



CrI.RC No.632

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>20.02.2023</i>
<i>Pronounced on</i>	<i>13.03.2023</i>

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.R.C. No.632 of 2017

S.Ramesh

... Petitioner

Vs.

M/s.Shree Agarsen Steel Industries Pvt. Ltd.,
Rep. by Authorised Person
Mr.Nithyanandam
No.9, Sembudoss Street,
Chennai – 600 001.

... Respondent

Criminal Revision Petition is filed under Section 397 r/w. 401 of Criminal Procedure Code, to allow the above CrI. R.C. and set aside the judgment dated 31.01.2017 made in C.A. No.51 of 2016 on the file of the learned XIX Additional Sessions Judge (City Civil Court), Chennai confirming the judgment dated 01.02.2016 made in C.C. No.4689 of 2010 on the file of the Metropolitan Magistrate (Fast Track Court No.IV) George Town, Chennai.

For Petitioner : Mr.D.Palani
For Respondent : Mr.Rajendra Prasad Tayal

**ORDER**

WEB COPY This petition has been preferred challenging the judgment of the learned XIX Additional Sessions Judge (City Civil Court), Chennai dated 31.01.2017 made in C.A. No.51 of 2016.

2. The petitioner is the sole accused against whom the respondent had filed a private complaint for the offence under Section 138 Negotiable Instruments Act. The case as appears from the complaint is that on 24.02.2009 the petitioner approached the respondent / complainant for purchasing goods on credit basis for his Proprietorship concern by name M/s.Krishna Trading Corporation. The respondent delivered goods to the petitioner worth Rs.10,44,679/- under various invoices. Towards discharge of the same the petitioner had issued five cheques which is tabulated below:

<i>Sl.No</i>	<i>Cheque Date</i>	<i>Cheque Number</i>	<i>Amount</i>
1	24.12.2009	735566	Rs.3,37,590/-
2	24.12.2009	735567	Rs.3,70,690/-
3	24.12.2009	735568	Rs.2,84,020/-
4	24.12.2009	735569	Rs.14,070/-
5	24.12.2009	735570	Rs.38,225/-



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2.1. When the respondent presented the cheques for collection on 24.12.2009 they were returned as “Funds Insufficient” on 26.12.2019. After complying the requirement of statutory notice and other mandates the respondent had filed a complaint under Section 138 of Negotiable Instruments Act. During the course of trial, on side of the complainant, he examined himself as P.W.1 and Exs.P1 to P19 were marked. On the side of the accused, he examined himself as D.W.1 and no documentary evidence has been marked.

2.2 After considering the evidence on record, the learned trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo Simple Imprisonment for a period of two years and awarded a sum of Rs.10,44,595/- as an amount equal to the cheque amount as compensation. The petitioner challenged the above said judgment by preferring a Criminal Appeal in C.A. No.51/2016 before the XIX Additional Sessions Judge, City Civil Court, Chennai and the same was also dismissed by confirming the judgment of the trial Court. Now the petitioner had preferred this revision by challenging the judgment of the Courts below.



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3. The learned counsel for the petitioner submitted that the cheques were actually given by the petitioner to the respondent as security for the purchase of goods; the respondent / complainant is a Private Limited company and its Board of Directors have not passed any resolution authorising P.W.1 to file a case against the petitioner; without appreciating the evidence in a proper manner, the Courts below have given a concurrent finding as to the guilt of the accused and hence the revision petition should be allowed.

4. The fact that the petitioner's proprietary concern had business dealings with the respondent's company is not denied. The respondent had stated that the petitioner had placed orders with the respondent company to the tune of Rs.10,44,595/- and goods were delivered by the respondent on various invoices totalling to a sum of Rs.10,44,595/-. The petitioner did not deny his signature on the impugned cheque. His only contention is that he had offered those two cheques as security for the goods purchased by him and they have been misused by the respondent.

5. From the above contention of the petitioner, it is confirmed that the petitioner was in the habit of purchasing goods from the respondent. When the



cheques given by the petitioner were presented for collection they returned for want of sufficient funds. Even though the petitioner had stated that he had not issued the cheque towards of any his liability, those facts were not told by the petitioner in his reply notice. The petitioner consciously refused to receive the notice sent by the respondent. When the execution of the cheques were denied, the initial presumption lies in favour of the holder of the cheque who is the respondent herein. Though the said initial presumption is rebuttable, the burden of rebuttal would shift upon the petitioner. However, the petitioner had not produced any contrary evidence to disprove the initial presumption that accrued in favour of the respondent.

6. The respondent on the other hand, had produced all the documents connecting to the transaction between himself and the petitioner and proved the liability. Since the essential facts have been proved, the initial presumption got culminated into conclusive proof and the learned trial Judge and the lower appellate Judge had rightly appreciated the same and recorded the guilt against the accused. Since I do not find any factual or legal infirmity in the appreciation of the evidence, the judgment of the appellate Court requires no interference.

7. However, I feel that some leniency should be shown in the matter of



punishment. Because The learned counsel for the petitioner submitted that if short time is given, he will deposit the compensation amount of Rs.10,44,569/- to the credit of lower Court.

8. In view of the above stated reasons, this Criminal Revision Petition is partly allowed and

i) the judgment dated 31.01.2017 made in C.A. No.51 of 2016 by the learned XIX Additional Sessions Judge (City Civil Court), Chennai with regard to the finding of the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act is confirmed and regarding the punishment, the sentence of two years is modified by reducing it to six months of simple imprisonment and the compensation of Rs.10,44,569/- equivalent to the cheque amount shall be deposited within a period of six weeks to the credit of C.C. No.4689/2010 before the learned Metropolitan Magistrate (Fast Track Court No.IV) George Town, Chennai.

ii) If the compensation so awarded is paid within six weeks, the learned trial Judge shall disburse the same to the complainant, if he is alive, or his legal heirs and compound the offence.



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iii) If the compensation amount is not paid within the said time, the learned Magistrate shall issue warrant of commitment for the accused to undergo the sentence imposed upon him by judgment dated 01.02.2016 in C.C. No.4689 of 2010.

13.03.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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To:

1. The XIX Additional Sessions Judge (City Civil Court),
Chennai.
2. The Metropolitan Magistrate (Fast Track Court No.IV) George Town,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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Pre-delivery order made in
CrI.R.C No.632 of 2017

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