



CrI.R.C.No.241 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

CrI.R.C.No.241 of 2020

R.K.Amuthakumar
Proprietor, M/s.Sree Vasavi Agro Services,
Fertilizer Dealer,
No.35, Bazaar Street,
Thittagudi-606 106,
Cuddalore District.

.. Petitioner

Vs.

M/s.Kothari Industrial Corporation Limited,
Rep.by its Deputy Manager Mr.A.Jayvelu,
Kothari Buildings,
No.114, Mahathma Gandhi Salai,
Chennai-600 034.

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment of conviction imposed in C.A.No.208 of 2015 on the file of the I Additional Sessions Judge, City Civil Court, Chennai dated 13.03.2019 confirming the conviction order passed in C.C.No.3906 of 2012 on the file of the Metropolitan Magistrate cum Fast Track Court No.2, Egmore, Chennai.



WEB COPY



CrI.R.C.No.241 of 2020

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.S.Sivaraman

ORDER

This Criminal Revision Case is filed against the concurrent findings of the Courts below holding the revision petitioner guilty of offence under Section 138 of Negotiable Instruments Act, for issuing cheque for Rs.2,34,956/-, but instructed the bank to stop the payment.

2. The case of the complainant is that there was a business transaction between the complainant company and the accused / the revision petitioner herein in connection with Fertilizers and as on 31.03.2012, there was a balance of Rs.2,83,567/- and after small payment as on 31.05.2012, the accused owe a sum of Rs.2,34,956/- for which, the subject cheque drawn in favour of the complainant company was issued. However, on presentation, the cheque was returned with an endorsement “payment stopped”. The statutory notice was issued to the accused, but after receiving the notice, the accused failed to reply or pay the cheque amount and hence the complaint.

3. The complaint has been filed by the Deputy Manager of the



Crl.R.C.No.241 of 2020

complainant company in whose favour, the Board has passed the resolution to represent the company.

4. To prove the complaint 6 exhibits were marked and Mr.Jayavelu, the Power Holder as a representative of the company, has mounted the witness box and deposed. Both the Courts have found that the cheque has been issued to discharge the legally enforceable debt, which is reflected from the statement of accounts marked as Ex.P2 dated 01.04.2012, in which the accused has signed and confirmed the debt.

5. The learned counsel appearing for the revision petitioner submitted that the complaint filed by Mr.Jayavelu, the Deputy Manager, who claims to be the person authorised to represent the company, is not a competent person to speak about the content of the complaint, since he has admitted in the cross examination that he is not aware of the transaction and therefore, his evidence is unreliable. Furthermore, the authorisation letter is signed by the company Secretary and not by the Directors of the company, therefore, the authorisation letter, which is



Crl.R.C.No.241 of 2020

marked as Ex.P1, is invalid, submitting that the blank cheque given as a security has been misused by the complainant company and therefore, the accused bank was instructed to stop the payment. While so, the presumption drawn by the Courts below that the cheque was issued for a legally enforceable debt is erroneous.

6. The learned counsel for the revision petitioner has also submitted that the signature found in the Ex.P2 was denied. However the Court has not taken any steps to compare the signature and get an opinion from the handwriting expert.

7. This Court after giving anxious consideration to the above submissions made by the learned counsel for the revision petitioner, finds that the business transaction between the complainant and the accused not denied and the signature found in the cheque is also not denied. While the complainant has relied upon the confirmation made by the accused regarding the balance amount to be paid as per books of account, the signature found in the said document, which is marked as Ex.P2, is disputed by the accused on the ground that it is not his signature.



CrI.R.C.No.241 of 2020

However, on perusal of the documents, this Court finds that Ex.P2 is the extract of the statement of accounts indicating the balance amount of Rs.2,34,956/- due and payable. This statement of account is in the form of letter addressed to the accused requesting him to confirm the account. Accordingly, the accused has signed stating that confirming the above statement and the seal of the accused firm M/s.Sree Vasavi Agro Services is affixed under the signature. If the accused wants to deny the genuineness of the document and dispute the signature, it is his duty to subject the document for test by an handwriting expert, which the accused has failed to do. Having admitted the business transaction and given a letter of confirmation admitting the liability and issued the cheque, the defence taken by the accused that the cheque was given long back in blank as security and had instructed the bank to stop payment, then it is the burden of the accused to prove why he instructed the bank to stop payment and when he instructed the bank to stop payment. No document or evidence placed before the Court by the accused to substantiate the above defence. It is settled principle of law that the power agent of the company, who represents the company in the



Crl.R.C.No.241 of 2020

WEB COPY

complaint under Section 138 of N.I.Act., is bound to know about the transaction either personally or from the records. In this case, PW.1, the authorised representative had spoken based on the record, which is admissible.

8. Above all, this Court finds that having issued the cheque after confirming the balance, the accused has chosen to instruct the bank to stop payment, but when the notice dated 15.06.2012 was served on the accused and received by him and same has been proved by the postal acknowledgement [Ex.P6]. The accused has chosen not to reply and whatever defence he has taken without evidence only by way of oral arguments and suggestions to PW.1. This is not sufficient to shift the onus of proof even by any preponderance of probability.

9. In the said reasons, this Court finds no merit in the Criminal Revision Case and same is dismissed.

09.06.2023

Internet : Yes/No
Index: Yes/No
rpl



CrI.R.C.No.241 of 2020

To
WEB COPY

- 1.The I Additional Sessions Judge, City Civil Court, Chennai.
- 2.The Metropolitan Magistrate cum Fast Track Court No.2, Egmore, Chennai.

Dr.G.JAYACHANDRAN, J.



WEB COPY



Crl.R.C.No.241 of 2020

rpl

Crl.R.C.No.241 of 2020

09.06.2023