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Crl.R.C.Nos.587, 588, 589 & 590 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.Nos.587, 588, 589 & 590 of 2017
and Crl.M.P.Nos.5202, 5203, 5204, 5205, 5206, 5207, 5208, 5210,
8807, 8808, 8809 & 8810 of 2017

Palanisamy

... Petitioner
in all Crl.R.Cs

VS.

M/s.N.R.K. Marketing,
Represented by its Partner,
Thiru L.Navaneetham,
27/4, Panthadi 5th Street,
Madurai – 625 001

... Respondent
in all Crl.R.Cs

Prayer in Crl.R.C.No.587 of 2017: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the records on the file of the learned Additional District and Sessions Judge, Krishnagiri in Crl.A.No.42 of 2015 dated 30.11.2015 filed against the judgment and Sentence passed in S.T.C.No.219 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court), Hosur dated 30.04.2015 and set aside the judgment rendered in Crl.A.No.42 of 2015 on 30.11.2015.

Prayer in Crl.R.C.No.588 of 2017: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the records on the



file of the learned Additional District and Sessions Judge, Krishnagiri in Crl.A.No.41 of 2015 dated 30.11.2015 filed against the judgment and Sentence passed in S.T.C.No.217 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court), Hosur dated 30.04.2015 and set aside the judgment rendered in Crl.A.No.41 of 2015 on 30.11.2015.

Prayer in Crl.R.C.No.589 of 2017: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the records on the file of the learned Additional District and Sessions Judge, Krishnagiri in Crl.A.No.40 of 2015 dated 30.11.2015 filed against the judgment and Sentence passed in S.T.C.No.216 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court), Hosur dated 30.04.2015 and set aside the judgment rendered in Crl.A.No.40 of 2015 on 30.11.2015.

Prayer in Crl.R.C.No.590 of 2017: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the records on the file of the learned Additional District and Sessions Judge, Krishnagiri in Crl.A.No.39 of 2015 dated 04.01.2016 filed against the judgment and Sentence passed in S.T.C.No.218 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court), Hosur dated 30.04.2015 and set aside the judgment rendered in Crl.A.No.39 of 2015 on 04.01.2016.

For Petitioner
in all Crl.R.Cs

: Ms.Divya Preathika
for M/s.R.Bharathkumar

For Respondent
in all Crl.R.Cs

: Mr.Naveen Infant
Legal aid Counsel



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ORDER

The same parties are involved in all these four criminal revision petitions. The issue involved is also common except for the fact that four independent cheques were issued by the petitioner/accused to the respondent and as a result, four individual complaints were filed, which ultimately ended up with four separate revision petitions. Hence, a common order is passed in all these four revision petitions.

2.The petitioner in all these four revision petitions was convicted for offence under Section 138 of the Negotiable Instruments Act. In Crl.R.C.No.587 of 2017, the petitioner was sentenced to undergo six months simple imprisonment and to pay a compensation of a sum of Rs.60,000/- (Rupees Sixty Thousands only) to the respondent. In Crl.R.C.No.588 of 2017, the petitioner was sentenced to undergo six months simple imprisonment and to pay a compensation of a sum of Rs.60,000/- (Rupees Sixty Thousands only) to the respondent. In Crl.R.C.No.589 of 2017, the petitioner was sentenced to undergo six months simple imprisonment and to pay a compensation of a sum of Rs.52,879/- (Rupees Fifty Two Thousand Eight Hundred and Seventy Nine only) to the respondent and in Crl.R.C.No.590 of 2017, the petitioner was sentenced to undergo six months



simple imprisonment and to pay a compensation of a sum of Rs.60,000/- (Rupees Sixty Thousands only) to the respondent.

3.The respondent and his wife were carrying on a partnership business under the name and style of NRK Marketing. They were dealing with the sale of industrial cables. During the course of their business, the petitioner had purchased the goods on credit basis. The petitioner was due and payable a total sum of Rs.2,38,019/- (Rupees Two Lakhs Thirty Eight Thousand and rupees Nineteen only). In discharge of the said liability, the petitioner issued four post dated cheques. When these cheques were presented by the respondent for collection with his bankers, the same was returned unpaid with an endorsement “Insufficient funds”. Pursuant to the same, the respondent issued a statutory notice. In spite of receiving the statutory notice, the petitioner neither replied for the same nor paid the cheque amount. As a result, separate complaints were filed for the four cheques that were issued by the petitioner.

4.Both the Courts below came to a conclusion that the respondent has established the legally enforceable liability and hence, legal presumption under Section 139 of the Negotiable Instruments Act was applied in favour of the respondent and it was further held that the petitioner failed to rebut the legal



presumption. In view of the same, the petitioner was convicted in each case for offence under Section 138 of the Negotiable Instruments Act and was sentenced separately in each complaint. The same was also confirmed by the Appellate Court. Aggrieved by the same, these criminal revision cases have been filed before this Court.

5.Heard Ms.Divya Preathika, learned counsel appearing on behalf of the petitioner and Mr.Naveen Infant, learned Legal aid Counsel appearing on behalf of the respondent.

6.The main defence that was taken by the petitioner in these criminal revision cases is that blank cheques were issue as security and the same has been misused by the respondent. The further ground taken by the petitioner is that there was no existing legally enforceable debt or liability. It was further contended that the person who was representing the partnership Firm did not have the proper authorization to represent the Firm and hence, the very complaint is not maintainable.

7.Both the Courts below on appreciation of evidence came to a categoric conclusion that the petitioner has not disputed the signature found in the cheques.



That apart, there was a transaction between the petitioner and the respondent. The petitioner had issued the cheques for goods that were purchased on credit basis. In view of the same, the legal presumption under Section 139 of the Negotiable Instruments Act was applied in favour of the respondent and it was held that the petitioner failed to rebut the said presumption.

8.In the considered view of this Court, the findings rendered by both the Courts below in each case, does not suffer from any perversity and there is no ground to interfere with the same.

9.When the matter came up for hearing on 23.12.2022, this Court passed the following order:

The petitioner had a business transaction with the complainant and in discharge of the business liability he issued four cheques roughly around for a sum of Rs.2,40,000/-. All the cheques were dis-honoured. Thereafter, a private complaint under Section 138 of Negotiable Instruments Act filed before the learned Judicial Magistrate, Fast Track Court No.I, Madurai in S.T.C.Nos.216, 217, 218 and 219 of 2014. The petitioner suffered conviction in all the four cases. Thereafter, the petitioner preferred an appeal before the Session Court in C.A.Nos.40, 41, 39 and 42 of 2015, respectively. These appeals were dismissed by the lower Appellate Court, against



which, the present revisions have been filed.

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2. On 27.04.2017, this Court suspended the sentence imposed on the petitioner on condition that the petitioner shall deposit 50% of the cheque amounts. Hence, a sum of Rs.1,20,000/- was directed to be deposited in two installments by order dated 24.07.2017. As per the orders of this Court, a sum of Rs.60,000/- was paid by way of demand draft on the same day and for payment of balance amount of Rs.60,000/-, the learned counsel for the petitioner sought three weeks time. Thereafter, the petitioner paid a sum of Rs.40,000/- by way of Demand Draft on 23.08.2017. So far, the petitioner has paid a sum of Rs.1,00,000/- and the balance amount is yet to be paid.

3. The contention of the petitioner is that the petitioner has to pay a sum of Rs.60,000/- and he paid only Rs.40,000/-. In the event of failure to make the payment, this Court observed that the suspension of sentence shall stand automatically vacated without any reference to this Court.

4. The learned counsel for the petitioner submits that the entire balance amount would be paid on or before 10.01.2023 and also produce the proof of the same. In view of the same, the learned counsel for the petitioner is directed to ensure the presence of the petitioner before this Court on 10.01.2023. The learned counsel is also directed to inform the respondent's counsel or the respondent about the pendency of the above cases and ensure his presence on that day.



10. When these cases were heard finally today, the learned counsel for the petitioner produced the relevant documents to substantiate that already a sum of Rs.1,50,000/- (Rupees One Lakhs Fifty Thousand only) has been paid to the respondent and only a balance of Rs.82,879/- (Rupees Eighty two thousand eight hundred and seventy nine only) remains to be paid and the learned counsel sought for some time. The counsel representing the respondent got the clarification from the respondent and submitted that the petitioner has already paid a sum of Rs.1,50,000/- (Rupees One Lakhs Fifty Thousand only) by way of Demand Draft. In view of the same, all these criminal revision cases are disposed of in the following manner:

- (a) The petitioner is directed to pay the balance amount of Rs.82,879/- (Rupees Eighty two thousand eight hundred and seventy nine only) to the respondent on or before 21.03.2023.
- (b) If the petitioner pays the amount as directed in clause (a), the offence shall stand compounded and the order of conviction and sentence passed against the petitioner in each case, will stand set aside.



(c) If the petitioner fails to pay the balance amount as directed in clause (a), the petitioner shall surrender before the Trial Court on 23.03.2023 to undergo the sentence in each case and

(d) If the petitioner fails to surrender as provided in clause (c), the Trial Court shall take steps to secure the petitioner and to send him to jail to undergo the remaining period of sentence in each case.

11. These criminal revision cases are disposed of accordingly. Consequently, connected miscellaneous petitions are closed.

12. Post these cases under the caption 'For Reporting Compliance' on 23.03.2023.

07.03.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr



Crl.R.C.Nos.587, 588, 589 & 590 of 2017

N. ANAND VENKATESH, J.

SSR

To

- 1.The Additional District and Sessions Judge, Krishnagiri.
- 2.The Judicial Magistrate (Fast Track Court), Hosur.

Crl.R.C.Nos.587, 588, 589 & 590 of 2017
and Crl.M.P.Nos.5202, 5203, 5204, 5205, 5206, 5207, 5208, 5210,
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