judge dismissed the Appeal and hence this Revision.

5.Heard the learned legal aid counsel for the Petitioner and the learned counsel for the Respondent.

6.Learned legal aid counsel for the Petitioner drew my attention to Ex.P.6 and contended that even as per paper publication dated 29.05.2015, the Petition cheque was lost during transit, while he was travelling in TVS 50 and therefore, it is a false case. Further he contended that one Siva Subramaniam gave money to Duraisamy and Duraisamy has borrowed the amount. On behalf of Duraisamy, the second Revision Petitioner viz., Balu has gave the cheque as collateral security, which was signed, unfilled and the same was misused.



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7.Learned counsel for the Respondent made submission in support of the judgment of the Courts below.

8.After hearing both sides and also perusing the records available on record, I find that the complainant is conducting his business in the name and style of Bharathi & Co., The accused had borrowed a sum of Rs.2,25,000/- on 26.03.2005, for the business purpose of accused No.1 and he agreed to repay the debt amount within two weeks from the date of borrowel. Both accused not complied the obligation, which they agreed at the time of borrowel. Inspite of several requests, the accused had issued cheque bearing No.793549 dated 27.06.2005 drawn from Punjab National bank, Tiruppur Branch under Ex.P.1 to discharge the said debt. When the complainant presented the cheque for collection on 12.08.2005 before Indian Overseas Bank, Tirupur branch, it was returned unpaid for the reason “Exceeds arrangements” under Ex.P.2. The complainant issued legal notice to the accused on 27.08.2005 under Ex.P.3 and both accused were received the same. But the accused had not given any reply notice. Thereby, the complainant initiated legal proceedings u/s.138 of



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Negotiable Instruments Act.

9.The signature in Ex.P.1/Cheque is admitted and hence the private complainant is entitled to statutory presumption as mandated under Section 139 of Negotiable Instruments Act. As per Ex.2, the cheque has been returned by the bank for the reason that “Exceeds arrangements” . Ex.P.3 is the legal notice dated 27.08.2005 and it was duly served upon the Revision Petitioners. Ex.P.4 & Ex.P.5 are the acknowledgement received from the Revision Petitioners for the receipt of legal notice.

10.In view of the position that signature being admitted, the private complainant is entitled for statutory presumption to rebut the presumption. When the Accused No.2 entered into the witness box as DW1, in the chief examination, he had stated that one Duraisamy borrowed money and he has issued the cheque as collateral security and the cheque has been misused. To prove the same Ex.P.2/Bank's memorandum has been marked. While the second Accused in the witness box, he had admitted that Ex.P.6 is the paper publication dated 29.05.2015 issued in Dinamalar, where it was stated that the



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cheque No.793549 (subject cheque) and other cheque and settlement deed were lost. Thus both the Courts below has come to the conclusion that the statement of the second Accused in the cross examination is found to be on material contradiction with the answer elicited during the cross examination.

11. Whether Revision Petitioners/Accused has rebutted the presumption is the point for consideration. In the chief examination, it was stated that the second accused gave the signed, unfilled cheque to Siva Subramaniam and the same was misused. As per the documents, the paper publication appears to have been issued on 29.05.2005, to go by the said paper publication, which was issued by him, he had possession of the said cheque and it was missed in transit. Hence I find that, what was stated by DW1, is only after thought and therefore, the findings rendered by the Courts below that accused himself adduced contradictory statement in one portion of the evidence with the other portion of the cross examination.

12. Yet another point is that Ex.P.3 legal notice dated 27.08.2015, was duly served upon the accused under Ex.P.4 and Ex.P.5, for the reasons best



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known the accused had not chosen to give reply and hence I find that the accused has not rebutted the presumption and hence both the Courts below has rightly come to the conclusion that the Accused/Revision Petitioners having failed to rebut the statutory presumption has rightly laid the conviction. Hence the conviction and sentence passed by the trial Court and confirmed by the lower Appellate Court do not suffer from any irregularity or illegality, warranting interference of this Court.

13.In the result, this Revision Petition is dismissed.

21.06.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

1.The I Additional District Sessions Judge,
Tirupur.

2.The Judicial Magistrate I,
Tambaram

3.The Public Prosecutor,
High Court,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Order made in

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Dated: 21.06.2023