



Crl.R.C.Nos.438 to 442 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM:

THE HON'BLE **MR.JUSTICE M.NIRMAL KUMAR**

CRL.R.C.Nos.438 to 442 of 2017

1.M/s.Sri Maya Trading &
Trading Solutions India (P) Ltd.,
5/8-N, B.D.O. Colony Street, Sulur,
Coimbatore - 641 402.

2.R.Prabakaran,
Chairman of M/s.Sri Maya Trading &
Trading Solutions India (P) Ltd.,
14/33-B, Pappampatty Main Road,
Pallapalayam Post, Sulur,
Coimbatore - 641 403.

... Petitioners/Accused in
all Crl.R.Cs.

Versus

1. D.Suresh

... 1st Respondent in
Crl.R.C.No.438 of 2017

1. M.Rajarathinam

... 1st Respondent in
Crl.R.C.No.439 of 2017

1. M.Devaraj

... 1st Respondent in
Crl.R.C.No.440 of 2017



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1. R.Marusamy

... 1st Respondent in

Crl.R.C.No.441 of 2017

1. G.Venkatachalam

... 1st Respondent in

Crl.R.C.No.442 of 2017

2.State rep. by Public Prosecutor,
District Court Campus,
Coimbatore.

... 2nd Respondent in
all Crl.R.Cs.

COMMON PRAYER: Criminal Revision Cases filed under Sections 397 and 401 of Cr.P.C. to set aside the judgment and sentence dated 24.01.2017 made in C.A.Nos.106, 105, 104, 103 & 102 of 2015, respectively, on the file of IV Additional District and Sessions Judge, Coimbatore and confirming the judgment and sentence dated 13.04.2015 made in C.C.Nos.324, 323, 322, 321 & 320 of 2013, respectively, on the file of the Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore.

In all Crl.R.Cs.

For Petitioners : Mr.R.Bharath Kumar

For Respondent-1 : Mr.N.Vignesh
Legal Aid Counsel

For Respondent-2 : Mr.L.Baskaran
Government Advocate (Crl. Side)

COMMON ORDER

These Criminal Revision Cases have been filed to set aside the judgment and sentence dated 24.01.2017 made in C.A.Nos.106, 105, 104,



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103 & 102 of 2015, respectively, on the file of IV Additional District and Sessions Judge, Coimbatore, confirming the judgment and sentence dated 13.04.2015 made in C.C.Nos.324, 323, 322, 321 & 320 of 2013, respectively, on the file of the Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore.

2. The petitioners/accused convicted by the Courts below for offence under Section 138 of Negotiable Instruments Act on the complaint of the respondent/complainants. The petitioners were convicted in C.C.Nos.324, 323, 322, 321 & 320 of 2013, respectively, by the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore by judgment dated 13.04.2015 sentencing the first petitioner-company to pay a fine of Rs.2,000/-, in default, the second petitioner/Chairman of A1 company to undergo two months simple imprisonment. Second petitioner/A-2 is sentenced to undergo 10 months simple imprisonment and to pay a fine of Rs.2,000/-. Aggrieved against the same, the petitioners have filed



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C.A.Nos.106, 105, 104, 103 & 102 of 2015, respectively, on the file of IV

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Additional District and Sessions Judge, Coimbatore. The learned Additional District and Sessions Judge by judgment dated 24.01.2017, dismissed the appeal confirming the conviction and sentence of the trial Court, against which, the present petitions have been filed.

3. For the sake of clarity and brevity, the petitioners and respondents are referred to as they are referred as per their rank before the trial Court.

4. The primary ground on which the petitioners assail is that the first respondent-complainants admitted that they enrolled for training under the petitioner-company for On-line Trading business and they were placed as team leader for training group. The complainants canvassed and enrolled several persons. As regards Crl.R.C.No.438 of 2017 is concerned, the complainant got enrolled 64 persons for training program to be conducted by



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the petitioner-company. Similarly, in Crl.R.C.No.439 of 2017, the complainant got enrolled 58 persons, in Crl.R.C.No.440 of 2017, the complainant got enrolled 150 persons, in Crl.R.C.No.441 of 2017, the complainant got enrolled 130 persons, in Crl.R.C.No.442 of 2017, the complainant got enrolled 124 persons and they collected a sum of Rs.5,300/- from each persons as fee for training. The petitioners/accused unable to provide any training, agreed to return back the amounts collected. Thereafter, there was an agreement entered between the petitioners and the first respondent and one another person, namely, Mahesh Kumar. The said Mahesh Kumar has not filed any case.

5. The brief facts of the case is that the first petitioner is a private limited company giving training in multilevel marketing for Trading in commodities, the second petitioner is the Chairman of the company. The company was in the business for five years. In order to give on-line trading training, the first respondent/complainant joined A1-company and paid



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Rs.5,300/- during the year 2012. The Chairman of the accused-company

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nominated the first respondent/complainant as leader to training groups. The first respondent/complainants were forced to canvas, bring in other persons and they collected 526 persons in total and made them to pay the money for training. Each one of them paid Rs.5,300/-. The complainants as group leaders collected Rs.3,50,000/- in total and handed over to the accused company. After receiving the amount, the accused Company failed to impart any training and gave evasive reply. Thereafter, a Memorandum of Understanding was entered between the second petitioner/A2 and other team leaders like the first respondents, namely, D.Suresh, M.Rajarathinam, M.Devaraj, R.Marusamy, C.Mahesh Kumar and G.Venkatachalam. As per the M.O.U. the accused admitted receiving amounts from the team leaders, which was collected from various persons and handed over to the accused/second petitioner, unable to give training agreed to repay the amounts received. Thereafter in discharge of the said liability the second petitioner issued cheque to each of the group leaders, proportionate to the



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money received from them. When, the cheques were presented, got dishonoured for the reason “Funds Insufficient”. Thereafter, notice issued following the statutory conditions and complaint filed.

6. The trial Court examined P.W.1 to P.W.4, marked Exs.P1 to P9.

On the side of the defence, the accused entered the box, examined himself as D.W.1, marked Exs.D1 and D2. The trial Court on the evidence and materials found that the petitioners guilty and sentenced them as above.

7. The contention of the petitioner in primarily as follows:

In this case, the agreement marked as Ex.P7. As per Ex.P7-Agreement, the petitioners said to have given blank cheques, which have been filled up and cases have been initiated. None of the individual persons, who paid the money, neither examined nor any proof produced to show that they authorised the first respondent/complainant to file the case. The petitioner/accused does not deny his signature but only the liability.



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8. The further contention of the petitioners is that the agreement itself is forged one. There is no liability for the petitioners to pay to the first respondent-complainants, since there is no legally enforceable debt or liability. Based on the cheque, no prosecution can be launched against them. There is no contract between the petitioners and the first respondent-complainants.

9. The further contention of the petitioners is that none from the team examined as witness, no evidence produced to show that the members of the team authorised the first respondent/complainant to lodge the complaint. There is no privity of contract. Further submitted that in the Agreement/Ex.P7, though the cheques were referred, the amount due was not shown. Further, there is a specific clause that the cheques will be used only to collect the dues. As far as the first respondent/complainant is concerned, he paid only Rs.5,300/-, hence, he is not entitled to collect it from the



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petitioners. He further referring to the judgment of Hon'ble Supremen Court in the case of *Krishna Janardhan Bhat vs. Dattatraya G. Hegde* reported in *2008(1) CTC 433*, wherein in paragraph 26 it is stated that the question as to whether the presumption which stood rebutted or not, to be determined keeping in view the other evidences on record. Further it is not imperative for the accused to get into the box to discharge the statutory presumption. In this case, the accused examined himself as D.W.1 and marked defence exhibits. Both the Courts below failed to consider these aspects, on the contrary convicted the petitioners.

10. Mr.N.Vignesh, learned Legal Aid Counsel appearing for the first respondent/complainants submitted that in this case the petitioner/accused not denied the issuance of cheque and signature. Once it is not denied, the presumption under Sections 118 and 139 of Negotiable Instruments Act comes into play. In this case, the petitioners/accused not taken any steps to dislodge the presumption and failed to probabalise



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defence. The petitioner/accused though got into the box, failed to dislodge the initial presumption. The complainant canvassed and collected money from several persons, handed over to the accused, who received the same and failed to give any training. Thereafter unable to give training, agreed to repay the amount collected, entered into an agreement. The M.O.U. agreement/Ex.P7 is not denied. Except taking a technical plea, the petitioners unable to show discharge of liability or probabilise any defence. The initial presumption being proved. It is for the accused to discharge the presumption. Though the accused/D.W.1 stated that about 15 persons came as a mob and taken away the cheques from the custody of the accused, no tangible evidence produced, the same made only for the purpose of defence. No police complaint or any pre-emptive notice was issued in this regard. Thus the trial Court as well as the Lower Appellate Court rightly convicted the petitioners/accused.



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11. Considering the submissions and on a perusal of the material it is seen that the petitioners not denied the relationship between the petitioners/accused and the first respondent/complainants. The complainants have joined the accused company for getting trained and paid a sum of Rs.5,300/-. The defence of the petitioners/accused is that 526 persons, who paid the amount of Rs.5,300/- each, one of them not examined as witness and they have not given any authorisation to the complainants to represent them. In such circumstances, claiming that the petitioners/accused are liable to pay to the tune of Rs.3,50,000/-, cannot be countenanced. The petitioner/accused not denied his signature or issuance of cheque. Hence, Sections 118 and 139 of the Negotiable Instruments Act comes into play. Though the accused examined himself as D.W.1 and marked documents, he is unable to dislodge the statutory presumption and failed to probabalise any defence. Apart from the issuance of cheque, the petitioner/accused liability confirmed by an agreement/Ex.P7, wherein, he admits that the team leaders of the company collected money from various persons and in discharge of the said liability he



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is issuing the cheque to the team leaders. The cheques got dishonoured, hence

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the team leaders have rightly filed the complaint.

12. The team leaders collected money from various persons and they are responsible to repay team members. The agreement is not denied and there is no evidence or contra material to show that the liability has been discharged. Though the petitioners/accused made a feeble attempt to project that the cheques were forcibly obtained, except his defence statement there is no other material to corroborate the same.

13. From the above factual matrix, this Court finds that the cheques were issued to the first respondent/complainants for discharge of the liability and the petitioners/accused failed to discharge their liability. The trial Court and Lower Appellate Court rightly convicted the petitioners. In view of the same, this Court finds no reason to interfere with the finding of the Courts below.



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14. Accordingly, these Criminal Revision cases are dismissed. The trial Court is directed to issue warrant to secure the petitioners/accused to undergo the sentence without waiting for the complainants in this case to file any petition. Since the accused had been convicted and sentence is confirmed, it is the duty of the Court to ensure that the accused undergo the sentence.

15. This Court appreciates the strenuous efforts taken by Mr.N.Vignesh, learned Legal Aid Counsel appearing for the first respondent, who made thorough preparation and effective submissions.

10.01.2023

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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M.NIRMAL KUMAR, J.

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To

- 1.The IV Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level-II,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

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