IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.08.2025

Pronounced on : 20.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.Nos.849 and 928 of 2023

In both cases :

S. Arun Kumar ... Petitioner

Versus

M/s.Gipsy Management Pvt. Ltd.,
Rep.by its Authorized person, Mr.Digvijay Singh Chouhan,
S/o. Ranvir Singh,
TL-5, 3rd Floor, Khaleeli Centre,
149, Montieth Road,
Egmore, Chennai-600 008. ...Respondent

PRAYER in Crl.R.C.No.849 of 2023: Criminal Revision Case is filed under Sections 397 & 401 of Criminal Procedure Code, 1973, to set aside the order dated 15.03.2023 made in Crl.M.P.No.16763 of 2021 in C.A.No.397 of 2019 on the file of the VII- Additional District & Sessions Court, Chennai.

PRAYER in Crl.R.C.No.928 of 2023: Criminal Revision Case is filed under Sections 397 & 401 of Criminal Procedure Code, 1973, to set aside the conviction and sentence dated 15.03.2023 made in C.A.No.397 of 2019 on the file of the VII- Additional District & Sessions Court, Chennai confirming the conviction and sentence dated 23.10.2019 made in C.C.No.2037 of 2017

Metropolitan Magistrate, Fast Tract Court at Magisterial Level - IV, George Town, Chennai, sentencing the petitioner to undergo simple imprisonment for 2 years and to pay a compensation of Rs.22,10,175/- to the respondent.

In both cases:

For Petitioner : Mr. C. Iyyapparaj
for Mr. K.S. Karthik Raja

For Respondent : Mr. D. Magesh Kumar

COMMON ORDER

Crl.R.C.No.849 of 2023 has been filed as against the order dated 15.03.2023 in Crl.M.P.No.16763 of 2021 in Crl.A.No.397 of 2019 on the file of the learned VII- Additional District and Sessions Court, Chennai, thereby dismissed the application filed by the petitioner under Section 391 of Cr.P.C., to receive the additional documents.

2. Crl.R.C.No.928 of 2023 has been preferred against the Judgement passed in C.A.No.397 of 2019 on the file of the VII- Additional Sessions Court, Chennai, dated 15.03.2023, thereby confirming the order of conviction and sentence imposed on the petitioner in C.C.No.2037 of 2017 on the file of the Metropolitan Magistrate, FTC, Allikulam, Chennai dated 23.10.2019 for the offence under Section 138 of the Negotiable Instruments Act, 1881.

3. The brief facts leading to the filing of these revisions are as follows:

(i) The petitioner is the accused in a complaint lodged by the respondent/complainant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

(ii) The respondent is a super stockist/distributor of Tata Chemicals Ltd., in Tamilnadu. The respondent used to distribute the goods and materials to the petitioner and the petitioner used to pay requisite. During the course of business transactions, the petitioner issued a cheque as a part payment for the goods and materials supplied by the complainant. When it was presented for collection, the cheque was dishonoured for the reason 'Exceeds Arrangements'.

(iii) After issuance of statutory notice, which was duly received by the petitioner, the respondent filed a complaint, which was taken cognizance by the Trial Court in C.C.No.2037 of 2017.

(iv) In order to substantiate the charges, on the side of the complainant, P.W.1 and P.W.2 have been examined, and Exs.P1 to P10 were marked. On the side the of petitioner/accused, he did not examined any witness, however, marked Ex.D1 alone.

(v) Upon considering the oral and documentary evidence, the Trial Court found the petitioner guilty of the offence under Section 138 of the N.I. Act and sentenced and convicted him to undergo two years Simple Imprisonment and directed him to pay the cheque amount of Rs.22,10,175/- to the complainant as compensation, within one month, in default, he was directed to undergo a further period of four months Simple Imprisonment.

(vi) Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.397 of 2019 before the VII-Additional District and Sessions Court, Chennai. The Appellate Court also confirmed the order passed by the Trial Court and dismissed the appeal on 15.03.2023. Pending appeal, the petitioner filed an application in Crl.M.P.No.16763 of 2021 under Section 391 of Cr.P.C., to receive certain additional documents, which was also dismissed on the same day. Hence, the petitioner has preferred two revisions against the orders dated 15.03.2023, before this Court.

4. Learned counsel for the petitioner submitted that the petitioner is the proprietor of M/s. Sri Palani Andavar Agencies and had business dealings with the respondent since 2014. During the course of the business, the respondent insisted the petitioner to deposit a sum of Rs.8 Lakhs as caution deposit and also insisted to issue 10 signed blank cheques for security purpose, by letter dated 08.12.2015, which was marked as Ex.D1. Though the petitioner deposited the caution amount of Rs.8 Lakhs and also issued 10 blank cheques

for security purpose, there was no liability on the date of issuance of the cheque, the respondent filled one of the cheques and presented for collection that too without any supporting invoice or delivery challan for supplying the goods. In fact, after receipt of the said statutory notice, the petitioner issued a detailed reply notice denying liability, and thereby rebutting the initial presumption under Section 118 and 139 of the Negotiable Instruments Act, 1881. Though the respondent duly received the reply notice, however, the respondent failed to mark the same before the Trial Court. Unfortunately, the petitioner also could not produce the same due to unavoidable circumstances. Therefore, while pending appeal, the petitioner filed a petition under Section 391 of Cr.P.C., to produce additional documents, such as, (a) Tax invoices issued by the Tata Chemicals Ltd., (b) Delivery Challans of M/s. Shivani Carriers Pvt. Ltd., (c) 10 bunch of delivery challans of Kerala Roadways Pvt. Ltd., (d) Reply notice dated 15.10.2016 issued by the petitioner's counsel, and (e) Bank statement of M/s. Sri Palani Andavar Agencies from 01.08.2015 to 19.12.2018. The rejection of the said application has resulted in miscarriage of justice. The Courts below failed to appreciate that the cheque was issued only as security and not towards any legally enforceable debt, and at the time of dismissing the said petition, the appeal was also dismissed. It is to be noted that on the date of issuance of the alleged cheque, there was no due on the part of the petitioner, since no goods were supplied. Whatever goods supplied by the respondent, the entire consideration was duly paid by the petitioner, and the alleged cheque was issued for security purpose. The cheque was misused by the respondent and proceedings under Section 138 of the Negotiable Instruments Act was initiated against the petitioner. It is also pointed out by the learned counsel for the petitioner that the alleged confirmation letter dated 16.02.2016, which was marked as Ex.P8, was not executed by the petitioner and is a fabricated document. The petitioner never accepted any liability. The petitioner also categorically cross-examined the P.W.2, the authorized person of the respondent /complainant company, and even then, the Trial Court failed to consider these aspects and mechanically convicted the petitioner.

5. In support of his contention, the learned counsel for the petitioner relied upon the following Judgements of the Hon'ble Supreme Court of India, in the case of :

(i) ***Dattatraya v. Sharanappa*** reported in ***(2024) 8 SCC 573***;

(ii) ***K. Prakashan v. P.K. Srenderan*** reported in ***(2008) 1 SCC 258***; and

(iii) ***M.S. Narayana Menon @ Mani v. State of Kerala and Another,*** reported in ***(2006) 6 SCC 39***.

6. Per *contra*, the learned counsel appearing for the respondent submitted that though the petitioner had issued reply notice reiterating the same story, the said defence was not substantiated by any materials. Even though the petitioner had sought to mark certain documents, no steps were taken during the proceedings of trial, and the same were requested to be marked before the Appellate Court. That apart, those documents have nothing to do for the trial. Therefore, the Appellate Court rightly dismissed the petition filed under Section 391 of Cr.P.C. Further, he submitted that during the cross-examination of P.W.2, no specific defence was raised to dislodge the complainant's case, nor was the presumption rebutted. During the cross-examination of P.W.2, nothing contrary to the complaint was elicited. On the other hand, Ex.P8, the letter of the petitioner, dated 16.02.2016 containing three annexures and even by letter dated Nil, the petitioner categorically admitted the outstanding amount due to the tune of Rs.29,96,307/- as on 06.04.2016. The petitioner even requested that further stocks be supplied from another stockist. Therefore, the petitioner admitted the liability till 06.04.2016. Therefore, even assuming that the cheque in question was initially issued for security purpose, on the date of presentation of the cheque, the liability was subsisting, and the cheque was filled up and presented for collection towards balance payment. Therefore, both the Courts below, upon appreciation of evidence, concurrently found the petitioner guilty,

and as such, the findings of the Courts below do not warrant interference by this Court.

7. In support of his contention, the learned counsel appearing for the respondent relied upon the following judgements of the Hon'ble Supreme Court of India, in the case of :

(i) ***Bir Singh v. Mukesh Kumar*** reported in ***(2019) 4 SCC 197***; and

(ii) ***Kalamani Tex and Another v. P. Balasubramanian*** reported in ***(2021) 5 SCC 283***.

8. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

9. On perusal of the records, it is admitted that the petitioner had purchased goods from the respondent on credit and used to pay the requisite consideration. While so, the petitioner was in due to the tune of Rs.22,10,175/-, in respect of the goods received by him. In part discharge of the said liability, a cheque dated 23.09.2016 was issued. Though the reply notice was not marked before the Trial Court, its existence was admitted by the respondent, and P.W.2

was cross-examined by the petitioner thereon. It is also admitted that in the course of business transactions, the respondent/complainant received 10 signed blank cheques and also security deposit to the tune of Rs.8 Lakhs.

10. However, except for this suggestion, nothing was elicited from P.W.2 to rebut the statutory presumption under Section 139 of the N.I. Act. On the contrary, on perusal of the statements of accounts of the petitioner from the date of 01.08.2015 to 19.12.2018, Canara Bank, Saravanampatti Branch II, revealed that payments were made through cheques which were issued by the petitioner, till 21.05.2016. As such, finally, two cheques were presented on 11.05.2016 for a sum of Rs.10 Lakhs, which was returned for the reasons 'no funds available' and another one on 21.05.2016, which was also returned for the reasons 'no funds available'. It is also noted by this Court that on 20.09.2016, the cheque in question was presented for collection and the same was dishonoured with an endorsement 'Funds Insufficient'.

11. Further, on perusal of Ex.P6/Bank Statement of the respondent/complainant company, and invoices, establishing the petitioner's liability, it is revealed that the petitioner made payment periodically till 20.09.2016. His last payment was made through NEFT for a sum of

Rs.20,040/- to the respondent's company. However, the last three cheques, which were presented for collection as part payment of the consideration, were dishonoured. However, the petitioner has also admitted the signature and also issuance of the cheque. Even assuming that cheques were issued for security purpose, on the date of presentation of the cheque, there was due to the respondent's company. Therefore, one of the cheques was presented for collection. The petitioner has also admitted the signature on the cheque and issuance of the cheque creating a presumption that the cheque was issued for a legally enforceable debt, and the respondent ought to have proved that the circumstances under which the petitioner is liable to pay. In fact, the respondent had categorically proved the same, by producing all statements of bank accounts and also invoices along with the letter of confirmation issued by the petitioner. Therefore, the Judgements relied by the learned counsel for the petitioner are not helpful to the case on hand. Though the petitioner disputed the letter dated 16.02.2016/Ex.P8, i.e., outstanding letter of confirmation issued by the petitioner, there was absolutely no cross-examination of P.W.2 in this regard. Further, as per the letter dated 16.02.2016, the petitioner categorically admitted the liability to the tune of Rs.33,46,472/-. By another subsequent undated letter, the petitioner admitted an outstanding amount of Rs.29,96,307/- as on date 06.04.2016, and requested to supply the goods from another stockist, thereby, reaffirming his liability.

12. Thus, the Trial Court rightly convicted the petitioner, which was affirmed by the Appellate Court. This Court finds no perversity or illegality in those findings.

13. Accordingly, the Criminal Revision Case in Crl.R.C.No.928 of 2023 is dismissed. The order of conviction and sentence dated 15.03.2023 made in C.A.No.397 of 2019 on the file of the VII- Additional District & Sessions Court, Chennai, confirming the conviction and sentence dated 23.10.2019 passed in C.C.No.2037 of 2017 by the learned Metropolitan Magistrate, Fast Tract Court at Magisterial Level - IV, George Town, Chennai, sentencing the petitioner to undergo simple imprisonment for 2 years and to pay a compensation of Rs.22,10,175/- to the respondent, is hereby confirmed.

14. Insofar as the dismissal of the petition filed by the petitioner under Section 391 of Cr.P.C., viz., the documents which were requested to produce as additional evidence before the Appellate Court are not helpful to the petitioner to rebut the presumption, as stated supra. Therefore, the Appellate Court has rightly dismissed the petition filed under Section 391 of Cr.P.C.

15. In view of the same, Criminal Revision Case in Crl.R.C.No.849 of 2023 is dismissed. The order dated 15.03.2023 made in Crl.M.P.No.16763 of 2021 in C.A.No.397 of 2019 on the file of the VII- Additional District & Sessions Court, Chennai, is hereby confirmed.

16. In fine, both the Criminal Revisions Cases are dismissed.

20.08.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

klt

To

1. The VII Additional District & Sessions Court, Chennai

2. The Metropolitan Magistrate, Fast Tract Court
at Magisterial Level - IV, George Town, Chennai.

G.K.ILANTHIRAIYAN, J.

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Pre-Delivery Order in

Crl.R.C.Nos.849 and 928 of 2023

20.08.2025