



Crl.R.C.Nos.1577, 1578 and 1579 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.Nos.1577, 1578 and 1579 of 2017

1.M/s.Saikrishna Engineering Pvt. Ltd.,
by its Managing Director & Director

2.M.Madavan, Managing Director
No.18, Self Help Industrial Estate,
Keelakattalai,
Chennai – 600 177.

... Petitioners (in all Crl.RCs)

vs.

M/s. Deccan Engineers,
a Partnership firm rep. by its
Managing Partner
F. Mohammed Anees
No. 5/121-C2, Junction Main Road,
State Bank Colony Bus Stop,
Salem – 4.

... Respondent (in all Crl.RCs)

Common Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the judgment and orders dated 18.09.2017 passed in C.A.Nos.93, 92 and 94 of 2016 by the II Additional District and Sessions Judge, Salem confirming the judgment and orders dated 14.09.2016 passed in C.C.Nos.288, 287 and 289 of 2013 by the Judicial Magistrate No.5, Salem.



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For Petitioners : Ms.S.Sasikala
(in all Crl.RCs)

For Respondent : Mr.R.Nalliyappan
(in all Crl.RCs)

COMMON ORDER

Challenging the conviction and sentence passed by the learned II Additional District and Sessions Judge, Salem, in C.A.Nos.92, 93 and 94 of 2016, dated 18.09.2017 confirming the conviction and sentence passed by the Judicial Magistrate No.5, Salem, in C.C.Nos.287, 288 and 289 of 2013, dated 14.09.2016, the present Criminal Revision cases are filed by the accused 1 and 2.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present criminal revisions would also be indicated.

3. The case of the respondent/complainant in a nutshell is as follows:

The complainant is a Partnership Firm. The complainant supplied electrical equipments to the tune of Rs.67,21,122.72/- to the accused/company on credit basis. According to the complainant, the



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accused paid only a sum of Rs.24,06,760/- and for the balance amount of Rs.43,14,362.72/- issued the following three cheques drawn on Bank of Maharastra, T.Nagar, Chennai:-

Sl. No.	Date	Cheque No.	Amount in Rs.
1	19.01.2013 (Ex.P1 in C.C.No.288/2013)	429357	Rs.10,00,000/-
2	21.02.2013 (Ex.P1 in C.C.No.287/2013)	429358	Rs.15,00,000/-
3	22.03.2013 (Ex.P1 in C.C.No.289/2013)	429359	Rs.18,14,362.72/ -

When the cheque dated 19.01.2013 was presented for collection by the complainant on 28.03.2013 through his banker viz., Indian Overseas Bank, Fairlands Branch, Salem, the same was returned for the reason 'exceeds arrangement', as is seen from the cheque return memo (Ex.P2). At the request of the revision petitioner, the complainant presented the cheques dated 21.02.2013 and 22.03.2013 and the same were returned for the reason 'Payment stopped by the drawer', as is seen from the cheque return memo (Ex.P2). Thereafter, the complainant issued a statutory notice on 29.03.2013 (Ex.P6 in C.C.No.288/2013, Ex.P5 in C.C.Nos.287 and 289/2013 respectively) through his lawyer to the



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accused demanding the latter to pay the amount due under the cheques within a period of 15 days from the date of receipt of the notice. According to the complainant, though the accused received the said notice on 02.04.2013, as is evidenced by the postal acknowledgement cards (Ex.P7 in C.C.No.288/2013, Ex.P6 in C.C.Nos.287 and 289/2013 respectively), he did not come forward to make good the payment and did not also send any reply.

4. Therefore, the complainant filed private complaints under Section 200 of Criminal Procedure Code before the Judicial Magistrate No.5, Salem, in C.C.Nos.288, 287 and 289 of 2013 against the revision petitioners/accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused/revision petitioners under Section 204 Cr.P.C. On appearance of the accused, the Judicial Magistrate furnished copies of records to them under Section 207 Criminal Procedure Code. When the revision petitioners/accused were



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questioned with regard to the substance of accusation made against them, they pleaded not guilty. Therefore, the case was posted for trial.

5. On the side of the complainant, the complainant examined himself as PW.1 and one another witness viz., Subba Raju (PW.2)-Senior Manager, Bank of Maharashtra and marked Ex.P1 to Ex.P18.

6. When the revision petitioners/accused were questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, they denied of having committed any offence. However, they did not examine any witnesses on their side.

7. The 1st accused is the company and the 2nd accused is the Managing Director of A1-Company. The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, acquitted the 3rd accused (wife of 2nd accused) and convicted the 1st and 2nd accused for the offence punishable under Section 138 of the Negotiable



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Case No.	Petitioners Rank	Provision under which convicted	Sentence
C.C.No.288/2013	A1	Under Section 255(2) Cr.P.C.	To pay compensation of Rs.10,00,000/- to the complainant.
	A2		Simple imprisonment for one year and to pay a compensation of Rs.10,00,000/- to the complainant, in default to undergo simple imprisonment for three months.
C.C.No.287/2013	A1	Under Section 255(2) Cr.P.C.	To pay compensation of Rs.15,00,000/- to the complainant.
	A2		Simple imprisonment for one year and to pay a compensation of Rs.15,00,000/- to the complainant, in default to undergo simple imprisonment for three months.
C.C.No.289/2013	A1	Under Section 255(2) Cr.P.C.	To pay compensation of Rs.18,14,362.72/- to the complainant.
	A2		Simple imprisonment for one year and to pay a compensation of Rs.18,14,362.72/- to the complainant, in default to undergo simple imprisonment for three months.

8. Aggrieved over the same, the 1st and 2nd accused/revision



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petitioners filed appeals in C.A.Nos.92, 93 and 94 of 2016 before the II Additional District and Sessions Judge, Salem. The learned II Additional District and Sessions Judge, Salem, after analysing the oral and documentary evidence on record, concurred with the findings of the trial court and confirmed the conviction and sentence vide his judgement and orders dated 18.09.2017. Aggrieved over the same, the present criminal revision cases are filed by the Accused 1 and 2.

9. It is represented by the learned counsels for the revision petitioners/accused and the respondent/complainant that M.Madhavan-(2nd accused) is no more. The death extract is also filed before this Court. Therefore, the case against M.Madhavan stands abated.

10. Since both the Courts below had directed M/s.Saikrishna Engineering Private Limited represented by its Managing Director and Director to pay compensation of Rs.10,00,000/-, Rs.15,00,000/- and Rs.18,14,362.72/- to the respondent/complainant, the present criminal revision cases are taken up for hearing as regards the 1st revision



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petitioner/1st accused alone.

11. Ms.S.Sasikala, learned counsel for the 1st revision petitioner would contend that both the Courts below had not properly analysed the oral and documentary evidence and therefore, the conviction and sentence passed by both the Courts below are liable to be set aside.

12. Per contra, Mr.R.Nalliyappan, learned counsel appearing for the respondent/complainant would contend that the respondent/complainant had adduced adequate evidence to show that the revision petitioners failed to repay the amount due under the cheques. His further contention is that the revision petitioners, with a *mala fide* intention, had closed their account with their bank. According to him, both the Courts below, after analysing the oral and documentary evidence adduced on both sides in the right perspective had come to the conclusion that the accused had committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and therefore, there is no reason for this Court to interfere with the same.



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13. At the outset, it may be observed that the signatures on the cheques were not denied by the revision petitioners. Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved. In the instant case, the 1st revision petitioner did not issue any reply to the statutory notice issued by the complainant.

14. Though a plea was taken before the trial court that the cheques were issued as a security, the same has not been established by way of adducing acceptable evidence. Even assuming that the cheques were issued only for security purpose, it would not preclude the complainant from getting the same encashed, if the revision petitioners do not repay the amount due to the complainant. This is more so because the cheques are issued as security for prompt repayment of the amounts. It is not the case of the accused that they had repaid the entire amount due to the complainant.

15. Another plea taken before the Trial Court was that goods



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were not supplied to them by the complainant. As already observed, the revision petitioners did not send any reply notice and in this regard, the observation of the Trial Court is extracted hereunder:-

“18. But, in cross of P.W.1, the defence counsel has raised as many as questions and relied only on the basis of Ex.P4 only. Many suggestive questions were put forth quoting the contents of Ex.P4 only. Here it is pertinent to note that a suggestion is important admission of defence. Hence, the issuance of legal notice Ex.P.4 and its contents are clearly admitted by the accused persons. Hence, the defence taken by the accused that the legal notice not sent by them are of no chance to stand to discharge the onus or raise reverse onus statutory clauses as per section 139 as reiterated in 2010 (11) SCC 441.”

16. The next plea before the trial court was that since the complainant is a Partnership Firm, the private complaint given by them is not maintainable. Both the Courts below has rightly negated this contention in view of the specific provision of Section 69 (2) of Indian Partnership Act, which is applicable only to civil cases and not to



criminal cases. The Appellate Court in his orders has observed thus:-

“21. The accused therefore were required to establish on record with their evidence the following defences taken by him : -

(a) that there is no legally enforceable debt or liability on the date of Ex.P1 cheque and the said cheque was given to the complainant only as security; (b) that accused were not served with the statutory notice and therefore the complaint is bad for want of compliance of Sec.138(b) of the Negotiable Instruments Act; (c) that the complainant firm is an unregistered one and therefore the complaint is not maintainable under Sec.69 of the Indian Partnership Act.

22. Firstly, the accused was required to establish that there was no legally enforceable debt or liability and the cheque in question was issued only towards security. While the accused took such a defence, have not chosen to examine either themselves or any other witness to show that there was no legally enforceable debt or liability. The complainant through his evidence, marked the documents Ex.P.8 to P.10 namely purchase order dated 08.03.2012 invoices (15 nos.) from 19.03.2012 to 31.03.2012 and copy of the ledger maintained by the complainant for the period from 01.04.2012 to 28.02.2013. They show that the accused



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placed purchase order and in compliance of the said order, the complainant supplied WIPRO luminaries to the accused. Further in Ex.P.4 notice dated 25.02.2013, the accused specifically admitted the placement of purchase order No.032 dated 08.03.2012 for a value of Rs.1,46,07,688/- and admitted supply of materials to the tune of Rs.67,21,122.72. It was also admitted that the accused paid Rs.2406760/- towards part payment and the remaining has to be paid. In paragraph no.8 of the said notice, it is mentioned that three cheques for Rs.10 lakhs, Rs.15 lakhs and Rs.18,14,362.72 were issued to the complainant but only towards security. However it is seen that the cheques were issued not blank but mentioning the dates and amounts which would tally the remaining amount due to the complainant after part payment of Rs.2406760/-. When the accused themselves admitted the transaction between them and the complainant and the liability towards the complainant, this court finds that the defence taken by the accused that there was no liability or debt is not sustainable. Similarly if the cheques were issued as security, the accused would not have mentioned the date of amount and they have issued with full particulars and therefore this court finds that they were issued only to discharge the



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liability of the accused towards the complainant. Therefore the contention of the accused that the cheques were issued only towards security is also not sustainable.”

17. All the observations made by both the Courts below are perfectly in order. Therefore, I do not see any reason to interfere with the same.

18. **In the result:-**

- (i) The Criminal Revision cases stand dismissed as against the 1st revision petitioner.
- (ii) The Criminal Revision cases as against the 2nd revision petitioner stands dismissed as abated.
- (iii) The conviction, sentence and payment of compensation as against the 1st revision petitioner passed by both the Courts below stands confirmed.



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(iv) The 1st revision petitioner/1st accused shall deposit the compensation amount within a month, to the credit of the trial Court, from the date of receipt of a copy of this order, failing which, the trial court shall take appropriate steps to recover the amount under the Revenue Recovery Act.

17.04.2024

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

- 1.The II Additional District and Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.5,
Salem.



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R. HEMALATHA, J.
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