BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.09.2024**

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)Nos.643, 644, 648, 649 and 650 of 2024

M/s.Dhandapani Cements (P) Ltd.,
Kariamanickam road,
S.Pudur, Samayapuram post,
Mannachanallur Taluk,
Tiruchy District - 621 112.
(Represented by its Manger cum Authorized Person)

V.Kalyanasundaram ... Appellant/ Respondent / Complainant
(in all Criminal Appeals)

Vs.

1.M/s.Bass & Co
No.4 and 10, Corporation Buildings,
TVK Road, Near Police Station,
Ammapet, Salem - 636001.

2.R.Chithrakala
Sole Proprietor
M/s.Bass & Co.
No.4 & 10, Corporation Buildings,
TVK Road, Near Police Station,
Ammapet, Salem - 636 001.
Residing at
No.14/21, No.1, Market Street,
Ammapet,
Salem - 636003. ... Respondent / Appellant / Accused

(in all Criminal Appeals)

Common Prayer : These Appeals are filed under Section 378(3) of Cr.P.C., to call for the records and to set aside the judgment dated 11.07.2023 in Criminal Appeal Nos.82, 83, 84, 85 and 86 of 2022 passed by the Hon'ble III Additional District and Sessions Judge, Tiruchirappalli, reversing the order of conviction made in C.C.Nos.373, 369, 370, 371 and 372 of 2019 dated 10.08.2022 on the file of the Judicial Magistrate No.1, Tiruchirappalli.

For appellant : Mr.T.Punithan

For Respondents : Mr.T.Muthukrishnan
for Mr.V.Muthukamatchi

(in all Criminal Appeals)

COMMON JUDGMENT

These Criminal appeals are filed to set aside the judgment dated 11.07.2023 in Criminal Appeal Nos.82, 83, 84, 85 and 86 of 2022 passed by the III Additional District and Sessions Judge, Tiruchirappalli, reversing the judgment of conviction made in C.C.Nos.373, 369, 370, 371 and 372 of 2019 dated 10.08.2022 on the file of the Judicial Magistrate No.1, Tiruchirappalli.

2. The case of the prosecution in brief is that the complainant is the authorised person representing the company M/s.Dhandapani Cements(P) Ltd., and they were engaged in the business of producing and selling cement.

The second accused is the owner of the first accused company called M/s.Bass & Co. The appellant on behalf of the company, the second accused on behalf of the first accused company are having business transaction. In the course of the business transaction, the second accused company is due to an amount of Rs.48,12,420/- to the complainant between the period 16.06.2018 to 16.07.2018. Inspite of repeated demand of payment of money, the second accused on 30.05.2018, issued undated 14 cheques towards discharge of the amount. The description of the amounts are mentioned in the complaint. The cheques are presented for payment on 31.08.2018, through the complainant's banker and came to be returned on 01.09.2018 with an endorsement that 'it exceeds arrangements'. Having fully known that he is not having proper balance in the account, the accused has issued cheques. So after completing the statutory formalities, the complainant filed a private complaint under Section 138 of NI Act.

3. On the side of the complainant, one witness was examined and nine documents were marked and on the side of the respondents one witness was examined and nine documents were marked.

4. Totally five cases were filed by the complainant namely C.C.Nos.373, 369, 370, 371 and 372 of 2019. All the cases were tried separately and by judgment dated 10.08.2022, the trial Court convicted and sentenced the accused to undergo one year rigorous imprisonment and to pay a compensation which is detailed in the judgment. Against which, separate appeals were preferred by the accused before the learned III Additional District and Sessions Judge, Tiruchirappalli, in C.A.Nos. 82, 83, 84, 85 and 86 of 2022. The appellate Court on re-appreciation of evidence, came to a different conclusion that the guilt of the accused was not proved beyond all reasonable doubts. In fact, the appellate Court recorded a finding that the accused has paid more than what was due to be paid by him towards business transaction. By judgment dated 11.07.2023, the appellate Court allowed all the appeals, acquitted the accused. Against which, these appeals are preferred by the complainant separately.

5. Since common question of facts and law arises in all the matters, these appeals are heard together and a common judgment is passed.

6. Now let us straightaway go to the tabulation made by the appellate Court for better understanding of the cheque amounts and the amount involved.

S. No	Trial Court case No.	Appeal case No.	Cheque Nos.	Date	Amount Particulars
1	C.C.No.373/2019	Crl.Apl.82/2022	610814 610815 610801 (State Bank)	31.08.2018 31.08.2018 31.08.2018	Rs.4,00,000/- Rs.4,00,000/- Rs.2,00,000/-
2.	C.C.No.369/2019	Crl.Apl.83/2022	610809 610810 (State Bank)	27.08.2018 27.08.2018	Rs.4,00,000/- Rs.4,00,000/-
3.	C.C.No.370/2019	Crl.Apl.84/2022	592353 592354 592355 (Karnataka Bank)	30.05.2018 30.05.2018 30.05.2018	Rs.2,00,000/- Rs.2,00,000/- Rs.2,00,000/-
4.	C.C.No.371/2019	Crl.Apl.85/2022	610811 610812 610813 (State Bank)	31.08.2018 31.08.2018 31.08.2018	Rs.4,00,000/- Rs.4,00,000/- Rs.4,00,000/-
5.	C.C.No.372/2019	Crl.Apl.86/2022	610806 610807 610808 (State Bank)	27.08.2018 27.08.2018 27.08.2018	Rs.4,00,000/- Rs.4,00,000/- Rs.4,00,000/-

7. Totally 14 cheques were issued by the accused, mentioning various dates and various amounts. Learned counsel for the appellant states that as mentioned in the tabulation column, various amounts are mentioned in various cheques mentioning various dates by the accused. There is a denial

on the part of the accused that the cheques were returned dishonoured as insufficient funds. The accused has not denied and disputed the issuance of cheques and the signatures found in the cheques. It is also not in dispute that statutory formalities were complied by the complainant before filing the private complaint. Since the signature as well as the issuance of the cheques were admitted by the accused naturally, the presumption under Section 139 of Negotiable Instruments Act will come into operation. Exactly on that point, the trial Court has rendered the judgment of conviction.

8. Now we will go to the appellate Court judgment of reversal. The point to be considered before the appellate Court was, whether the accused has rebutted the presumption that is available in favour of the disputed cheques. Regarding the enforceability of the alleged debt amount, this finding of the trial Court to that effect that as per the case of the complainant, the transaction is pertaining to the period between 16.06.2018 and 16.07.2018. As mentioned above, the total amount due is Rs.48,12,420/-. Now it has been stated in the complaint itself that the accused issued a cheque on 30.05.2018. Normally, according to the appellate Court, demand would be made only after the transaction is over. But as mentioned here, the transaction is between 16.06.2018 and 16.07.2018. So the reason for

issuance of cheque before the period is bound to be explained by the appellant.

9. It was the contention on the part of the accused that those cheques were issued as a security for the due payment of the transaction amount. According to the accused, at the time of the business transaction, it was agreed by the appellant that he will repay the freight charges and discount amount after due discharge of the transaction amount. But the complainant failed to keep up his promise. To escape from the liability only he filed the private complaint.

10. Now we will go to the first circumstances which lies against the appellant. According to the appellate Court, absolutely there was no explanation on the part of the complainant as to why advance cheques were issued before incurring the liability. The next point is that the statement of accounts of the accused were produced as Ex.D8 and Ex.D9, for the period of 16.06.2018 to 16.07.2018. As per the statement of account, the total transaction took place between the complainant and the accused is for a sum of Rs.54 Lakhs. During the course of cross examination, the appellant himself admits the correctness of statement of accounts produced by the

accused. As mentioned above, the case of the appellant is that the due amount is only Rs.48,12,420/-. But as per the statement of accounts of the accused, the amount paid by the accused exceeds the liability. There was no explanation on the part of the complainant on that aspect, according to the appellate Court.

11. So this was the second circumstances which stood against the appellant which was pointed out by the appellate Court. Now we will go further as to whether the complainant was able to prove and substantiate his plea that liability was legally and duly incurred by the accused. On that point, the appellate Court has took much time to scrutinize each and every invoices produced by the complainant and the accused. we find the comparative table in paragraph No.16 of the appellate Court judgment. The appellate Court found that there is a vast difference between the invoices produced by the complainant and that of the accused. Those invoices were admitted by the complainant since those documents are marked during the cross examination of the complainant. The appellate Court doubted the genuineness of the invoices produced by the complainant. There is another circumstances which stood against the appellant that totally Rs.1,85,13,980/- was to be paid by the complainant towards freight charges and discount amount of Rs.10/- per bag.

Notices were issued by the accused under Ex.D2 and Ex.D3. There is no proper explanation on the side of the complainant to the demand notice issued by the accused. There was no reply by the complainant. There was no explanation on the side of the appellant on this issue also.

12. By taking into account all those things, the appellate Court was of the view that prima facie the accused has rebutted the presumption available under Section 139 of NI Act when the complainant has not established the liability that too legally enforceable liability to the satisfaction of the Court. So this is the major finding of the appellate Court.

13. Regarding the competency of the complainant, there is a finding by the appellate Court to the effect that proper authorisation must be produced by the complainant for maintaining the complaint. There was no Board resolution, authorising the complainant namely V.Kalyana Sundaram, for filing the complaint. So this is the another major flaw noticed by the appellate Court against the case of the complainant. It was contended before the appellate Court by the complainant that it is only a technical flaw. But this sort of argument cannot be advanced or accepted for the simple reason that a criminal case can be filed only by a person who is authorised. A

complaint filed by an unauthorised person is not permissible. The appellate Court has followed the judgment of the Principal Seat of this Court reported in 1999(III) CTC 764 in the case of M.Lakshmi Vs Shanmugapria Textiles (P) Ltd., wherein the following observation has been made:

> *" when once the capacity of the person to file a complaint has not been substantiated and when it is submitted that the person is a company incorporated under the Companies Act, without a resolution of the Board and in the absence of proof, the person mentioned in the complaint had no right to maintain the complaint and therefore the lower Court was not justified in taking cognizance of the complaint."*

14. By taking into account all those things, the appellate Court has concluded that the cheques were issued by the accused as security before the transaction commenced between the parties, those cheques have been misused by the complainant for the purpose of filing the illegal complaint. Against which this appeal is preferred by the appellant / complainant.

15. In the light of the above said finding of the appellate Court we will go to the arguments advanced by both sides.

16. Learned counsel for the appellant would submit that the accused has not discharged the burden which cast upon him to rebut the presumption because he has not examined herself but only her husband was examined. The appellate Court by relying upon the evidence of the husband recorded a finding. Even only affidavit was filed and nothing more was done by the accused in this regard. It is further contended that those cheques were issued only for the period prior to the transaction and not relevant for the present transaction. Reply was issued by the accused only after receiving the same from the trial Court. According to the learned counsel for the appellant it is nothing but an after thought attempt made by the accused. According to the appellant counsel, when his signatures are admitted by the accused, the presumption under Section 139 of NI Act, automatically comes into effect as observed by the trial Court and accused has not rebutted the presumption. The evidence of the husband cannot be considered as that of the evidence of the accused.

17. Per contra, learned counsel for the respondent would submit that, as observed by the appellate Court, those cheques were issued only as security for the payment of money. In course of the transaction goods were supplied only for Rs.48,12,420/-, but whereas the accused has paid more than

the amount involved in the transaction. No statement of account were produced by the complainant. Duplicate invoices are produced by the complainant to prove the figure. As observed by the appellate Court, for the demand for the freight charges and the discount made by the accused, there was no proper response from the complainant. Apart from that it was submitted that the complaint filed by V.Kalyanasundarama, itself is incompetent, illegal, so the finding of the appellate Court requires no re-appreciation of evidence.

18. Now the question that arises for consideration is whether the appellate Court was right in these reversal finding. I have gone through the entire judgment of the appellate Court document produced. First point is that the lodging of the complaint by the incompetent person is not proper. There is no authorisation for Mr. Kalyanasundaram to maintain the complaint. As mentioned above, eventhough, it is a formal defect, according to the appellant, it was not cured till the disposal of the complaint by the trial Court. No attempt was made by the complainant to maintain the complaint properly. Absolutely, there is no record except the evidence of P.W.1. This is the major flaw which was not properly explained by the appellant. So the finding of the appellate Court regarding the competency of V.Kalyanasundaram to file the

complaint is perfectly legal and no interference is called for.

19. With regard to the legally enforceable liability it is seen that the issue of the cheque and signatures are admitted by the accused. Automatically the presumption under Section 139 of NI Act will come into play and of course foundational fact must be established by the complainant before drawing the presumption. No doubt it is a rebuttable presumption. The presumption can be rebutted either by way of direct or indirect evidence.

20. A detailed re-appreciation of evidence has been made by the appellate Court. The appellate Court took much pain in comparing the voucher produced by the complainant and that of the accused. The voucher did not tally. Absolutely, there is no explanation on the side of the complainant on that issue. As mentioned above, most of the defence side evidences are marked only during the course of cross examination of the complainant. It is nothing but the duty cast upon the appellant herein to establish that the invoices were duly raised for the goods supplied to the accused. They failed in their duty. But the finding of the appellate Court is that it is submitted during the course of arguments that the present cheques were issued towards the discharge of the previous transactions. It is nothing

but a surprise not only to the Court but also to the accused. That was not the plea taken by the appellant either before the trial Court or before the appellate Court. As mentioned above, it was the specific case of the complainant that the cheques were issued by the accused on 30.05.2018. Trial commenced much after the above said date of cheque. So the contention on the part of the complainant that it was pertaining to the previous period which is absolutely without any basis and evidence in fact, it comes against their own case. So such a plea is not available and cannot be taken at the second appellate stage. So this argument also fails.

22. When admittedly the cheques were issued on 30.05.2018, the transaction commenced only after that. Then there is every possibility of the cheques having been issued by the accused as security. Probability stands against the case of the complainant as mentioned above. To overcome this issue only, it appears that the complainant is saying that cheques were pertaining to previous period and not to the subject period. This ground is also not available to the appellant.

23. In view of the circumstances stated above, the accused successfully rebutted the presumption under Section 139 of Negotiable

Instruments Act. Now it is the duty of the complainant / appellant to substantiate the transaction. Absolutely there is no evidence on record. So the contention on the part of the appellant that the accused has not rebutted the presumption, since the accused has not come into the box but only her husband has been examined, is not acceptable.

24. The respondent is a company, on behalf of the company any one can give evidence. It is not necessary that for giving evidence authorisation must be come from the company unlike a complaint has been filed by the company. Moreover, the case under Section 138 of Negotiable Instruments Act, is quasi civil in nature. So husband and wife are competent witnesses before the trial Court. It is a basic principle that the husband is the agent of wife and vice versa. More importantly, as mentioned above, even if we ignore the evidence of the defendant's husband, the circumstances brought on record clearly comes against the appellant. So by way of satisfactory evidence, the accused was successful in rebutting the presumption but the complainant failed in his duty to prove the enforceability of the cheque.

25. For all those reasons, I find absolutely no perversity in the finding recorded by the appellate Court. In fact appreciation must go to the appellate Court in taking the matter in a proper perspective in making analysis of invoices produced by the accused with reference to the time, date and numbers etc., in a meticulous manner. It is a case which requires no consideration at all. Accordingly, all the Criminal Appeals fail and dismissed. The judgment of acquittal passed in Criminal Appeal Nos.82, 83, 84, 85 and 86 of 2022 passed by the Hon'ble III Additional District and Sessions Judge, Tiruchirappalli, dated 11.07.2023, are confirmed.

26.09.2024

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

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To

1. The III Additional District and Sessions Judge, Tiruchirappalli.
2. The Judicial Magistrate No.1, Tiruchirappalli.

G.ILANGOVAN,J.

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Crl.A(MD)Nos.643, 644, 648, 649 and 650 of 2024

26.09.2024