IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.03.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

Crl.R.C.No.1181 of 2020

1. The Lion Packer,
   1/177, New No.311, Sithar Kovil Main Road,
   Sivathapuram, Salem

2. Y.G.Vijaya Mahendra ... Petitioners/Appellants/Accused

Vs.

R.Dhatchanamoorthy ...Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. to set aside the conviction and sentence passed in Crl.A.No.25 of 2019 by the learned Principal District and Sessions Judge, Namakkal dated 07.10.2020 by confirming the sentence imposed in S.T.C.NO.156 of 2015 dated 06.07.2019 by the learned Judicial Magistrate, Tiruchengode and allow the Criminal Revision Petition.

For Petitioners : Mr.B.Gopalakrishnan

For Respondent : Mr.M.Vignesh
for Mr. C.S.Saravanan

O R D E R

Being aggrieved by the concurrent findings of conviction and sentence imposed by the Judicial Magistrate, Fast Track Court, Thiruchengode in ST.C.N0.156 of 2015 dated 06.07.2019 and the same finding was confirmed by the learned Principal District and Sessions Judge, Namakkal in Crl.A.No.25 of 2019 on 07.10.2020, the accused herein has preferred this Criminal Revision Case.

Title	Description
Court Details	1.STC.No.156 of 2015 dated 06.07.2019 on the file of Judicial Magistrate (FTC), Tiruchengode
	2. C.A.No.25 of 2019 dated 07.10.2020 on the file of the Principal District and Sessions court, Namakkal.
Name of the accused	1. The Lion Packer, 1/177, New No.311, Sithar Kovil Main Road, Sivathapuram, Salem 2. Y.G.Vijaya Mahendra, s/o, Y.P.Ganesan, Proprietor/The Lion Packer, 1/177, New No.311, Sithar Kovil Main Road, Sivathapuram, Salem
Finding	Found guilty
Punishment details	Convicted and sentenced to undergo one

Title	Description
passed by the Trial Court	year simple imprisonment and to pay an amount of Rs.7,81,422/- as compensation to the complainant within a period of one month under Section 357 (3) Cr.P.C, in default to undergo simple imprisonment for one month for the offence under Section 138 of the Negotiable Instrument Act, 1881.
Judgment details of Appellate Court	Criminal Appeal was dismissed by confirming judgment of the trial Court.

2. **The case of the complaint is narrated in brief hereunder:-**

i) The complainant and accused are business friends for the past 5 years. The complainant used to procure paper products from the factories and supplied to the paper mills and thereby acting as a commission agent. The complainant has supplied papers to the accused procured from the following paper mills:-

1. Sri Navasakthi Paper and Boards,
2. Sri Velavan Paper and Boards and
3. Sivadharshini Paper Private Limited

ii) The accused on instalments paid an amount of Rs.1,45,636/- to the complainant, payable to the above said paper mills. The remaining amount payable by the accused to the above said paper mills comes to Rs.7,81,442/-. At the request of a common person S.S.Muthaiah, Owner, Annaporani Enterprises, complainant agreed to give loan for the above said amount to the accused on 29.12.2013 and the accused received the said amount at the residence of the complainant on 02.01.2014. For which accused issued two cheques – Cheque bearing No.001022 dated 04.01.2014 for an amount of Rs.2,50,000/- and another cheque bearing No.001087 dated 20.01.2014 for an amount of Rs.5,31,442/- drawn on City Union Bank, Salem Branch by affixing signature in the presence of the complainant.

iii) The accused repaid the due amounts to the above said three paper mills by receiving the hand loan from the complainant.

iv) When the two cheques were presented at the request of the accused on 04.03.2014 to the banker of complainant namely Union Bank of India, Thiruchengode Branch for encashment, both cheques were returned with return memorandum for the reason "funds insufficient". He was informed about the same on 14.03.2014.

v) The statutory notice dated 12.04.2014 was issued by the complainant to the accused, calling upon the accused to repay the amount. On receipt of the legal notice on 15.04.2014 accused did not repay the debt.

vi) The accused without arranging sufficient funds, in order to defraud the complainant issued the above said cheques. Even after the receipt of the legal notice, he did not come forward to repay the debt, would amount to commission of offence under Section 138 of Negotiable Instrument Act, 1881 and he is liable to be punished for the same.

2.The defence set up by the accused is that during the business transactions, he issued six unfilled signed cheques to the complainant then and there. After payment for the products, the complainant did not return the cheques. Therefore, the accused states that the cheques were issued to the complainant for security purposes.

3. He has paid the amount to the complainant through bank and in person. The bank receipts are Ex.D.1 (7 challans) and Ex.D3 (3 challans).

4. The learned counsel Mr.B.Gopalakrishnan appearing for the petitioners/accused strenuously argued that the accused never obtained

any loan from the complainant. During business transactions, the accused issued cheques for security purpose and the same were misused by the complainant and false case is foisted against him. Whereas, these details were not appreciated by both the trial Court and the appellate Court in proper perspective and the accused was wrongly convicted for the offence under Section 138 of the NI Act and pleaded to set aside the same.

5. Per contra, Mr.M.Vignesh,the learned counsel appearing for the respondent vehemently argued that if the accused had issued the cheques only for security purpose, he should have issued reply notice explaining the details. Signature in the two cheques are not denied by the accused. It is his further argument that, once the signature is admitted, then presumption under Section 139 of the NI Act arise in favour of the complainant. The said presumption was not rebutted suitably by the accused.

6. At trial, complainant has examined himself as P.W.1 and nine documents were marked. Cheques two in number (Dated 02.01.2014) are Ex.P.1 and Ex.P.2. Invoices (Nos.67, 260, 302, 303, 411 and 412) six in number is Ex.P.9. On the accused side, accused (D.W.1) and one Rajesh Kumar (D.W.2) were examined and before the Trial Court,

four exhibits were marked and in the criminal appeal eight documents were marked by the accused.

7. It is the evidence of P.W.1 Dhakshanamoorthy that he knows the accused for the past five years. He used to procure paper products and supplied the corrugated box to the companies and acting as a Commission Agent. The accused used to receive paper products through him from the Sri Navasakthi Paper and Boards, Sri Velvan Paper and Boards and Sivadharshini Paper Private Limited for an amount of Rs.9,27,078/-. The invoice details are given hereunder:

Sl. No.	***Date***	***Company***	***Invoice No.***	***Weight***	***Amount***	***Delivery***
1	31.05.2015	Sri Navasakthi Paper & Boards	67	6602 kgs	1,51,073	31.05.13
2	24.08.2013	Sri Velavan Paper & Boards	260	6874 Kgs	1,59,216	24.08.13
3	01.12.2013	Srivadharshini Papers Pvt. Ltd	302	5245 Kgs	1,17,094	02.12.13
4	01.12.2013	Srivadharshini Papers Pvt. Ltd	303	6090 Kgs	1,35,958	02.12.13
5	27.12.2013	Srivadharshini Papers Pvt. Ltd	411	8742 Kgs	2,02,482	28.12.13
6	27.12.2013	Srivadharshini Papers Pvt. Ltd	412	6962 Kgs	1,61,255	28.12.13
			Total Amount Rs.9,27,078/-			

8. It is his further evidence that the accused through bank and in person on instalments paid an amount of Rs.1,45,636/- and in turn the complainant paid to the above said paper companies at the request of the accused. The remaining amount was demanded by the three paper companies to the accused through him. When the accused was asked to repay the said remaining due amount in the presence of S.S.Muthaiah, owner of Annaporani Enterprises, accused promised to pay the amount within a month and requested him to issue a loan of Rs.7,81,442/- in order to pay the due amounts to the above said paper companies. On 02.01.2014, accused came to his house and received the said amount as a hand loan and issued two cheques dated 04.01.2014 for an amount of Rs.2,50,000/- and another cheque dated 20.01.2014 for an amount of Rs.5,31,442/-. The accused put the signature in both the cheques in his presence and handed over the same. It is his further evidence that on his assurance, when he presented the two cheques (Ex.P1 and Ex.P2) to his banker, Union Bank of India, Thiruchengode Branch for encashment, both the cheques were returned with the reason as "funds insufficient" on 05.03.2024 and an intimation was received by him on 14.03.2014. The complainant

further states that for his legal notice dated 12.04.2014, despite the receipt of notice by the accused on 15.04.2014, he did not chose to either repay the debt or send reply notice. The accused without keeping sufficient amount in his account, in order to defraud the complainant he issued the two cheques. Despite the receipt of notice, he did not come forward to repay the debt and he is liable to be punished under Section 138 of the NI Act.

9. During the cross examination, a question was posed to the complainant/P.W.1 that during the business transactions, the cheques which were issued for the security purpose were filled up by the complainant was denied by him.

10. About the presumption dealt with under Section 139 of the Negotiable Instrument Act, 1881, It is useful to refer the observations made by the Hon'ble Supreme Court in the following cases:-

i) In *Rangappa vs. Sri Mohan [(2010) 11 SCC 441],* the Hon'ble Supreme Court observed that “The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of

“”*preponderance of probabilities”*, similar to a defendant in a civil proceeding.

ii). The Hon'ble Apex Court in *Basalingappa vs. Mudibasappa* [*CDJ 2019 SC 471]* has held that “In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words *“until the contrary is proved”* occurring in Section 139 do not mean that the accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability does not exist.”

iii). In *Rajesh Jain Vs. Ajay Singh reported in (2023) 10 SCC 148,* the Hon'ble Supreme Court held that the Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance of the cheque and secondly, in the event where the complainant proves that cheque was executed in his favour by the drawer.

iv). It was further held in the *Rajesh jain case* that the presumption takes effect even in a situation where the accused contended that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. It was further held by the Hon'ble Apex Court that thus, soon as the complainant discharges the burden to prove that the cheque was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act assists shifting the burden on the accused. He has to prove that the cheque was not received by the bank towards discharge of any liability.

11. Therefore, law is well settled that once the signature found in the cheque is admitted by the accused, then the presumption arise under Section 139 of the NI Act in favour of the complainant. The presumption is a rebuttable one. Accused may rebut the presumption through oral or documentary evidence or he can even rely upon the cross examination details of the complainant. The defence put forth by the accused is a probable one or not is the pivot issue to be decided.

12. From the evidence of P.W.1 and D.W.1, it appears that the complainant and accused have business transactions. The complainant is a Commission Agent dealing with paper products, he procures paper products from the paper mills and supplies to the needy person on

commission basis. These details are not in dispute.

13. In Page No.4 of the proof affidavit of P.W.1 and in the complaint, it has been stated that the accused received a hand loan of Rs.7,81,442/- from him and paid his dues to the three paper mills as mentioned supra. But these details were not admitted by the accused. In order to prove the same on the accused side, the complaint filed by M/s.Sivadharshini Papers Private Limited against him under Section 138 of the NI Act is marked as Ex.D.5 copy of the complaint dated 11.12.2015. Therefore, the above said details given by the complaint has proven the fact that the accused said details are not true.

14. It is relevant to note that during cross examination of P.W.1 (Complainant) and through the evidence of D.W.1 (Accused) the accused has not denied the signature found in Ex.P.1 and Ex.P.2 Cheques. Then the presumption under Section 139 of the NI Act comes into play in favour of the complainant. In order to rebut the presumption, accused examined himself as D.W.1 and one Rajesh kumar, Manager of Sri Navasakthi Paper Mills is examined as D.W.2. It is his evidence that the complainant purchased products on 13.07.2013 for Rs.55,000/-, on 15.07.2013 for Rs.45,000/- and on 18.08.2013 for Rs.51,073/- and paid the money through invoice No.67 (Ex.D.4 dated

31.05.2013). Ex.D.4 is the invoice raised by the Sri Navasakthi Paper Boards in the name of the accused "The Lion Packer" and net amount is mentioned as Rs.1,51,073/-. D.W.2 Rajesh Kumar has stated that the amount is paid by the complaint. In what way, this portion of evidence is helpful for the accused in rebutting the presumption is not known. Because D.W.2 Rajesh Kumar would state that the complainant purchased paper products from their paper mill on various states and paid the amounts.

15. The defence set up by the accused is that during the business transactions, he issued Ex.P.1 and Ex.P.2 cheques to the complainant herein for security purpose. But this was emphatically denied by the complainant. It is the candid case of the complainant that the accused borrowed hand loan of Rs.7,81,442/- and issued Ex.P.1 and Ex.P.2 cheques after signing in his presence at his residence for the amount of Rs.2,50,000/- and Rs.5,31,442/-.

16. When the accused was questioned under Section 251 Cr.P.C., he has answered that he did not receive any loan from the complainant (P.W.1) and during business transactions, he issued the above said two cheques, for security purpose. When he was questioned under Section 313 Cr.P.C., he has stated that the evidence

are false and reiterated the same details as mentioned above.

17. The trial Court has observed that it is unable to ascertain the fact of preponderance of probabilities and the presumption arise under Section 139 of the NI Act was not rebutted by the accused. It was further observed by the trial Court that there is no option except to fix the criminal liability on the accused under Section 138 of the NI Act and found guilty of the accused.

18. The appellate Court has concluded that the accused has failed to rebut the presumption drawn in favour of complainant and dismissed the appeal.

19. It is made clear that once the accused has not denied the signature found in Ex.P.1 and Ex.P.2 cheques, then the legal presumption under Section 139 of the NI Act arise in favour of the complainant and the presumption was not rebutted by the accused. The plausible conclusion is that the accused has utterly failed to raise probable defence and this Court does not find any perversity in the findings of both Trial Court as well as the Appellate Court.

20. In fine, this Criminal Revision case is dismissed. In the result, the conviction and sentence passed by the trial Court stands confirmed.

21. The trial Court shall issue warrant to the accused in order to serve the sentence imposed by it within one month from the date of receipt of copy of this judgment.

27.03.2024

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Index : Yes/ No
Internet : Yes/ No
Neutral Citation : Yes/ No
Speaking order/ Non-speaking order

To

1. The Principal District and Sessions Court, Namakkal
2. The Judicial Magistrate, Tiruchengode

R.KALAIMATHI, J.

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Crl.R.C.No.1181 of 2020

27.03.2024