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Crl.R.C.Nos.1074 and 1077 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

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

Crl.R.C.Nos.1074 and 1077 of 2019

S.S.Perumal,
Proprietor, SPR Engineering Enterprises,
Plot A1/B, 1st Cross Road,
Ambattur Industrial Estate,
Chennai 600 058.

... Petitioner in both Crl.R.Cs

Vs.

Abhishek Modi, Director,
Mod Forge Private Limited, No.103,
Sidco Aiema Towers, No.1, 1st Main Road,
Ambattur Industrial Estate,
Chennai 600 058.

Rep. by its Power of Attorney
Mr.Mohan, Manager

... Respondents in both Crl.R.Cs

Common Prayer: Criminal Revision Cases filed under Section 397 r/w. 401 of the Criminal Procedure Code, to set aside the Judgment and orders passed in C.A.No.174 of 2017 and C.A.No.156 of 2017, dated 21.08.2019 by III Additional District and Sessions Judge, Thiruvallur, Poonamallee, modifying the Conviction and Sentence, dated 05.10.2017, passed in S.T.C.No.410/2016 by the Judicial Magistrate, Fast track Court (Magisterial Level), Ambattur.

In both Crl.R.Cs

For Petitioner	:	Mrs.A.L.Gandhimathi, Senior Counsel assisted by Mr.A.Ramkumar
For Respondent	:	Mr.R.Muthukumar



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COMMON ORDER

The Criminal Revision Cases are filed by the Revision petitioner / accused challenging the common Judgment and orders passed in C.A.No.156 of 2017 and C.A.No.174 of 2017, dated 21.08.2019 by the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee, whereby he had modified the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Ambattur in S.T.C.No.410/2016, dated 05.10.2017.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

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

- i. The Respondent / complainant used to supply steel materials to the petitioner / accused on credit basis. He had supplied steel materials on different dates for the amount mentioned below:



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<i>S.No.</i>	<i>Invoice Number</i>	<i>dated</i>	<i>Amount</i>
1	IB 50151	25/02/2016	Rs.7,02,171/-
2	IB 30080	13/04/2016	Rs.1,41,455/-
3	IB 30161	26/04/2016	Rs.7,11,402/-
Total amount			Rs.15,55,028/-

- ii. When the complainant demanded the accused to pay the outstanding amount, the latter issued a cheque bearing number 913763 dated 11.08.2016 (Ex.P1) drawn on State Bank of India, SME Branch, Sidco Ambattur for Rs.4,54,781/- towards part payment.
- iii. When the cheque was presented for collection on 11.08.2016 by the complainant through his bankers viz., Indian Bank, Padi branch, Chennai, the same was returned on 12.08.2016 for the reason "Payment stopped by Drawer" as is seen from the Cheque return memo (Ex.P2).
- iv. Therefore, the complainant issued a legal notice, dated 24.08.2016 (Ex.P3) to the accused, demanding the latter to pay the amount due under the Cheque within 15 days.



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- v. The accused though received the said notice, as is evidenced by the postal acknowledgment card (Ex.P4), did not come forward to make good the payment and did not also send any reply to the statutory notice.
- vi. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.410/2016 before the Judicial Magistrate, Fast Track Court, Magisterial Level, Ambattur.
- vii. The learned Judicial Magistrate, Fast Track Court, Magisterial Level, Ambattur, took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the copies of case records were furnished to him under Section 207 Cr.P.C., The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the matter was posted for trial.
- viii. In order to bring home the guilt of the accused, the complainant examined one Mohan who is the Manager / power of attorney of



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the Respondent as P.W1 and marked Ex.P1 to Ex.P16.

- ix. Thereafter, the accused was questioned under Section 313 (i) (b) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him. He denied of having committed any offence. The accused examined one Siva Shanmugaraj as D.W.1 and marked Ex.D1 and Ex.D2.
- x. After full trial, the learned trial Court Judge vide his Judgment dated 05.10.2017, convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo Simple Imprisonment for a period of eight months and to pay a sum of Rs.4,54,781/- towards compensation within a period of one month from the date of the order, in default, to undergo Simple Imprisonment for a period of two months.
- xi. Aggrieved over the same, while the petitioner / accused filed C.A.No.156 of 2017 for setting aside the conviction and sentence passed against him, the complainant filed C.A.No.174 of 2017 to enhance the sentence and compensation awarded by the trial Court



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Judge, before the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee.

- xii. Both the appeals were taken up together by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee and after appreciation of evidence, the learned Appellate Court Judge, though confirmed the conviction and sentence passed by the trial Court Judge, enhanced the compensation amount and directed the accused to pay a sum of Rs.9,09,562/-, (twice the cheque amount) in default to undergo Simple Imprisonment for two months;
- xiii. Aggrieved over the same, the present Criminal Revision cases are filed by the accused.

4. At the outset, it may be observed that the accused did not dispute his signature on the Cheque (Ex.P1). Once the signature is admitted, there is a presumption under Section 138 of the Negotiable Instruments Act, unless the contrary is proved by the accused.



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5. Mrs.A.L.Ganthimathi, learned Senior Counsel assisted by Mr.A.Ramkumar learned counsel appearing for the petitioner / accused submitted that the cheque (Ex.P1) was issued by the accused only as a guarantee for the materials purchased by him from the complainant and that the said cheque was subsequently filled up in order to file a private complaint against the accused under Section 200 Cr.P.C. It is also contended by the learned Senior Counsel that the accused had a dispute with the complainant with regard to the price of the materials supplied to him and since the dispute has not been settled, he was constrained to stop the payment as evidenced by his letter addressed to the Manager (Ex.D1). According to her, the accused had sufficient balance in his account and therefore, he cannot be punished for the offence punishable under Section 138 of the Negotiable Instruments Act.

6. Per contra, Mr.R.Muthukumar, learned counsel appearing for the Respondent would contend that both the Courts below after analysing the evidence on record, had convicted and sentenced the



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accused and hence there is no reason for this Court to interfere with the same.

7. In the instant case, though the accused had contended that he issued the cheque only as a security / guarantee towards payment for the materials supplied to him by the complainant, the same has not been established by way of adducing acceptable evidence. It is pertinent to point out that the accused did not issue any reply notice to the complainant though he received the statutory notice dated 24.08.2016 (Ex.P3) issued by the complainant. The accused had not also at the earliest point of time, issued any notice with regard to the dispute over the price of the materials supplied to him by the complainant for the reasons best known to him. These aspects have been discussed in detail by both the Courts below and in fact, the appellate Court in his Judgment, dated 21.08.2019, had observed thus:

"20. As in this case the accused has not denied his signature in the cheque in dispute, this court finds that in view of the provisions contained in Section 118 and 139 of Negotiable Instruments Act, the presumption has to be



drawn that the cheque had been issued for discharging a debt or liability. This court finds that the presumptions mandated under sections 118 and 139 of Negotiable Instruments Act could be rebutted by the Appellant/Accused by proving the contrary. Thus it is for the Accused to rebut the presumption infavour of the complainant and once the complainant has proved the issuance of cheque in his favour rebuttal is given by the accused and if that satisfies the degree of preponderance of probability, it is sufficient to draw a conclusion that acceptable rebuttal has been given by the accused but in this case the accused failed to make out satisfactory rebuttal evidence beyond any doubt. In the present case the accused failed to adduce acceptable rebuttal evidence to show that there was no legally enforceable debt between the complainant and accused but on the other hand the complainant has proved the transaction between the complainant and accused and further proved that Ex.P.1 cheque has been issued to satisfy the existing liability ad when Ex.P.1 was presented for collection the same were returned with endorsement "payment stopped by the drawer" and thereafter the statutory notice though received by the accused was neither replied nor paid the dishonoured cheques amount.



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21. Apart from that the Hon'ble Supreme Court in Suresh Chandra Goyal Vs. Amit Singha and V.K.Ashoken Vs.CCE (2009) 14 SCC 85 has held that under the guise of Security cheque the accused cannot absolve from the liability as adumbrated under section 138 of Negotiable Instruments Act. The Accused having admitted his signature in Ex.P.1 has failed to rebut the presumption and thus the accused is found to be guilty of offence punishable under section 138 of the Negotiable Instruments Act. Likewise though the accused through D.W.1 proved that he had over draft facility on the date of issuance of cheque in dispute, this court finds that the accused having issued Ex.P.1 cheque to the complainant has given instruction of stop payment and thereby the accused is found to be guilty of offence punishable under section 138 of the Negotiable Instruments Act. Hence this court finds that there is no infirmity in the judgment of the trial court and there does not warrant any interference of this court in the findings of the lower court."

8. The above observations of the appellate Court cannot be found fault with. Therefore, I do not see any reason to interfere with the conviction and sentence passed by both the Courts below. However, as



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far as the compensation is concerned, while the trial Court directed the accused to pay compensation of Rs.4,54,781/-, the appellate court had doubled the compensation and directed the accused to pay Rs.9,09,562/-. The appellate Court had not given any sufficient reason for coming to the said conclusion.

9. Even according to the complainant, the accused issued a cheque for Rs.4,54,781/- and there are four cases filed by the same complainant against the revision petitioner / accused. In such circumstances, directing the accused to pay double the fine amount in each case would cause hardship to him. Hence, the compensation amount is modified to the effect that the accused shall pay a sum of Rs.4,54,781/- towards compensation to the complainant.

10. In the result,

- i. the Criminal Revision Cases are partly allowed.
- ii. the conviction and sentence passed in S.T.C.No.410/2016, dated 05.10.2017 on the file of the Judicial Magistrate, Fast Track Court



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(Magisterial Level), Ambattur and C.A.No.174 of 2017 and C.A.No.156 of 2017, dated 21.08.2019 on the file of the III Additional District and Sessions Court, Thiruvallur at Poonamallee, are confirmed.

- iii. As regards the payment of compensation, the accused is directed to pay a sum of Rs.4,54,781/- towards cheque amount to the complainant, in default, to undergo Simple Imprisonment for a period of two months.
- iv. The accused shall surrender before the trial Court viz., the Judicial Magistrate, Fast track Court (Magisterial Level), Ambattur, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

08.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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- To
1. The III Additional District and Sessions Judge,
Thiruvallur at Poonamallee.
 2. The Judicial Magistrate,
Fast track Court (Magisterial Level),
Ambattur.



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R. HEMALATHA, J.

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