IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

Crl.R.C.No.1146 of 2020

A.M.Marketing Associates,
Prop.M.Arun, Male – 55 years/2015,
S/o.K.Masilamani,
No.74, Thepakulam 3rd Street,
Coimbatore – 641 001. ... Petitioner/Accused

vs.

Sri Amman Precision Component (P) Limited,
Rep by its Managing Director -
R.Padmanaban, 57 years/2015,
S/0.Mr.Ramasamy,
Shed No.155, SIDCO Industrial Estate,
Malunichampatti (PO),
Coimbatore – 641 021 ... Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the Judgment dated 17.12.2019 made in C.A.No.346 of 2018 on the file of V-Additional District and Sessions Judge, Coimbatore, confirming the Judgment and conviction dated 02.08.2018 made in C.C.No.192 of 2015 on the file of Judicial Magistrate, Fast Track Court No.II, Magisterial Level, Coimbatore, the petitioner/accused found guilty under Section 138 of the Negotiable Instruments Act, sentenced to undergo six months simple imprisonment and directed to pay compensation of Rs.1,50,000/- to the Respondent/Complainant with interest at the rate of 6% per annum within one month in default to undergo three months simple imprisonment.

For Petitioner : Mr.B.R.Shankaralingam
For Respondent : Mr.K.Govi Ganesan

ORDER

Being aggrieved by the concurrent findings of conviction by the trial Court (Judicial Magistrate, Fast Track Court-II, Coimbatore) in C.C.No.192 of 2015 dated 02.08.2018 as well by the V Additional District Court, Coimbatore in Crl.A.No.346 of 2018 dated 17.12.2019. The accused has preferred this revision.

2. The case of the complainant in brief is given here under:-

i) The complainant is a manufacturer of Aluminium Pressure Die Castings and other related materials. The accused is a customer of the complainant, used to buy cable connection box.

ii) In the course of the business transaction, an amount of Rs.2,70,000/- is due from the accused to the complainant herein as per the accounts towards outstanding liability. The particulars with regard to the above said amount due is given hereunder:-

Sl.No.	Date	Bill No.	Amount [Rs.]
1.	22.10.2013	62	18,296.00
2.	21.11.2013	76	21,643.00
3.	23.12.2013	88	31,014.00
4.	09.01.2014	95	34,414.00
5.	15.02.2014	100	25,436.00
6.	04.03.2014	107	24,189.00
7.	22.04.2014	06	35,280.00
8.	02.05.2014	9	30,424.00
9.	19.05.2014	17	19,640.00
10.	18.06.2014	27	33,416.00
		Total LESS	2,73,752.00 3,752.00
		Net Total	2,70,000.00

iii) The complainant made a demand to pay the outstanding amount of Rs.2,70,000/- to the accused by way of a letter dated 30.09.2014. The accused on receipt of the said letter has confirmed the said statement in the letter dated 30.09.2014.

iv) To discharge the above said liability, on the same date, the accused issued two post dated cheques drawn on "Corporation Bank, Coimbatore Branch, Coimbatore 641 001" bearing No.419564 dated 27.10.2014 for Rs.1,50,000/- and another cheque bearing No.419565 dated 25.11.2014 for Rs.1,20,000/- in favour of the complainant herein.

v) The complainant presented the first cheque bearing No.419564 dated 27.10.2014 for Rs.1,50,000/- with his banker "Tamil Nadu Mercantile Bank Limited, Podanur Branch, Coimbatore" towards part satisfaction. The said cheque was dishonoured with the note 'Account Closed' under a Return Memorandum dated 30.10.2014.

vi) The complainant caused to issue legal notice to the accused on 20.11.2014, calling upon him to pay the said amount. Though the accused received the said notice on 24.11.2014, he did not respond to the same. The accused knowing fully well that his account is closed and not in operation, issued the cheque towards legally enforceable debt. On receipt of legal notice also he did not come forward to repay the said amount. Clearly, the act is punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The defence set up by the accused is that there is no authorization given to the complainant to take legal action under Section 138 of the Negotiable Instruments Act, 1881. He has paid an amount of Rs.2,00,000/- on 29.09.2014, therefore he has to pay only Rs.70,000/-. As on the date of complaint, the accused was not liable to pay Rs.1,50,000/- and Rs.1,20,000/- i.e. Rs.2,70,000/-.

4. The learned counsel Mr.B.R.Shankaralingam appearing for the appellant/accused strenuously argued that the appellant company is registered under the Companies Act. Admittedly, the complaint was laid without any company resolution authorizing the appellant to take legal action. It is his further argument that the accused is a proprietorship concern and his name should precede the name of the proprietorship concern. For these reasons, the complaint is liable to be dismissed. He would further contend that for total amount due of Rs.2,70,000/-, admittedly the accused has paid Rs.2,00,000/- on 29.09.2014 and only Rs.70,000/- alone is due. For which the complaint is laid for Rs.1,50,000/-. For these reasons, complaint is not maintainable in law. To substantiate his arguments, the following judgments were referred to:-

1. *Anas Industries having its office at No.3 Poomagal St., Chennai 97 rep. by its Prop.S.Ram Mohan Vs. Sri Suresh Bafna, Prop:Mansi Mercantile Company, rep. by its Power of Attorney Holder Sri Kantilal S.Dave* [1999 (1) LW (Crl.) 405]
2. *M/s. Vadivel Sizing and Weaving Mills (P) Limited rep. by its Managing Director Mr.S.P.Saminathan, Arulpuram, Veerapandi Via., Tirupur 641 605 and another Vs. M/s. Fenner (India) Limited, Textile Division, Administrative Office, 7/54, Junction Main Road, 3rd floor, Ideal Garden*

Complex, Salem 4. rep. by its power of attorney holder Mr.C.Ravichandran [*Crl.R.C.No.98 to 103 of 2009 dated 20.12.2012]*

5. Per contra, Mr.K. Govi Ganesan, learned counsel appearing for the respondent/complainant vehemently contended that the appellant has filed revision against the concurrent finding of conviction and the scope of revision is very limited. It is his further contention that based on the technical defects, the complaint cannot be dismissed. It is his further contention that the accused has acknowledged in Ex.P.2-payment request of the complainant company, addressed to the accused, in which the accused has acknowledged that he owe Rs.2,70,000/- to the complainant as per the book of accounts of the complainant company. To buttress his argument, the following judgments were referred:-

1. *Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and Another [(2022) 2 SCC 355]*
2. *Standard Chartered Bank Vs. Ravi Bhandai [2002 (63) DRJ 502]*
3. *M.M.T.C. Limited and another Vs. M/s Medchi Chemicals and Pharama (P) Ltd., and another [AIR 2002 SC 182]*
4. *Vishwa Mitter Vs. O.P.Podar* [*(1983) 4 SCC 701]*

6. The Hon'ble Supreme Court in *M.M.T.C. Limited and another Vs. M/s Medchi Chemicals and Pharama (P) Ltd., and another [AIR 2002 SC 182]* has held that Section 142 of the Negotiable Instruments Act, 1881 provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque.

7. The Hon'ble Supreme Court in *Vishwa Mitter Vs. O.P.Podar* reported in *(1983) 4 SCC 701 has observed that* anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It was further held that no court can decline to take cognizance on the sole ground that the complainant is not competent to file the complaint. ....the only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. Therefore, the arguments put forth by the learned Mr.B.R.Shankaralingam appearing for the appellant has no force.

8. At trial, on the complaint side, complainant has examined himself as P.W.1 and eight documents were marked. On the accused side, accused and two other witnesses were examined.

9. It is the evidence of P.W.1 that the accused who is a customer of the complainant had purchased cable connection boxes and in the course of business transaction, an amount of Rs.2,70,000/- is due from the accused as per the Ex.P.2 dated 30.09.2014, which was acknowledged by the accused in Ex.P.2 itself. P.W.1 further states that to discharge the liability of Rs.2,70,000/- accused issued two post dated cheques drawn on "Corporation Bank, Coimbatore Branch, Coimbatore 641 001" bearing No.419564 dated 27.10.2014 for Rs.1,50,000/- and another cheque bearing No.419565 dated 25.11.2014 for Rs.1,20,000/- in favour of the complainant herein. The cheque for Rs.1,50,000/- was presented with his banker "Tamil Nadu Mercantile Bank Limited, Podanur Branch, Coimbatore" towards part satisfaction and the cheque was returned with endorsement as “Account Closed” and the legal formalities are compiled with. On receipt of legal notice, accused did not choose to repay the said amount.

10. Accused has examined himself as D.W.3, the defence put up by the accused is that for the due amount of Rs.2,70,000/-, he has paid an amount of Rs.2,00,000/- on 29.09.2014 which was admitted by P.W.1 and therefore the complaint laid for Rs.1,50,000/- in "C.C.No.192 of 2015" is not maintainable in law.

11. It is useful to refer the observations made by the Hon'ble Supreme Court in the following cases:-

1. 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.

2. 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.”

3. 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.

4. It was further held 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.

5. The Hon'ble Supreme Court in *Gimpex Private Limited vs. Manoj Goel [(2022) 11 SCC 705]* has listed the ingredients forming the basis of the offences under Section 138 of the Negotiable Instruments Act, 1881 which is given here under:-

1. *"The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account;*
2. *The cheque being drawn for the discharge in whole or in part of any debt or other liability;*
3. *Presentation of the cheque to the bank arranged to be paid from that account;*
4. *The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount;*
5. *A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and*
6. *The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice."*

12. From the careful perusal of the evidence of P.W.1 and R.W.1, it is clear that the signature found in the Ex.P.1 cheque was not denied by the accused. Therefore, the presumption under Section 139 of the Act arise in favour of the complainant that the cheque was issued

towards discharge of legally enforceable debt. It is a rebuttable presumption. Law is well settled that the accused may discharge the evidential burden as it is not heavy. As regards the nature of evidence, it may either be oral or documentary evidence or based on the admission made by the complainant.

13. P.W.1 has also in his cross examination has stated that "அந்த தேதியில் எதிரி எனக்கு ரூ.2000/– பாக்கி தரவேண்டி இருந்தது என்றும் அதனால் முன் தொகை கொடுத்தால் தான் நான் பொருட்களை சப்ளை செய்வேன் என சொன்னதால் எதிரி எனது கணக்கிற்கு 29.09.2014 ல் ரூ.2 லட்சம் எனது கணக்கிற்கு செலுத்தியுள்ளார் என்றால் பணம் செலுத்தியது உண்மை. ஆனால் முன் தொகையாக பெற்றதாக சொல்வது தவறு. ஏற்கனவே எதிரிக்கு சப்ளை செய்த பொருட்களுக்கு தான் இந்த தொகை பெறப்பட்டது.

14. The accused was examined as D.W.3 has also admitted the signature found in Ex.P.2 payment request. It is his contention that he signed in Ex.P.2 under the impression that it is a receipt for having sent an amount of Rs.2,00,000/- to the complainant to his account. However, he has transacted through bank. Necessarily the details of money sent will be found in the statement of account of both. From the evidence of D.W.3 Arun (Accused), it appears that he is running a

business under the name and style of A.M. Marketing and he is also running a Photoshop in the name and style of Arun Photo Spot.

15. From the evidence of D.W.3, it is clear that in the Ex.P.2, he signed under the impression that it is a receipt, cannot be acceptable. Therefore, the contention of the accused that out of Rs.2,70,000/- due, he paid Rs.2,00,000/- by crediting the amount in the account of the complainant is totally incorrect.

16. As per Ex.P.2 payment request, the amount due is Rs.2,73,752/-. But two complaints were laid. One for an amount of Rs.1,50,000/- and another complaint was laid for an amount of Rs.1,20,000/-.

17. The transaction between the complainant and accused is admittedly business transaction. The total amount due (Rs.2,70,000/-), is clearly mentioned in Ex.P.2 payment request letter with all details. A legal notice (Ex.P.4) was issued on 20.11.2014. Much earlier to Ex.P.4 legal notice, Ex.P.2 payment request was made by way of Ex.P.2 in the letter pad of complainant company. Ex.P.2 payment request is extracted hereunder:-

"Date:30.09.2014

To

Mr.M.Arun

AM Marketing Associates,

74, Theppa Kulam Street No.3,

Coimbatore-1.

Sub:Pending Payment Request/Regarding

Dear Sir,

With reference to our books of accounts it shows the below mentioned bills are long pending for payment as on 30.09.2014.

2013-14

Bill no.		***Rs.***
62/22.10.2013	-	*18,296.00*
76/21.11.2013	-	*21,643.00*
88/23.12.2013	-	*31,014.00*
95/09.01.2014	-	*34,414.00*
100/15.02.2014	-	*25,436.00*
107/04.03.2014	-	*24,189.00*

2014-15

Bill No.		***Rs.***
06/22.04.2014	-	*35,280.00*
09/02.05.2014	-	*30,424.00*
17/19.05.2014	-	*19,640.00*
27/18.06.2014	-	*33,416.00*
Total	_	*2,73,752.00*
Less	_	*3,752.00*
Net Total	_	*2,70,000.00*

Based on above details pending payment is Rs.2,70,000.00. Kindly return one copy duly signed and sealed, in confirmation of the same. He request to give firm written commitment for this payment and also release the payment immediately.

Thanking You,

Yours faithfully,

For A.M. Marketing Associates
(Sd -) xxx
Proprietor.

For Sri Amman Precision Component (P) Ltd.
(Sd-) xxx
Managing Director.

I/We hereby confirm above statements are correct."

18. It is evident from perusing Ex.P.2, accused received a copy and signed in the Ex.P.2 payment request . He has also called upon to make payment of Rs.2,70,000/-.

19. On 08.04.2015, the accused was furnished the copy of the compliant. On 15.04.2015 when the accused was questioned, he has answered that it is a false case. During questioning under Section 313 Cr.P.C., he answered that it is a false case.

20. Based on the aforesaid observations, it is concluded that the accused has failed to raise a probable defence. Therefore, the evidential burden placed on the accused was not discharged by him

suitably. Based on the details given in the legal notice of the complainant, contents of the complaint, evidence and documents of the complainant and answers given by the accused during questioning, the defence set up by the accused is totally not acceptable. The trial court as well as the appellate court have in a proper perspective analysed the factual circumstances and came to the conclusion that the accused is guilty under Section 138 of the Negotiable Instruments Act, 1881. I find no valid reason to interfere with the same

21. Based on the detailed discussion, this Criminal Revision case stands dismissed. In the result, conviction and sentence passed by the trial Court stands confirmed. The trial Court shall issue warrant against accused to secure and send him to prison in order to serve the sentence within two weeks from the date of receipt of copy of this judgment.

20.03.2024

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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R.KALAIMATHI, J.

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To

1.The V Additional District and Sessions Judge, Coimbatore

2. The Fast Track Court No.II, Magisterial Level, Coimbatore

Crl.R.C.No.1146 of 2020

20.03.2024

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