BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.06.2023

PRONOUNCED ON :30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.523 of 2023
and
Crl.M.P.(MD)No.7471 of 2023

Padmavathy,
Proprietrix,
HU SREERAM Agency,
Plot No.6, Madipakkam Main Road,
Kaivele, Pallikaranai,
Chennai. ... Revision Petitioner/Petitioner/Accused

Vs.

M/s Sri Balaji Networks,
represented through its Managing Partner,
P.Venkatachalapathy,
BS-3, SIDCO Industrial Estate,
Kappalur,
Madurai-8. ... Respondent/ Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the impugned order in Cr.M.P.No.938 of 2023 in S.T.C.No.4 of 2022, dated

12.05.2023, on the file of the learned Judicial Magistrate No.I, (FTC at M.L.), Madurai District and set aside the same.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.S.Srikanth

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 938 of 2023 in S.T.C.No.4 of 2022, dated 12.05.2023, on the file of the Court of the Judicial Magistrate No.I, FTC, Madurai, in dismissing the petition filed under Section 243(2) Cr.P.C., r/w Sections 45 and 73 of the Indian Evidence Act.

2. The revision petitioner is the sole accused in S.T.C.No.4 of 2022, on the file of the Fast Track Judicial Magistrate Court No.I, Madurai, facing the charge for the offences under Section 138 r/w 142 of the Negotiable Instruments Act. Pending trial, the petitioner, by invoking Sections 45 and 73 of the Indian Evidence Act, has filed the above petition to send Ex.P.3 - Minutes of the meeting dated 30.08.2021 and Ex.P.4- cheque bearing No.000089, drawn from HDFC Bank, Madipakkam Branch, Chennai to the Regional Forensic Laboratory for the expert opinion on the question as to whether Ex.P.3 was signed by the

petitioner/accused and that the date and the amount both in words and number were written by the petitioner/accused in Ex.P.4 cheque.

3. The respondent/complainant has filed a counter statement raising serious objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 12.05.2023, dismissing the petition. Aggrieved by the order of dismissal, the petitioner/accused has preferred the present Criminal Revision Case.

4. It is the specific case of the respondent/complainant in his complaint filed under Section 200 Cr.P.C., that the petitioner/accused invited the respondent/complainant to invest in her business and promised to give profit in monthly basis, that the complainant, believing her words, invested a total sum of Rs.60,00,000/- and the same was transferred to the accused through RTGS on three occasions, that both of them have entered into a memorandum of understanding on 04.03.2021, that the accused has also executed an additional security document in favour of the complainant, that since the accused had started to divert the investments and agreed profits to her some other business activities, there was a meeting held on 30.08.2021 to resolve the issues between

them, that the accused agreed to pay the complainant's respective accrued profit amount of R.14,00,000/- on or before 20.09.2021 and the same was reduced in writing also and that since the accused has not chosen to pay the amounts as agreed by her, the complainant demanded the accused to return the total investment and accrued profits and accordingly, the accused has issued a cheque dated 12.10.2021 for Rs.75,95,000/- and promised for genuine collection.

5. It is the further case of the complainant that when the cheque was presented for collection, the same was returned for want of sufficient funds in the Bank account of the accused, that the complainant has then sent a legal notice demanding the accused to pay the amount within the time stipulated and that since the accused has neither sent any reply notice nor complied with the notice demand, the complainant was constrained to file the above complaint under Section 200 Cr.P.C., for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act.

6. As already pointed out, the accused has now disputed the signature found in the settlement document dated 30.08.2021 and disputed the writings found in Ex.P.4 – cheque. As already pointed out, the accused, after the receipt

of the statutory notice, dated 05.11.2021, has not sent any reply notice. As rightly contended by the learned Counsel for the complainant, even when the complainant was in the witness box, he was not cross-examined with respect to the pleas now canvassed in the above petition. It is pertinent to note that the accused has neither disputed the issuance of the cheque nor her signature found therein. It is not the case of the accused that she has disputed the very fact of entering into a settlement on 30.08.2021 and the signatures found therein.

7. The learned Counsel for the complainant would submit that as per Section 20 of the Negotiable Instruments Act, the holder of the cheque either by himself or through any third party can very well fill up the blank cheques and it is necessary to refer Section 20 of the Negotiable Instruments Act hereunder for better appreciation;

> *"Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an in complete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not*

exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same, to nay holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead by him to be paid to thereunder."

8. As per Section 20 of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank pronote and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such Section 20 of the Negotiable Instruments Act, will have no application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.

9. The learned Counsel for the revision petitioner/accused has relied on the decision of the Division Bench of the Hon'ble Supreme Court in ***T.Nagappa Vs. Y.R.Muralidhar*** reported in ***2008(2) Crimes 219 (SC)*** and the relevant passages are extracted hereunder:

> *" Code of Criminal Procedure 1973 – Section 243(2) r/w Article 21 of the Constitution of India – An accused has a right to fair trial and to adduce evidence for that purpose – Ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.*
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> *Negotiable Instruments Act 1881 – Section 20 – Only a prima facie right, that too conditional, had been conferred upon the holder of the negotiable instrument – Request of the appellant for referring the cheque to Forensic examination was bona fide."*

10. At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in ***Oriental Bank Of Commerce vs Prabodh Kumar Tewari*** reported in ***2022 Live law SC 714***, wherein it has been held as follows:

> *" Negotiable Instruments Act, 1881 – Sections 138, 139 - A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would*

be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability."

11. In that decision, another judgment of the Three Judges Bench of the Hon'ble Supreme Court in ***Kalamani Tex Vs. Balasubramanian*** reported in ***2021(5) SCC 283*** was referred and wherein the Hon'ble Apex Court has reiterated the legal position settled in ***Bir Singh Vs. Mukesh Kumar*** reported in ***(2019)4 SCC 197***, wherein it has been held as follows:

"*14. In Bir Singh v. Mukesh Kumar, after discussing the settled line of precedent of this Court on this issue, a two-Judge Bench held:*

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial *that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

[...]

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

(emphasis supplied)"

12. The above decisions are clearly applicable to the case on hand. In the present case, according to the petitioner, she has not written the contents of the cheque. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served, if the disputed cheques are sent for expert opinion. Even assuming for argument sake, that the expert gives his opinion that the writings found in the cheque are not that

of the petitioner, that by itself would not advance the case of the petitioner further. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability and that the cheque presumption arises under Section 138 of the Negotiable Instruments Act. Section 139 of the said Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it for the discharge, in whole or in part, of any debt or other liability. In case if the accused is able to raise a probable defence which creates doubts about the existence of a legally recoverable debt or liability, the prosecution can fail. The standard of proof for rebuttal of presumption under Section 139 of the Negotiable Instruments Act is guided by prepondrance of probabilities. For deciding the above, the fact that the details in the cheque have been filled up not by the drawer, but by some other person, would be immaterial.

13. It is pertinent to note that the respondent/complainant has already filed a petition in Crl.O.P.(MD)No..17197 of 2022 seeking direction for speedy disposal of the above case in S.T.C.No.4 of 2022 within the stipulated time fixed by this Court and this Court, vide order dated 10.11.2022 directed the learned

Judicial Magistrate to dispose of the above case within a period of one month from the date of receipt of a copy of that order. The revision petitioner/accused has filed a petition for Special Leave to Appeal (Crl.) No.165 of 2023, challenging the order passed by this Court in Crl.O.P.(MD)No.17197 of 2022 for speedy disposal of the case and the Hon'ble Supreme Court, vide order dated 13.01.2023, dismissed the same.

14. It is also evident from the records that subsequently, the complainant filed a petition under Section 91 Cr.P.C., for production of accounts statements from his auditor and the same was allowed on 22.12.2022 and that the accused has filed Crl.O.P.(MD)No.1353 of 2023 challenging the order passed in Cr.M.P.No.3769 of 2022 and that this Court, by observing that the document was already exhibited through P.W.1, dismissed the petition as infructuous.

15. On considering the entire facts and circumstances and also taking note of the fact that the time frame has already been fixed by this Court for early disposal of the case and filing of the above petition without raising the pleas earlier, the order of the learned Magistrate in dismissing the petition cannot be

found fault with. Hence, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed.

16. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

30.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
SSL

To

The Court of Judicial Magistrate No.I, (FTC at M.L.),
Madurai District.

K.MURALI SHANKAR, J.

SSL

Pre-Delivery order made in
Crl.R.C.(MD)No.523 of 2023
and
Crl.M.P.(MD)No.7471 of 2023

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