IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2025

CORAM

THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

Crl.A.No.872 of 2012

M/s.Redington (India) Ltd.,
Represented herein by
Mr.S.Srinivasan,
Male: aged about:- 41,
Sr.Manager - Credit,
SPL Guindy House,
No.95, Mount Road,
Cuindy-600 032. ... Appellant

Vs

Mr.Neeraj Verma,
Proprietor,
M/s.R.S.Enterprises,
No.81, Industrial Area,
Shaguli, Shimla,
Himachal Pradesh-173 219. ... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set-aside the judgment dated 21.09.2012 in C.C.No.2410/2007 passed by the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai and convict the respondent/accused for the offence u/s 138 Negotiable Instruments Act and grant compensation for the amount covered under the cheque.

For Appellant : Mr.V.T.Narendiran

For Respondent : Mr.R.Surya Prakash,
Legal Aid Counsel

ORDER

The appellant as complainant filed a private complaint against the respondent/accused for offence under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.2410 of 2007 before the learned Metropolitan Magistrate, Fast Track Court No.II, Saidapet, Chennai (trial Court) and the same was dismissed by judgment dated 21.09.2012, against which, the present Criminal Appeal is filed.

2.Since there was no representation for the respondent/accused, this Court by order dated 05.04.2024 appointed Mr.S.Vignesh Kumar as Legal Aid Counsel/Amicus Curiae for the respondent. However, he was not present for further hearings. Hence, this Court by order dated 05.06.2024 appointed Mr.R.Surya Prakash as Legal Aid Counsel for the respondent.

3.Gist of the case is that the appellant/complainant engaged in the business of distribution of computer, computer peripherals and related products of various multinational companies, in the name of M/s.Redington (India) Limited. The respondent/accused is the Proprietor of M/s.R.S.Enterprises who placed orders with the appellant Company for purchase of HP Deskjet, Laser Jet Printers, APC, UPS and MSOF Software etc. The products supplied under the cover of Invoices Ex.P1 to P6. In discharge of liability for the products purchased, the respondent issued cheque (Ex.P7) for a sum of Rs.5,95,990/-. When the cheque (Ex.P7) presented with the complainant Bankers, the same returned by return memo dated 26.04.2006 for the reason "Payment stopped by the Drawer" which communicated to the appellant on 05.05.2006, thereafter, statutory notice (Ex.P15) issued to the respondent on 15.07.2006. The respondent received the statutory notice (Ex.P15) and sent a reply notice (Ex.P16) with false allegations, ignoring the reply, the appellant filed a case in C.C.No.2410 of 2007. During trial, Assistant Manager of the complainant Company examined as PW1, through him, Exs.P1 to P23 marked. On the side of defence, two witnesses DW1 & DW2 examined and Exs.D1 to D12 marked.

4.The learned counsel for the appellant submitted that the trial Court failed to consider the evidence and materials produced by the appellant. In this case, the relationship between the appellant and respondent not denied and it is a commercial transaction. The goods supplied under the cover of Invoices (Exs.P2 to P6), in discharge of liability, the cheque (Ex.P7) issued. Neither the signature in Ex.P7 nor issuance of cheque (Ex.P7) denied, hence, presumption under Sections 118 & 139 of Negotiable Instruments Act, 1881 comes into play. The trial Court nowhere in the judgment referred to dislodging statutory presumption. Merely based on the reply notice (Ex.P9) trial Court giving a finding that respondent probablized his defence, is not proper. In fact, in this case, the respondent though examined himself as DW1, but he deposed that the cheque issued in advance as security and, both the respondent and his wife had businesses with the appellant and the cheque (Ex.P7) misused by the appellant.

5.The learned counsel further submitted that the respondent is the Proprietor of M/s.R.S Enterprises and his wife is the Proprietor of M/s.Balaji Infotech Services, and the respondent was running both entities. The respondent in pre-emptive issued notice dated 28.04.2006 (Ex.P15) to the appellant claiming payments already made for the goods supplied, five security cheques received as security, one of the cheques misused, liability discharged by way of bank guarantee 03/05 and his wife discharged her liability by way of bank guarantee 10/2005. This was refuted by way of rejoinder (Exs.P17 & P18) by the appellant. Further, the appellant produced Exs.P21 to P23 to confirm the letter issued by the respondent accepting liability, hence, the explanation given by the respondent stands exposed, but the trial Court placing undue reliance on the evidence of DW1 and Exs.D1 to D12 gives a finding that the amount due to the appellant a sum of Rs.49,50,000/- discharged by way of bank guarantee 03/05 on 20.07.2005 and, thereafter bank guarantee of Rs.40,00,000/- was renewed and the cheque formed part of the bank guarantee utilized, is on a wrong understanding. The trial Court holding that the appellant taken advantage of two businesses with the respondent and his wife, misused the cheque (Ex.P7), is not proper. He further submitted that once signed cheque is issued, it gives an authority and mandate for the holder of the cheque to fill up the same. The learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in ***Bir Singh v. Mukesh Kumar*** reported in ***2019 SCC OnLine SC 138***. In view of the above, the judgment of the trial Court is perverse and to be set aside.

6.The learned counsel for the respondent submitted that the appellant misused one of the five security cheques given earlier during the business transaction. The business transaction between the appellant and respondent is covered by invoices (Exs.P2 to P6). The respondent produced Ex.D1 series to confirm the business transaction with the appellant and by notice dated 28.04.2006, the appellant informed the respondent that the liability of the respondent and his wife discharged and the security cheque becomes stale. He further submitted that notice of the appellant was immediately responded by sending reply notice on 07.06.2006 (Ex.P16). Further, the respondent produced the bank guarantees (Exs.D3 & D4) for Rs.49,50,000/- and Rs.40,00,000/-. The respondent by producing Exs.D1 to D12 clearly refuted the contention of the appellant and probablized his defence. The respondent gave stop payment notice to the bank since already the cheque amount paid and liability discharged. The respondent also examined the Bank Manager DW2 and marked bank statement as Ex.D12.

7.The learned counsel further submitted that the respondent by demand draft No.094027 dated 05.01.2005 for Rs.9,00,000/-, demand draft No.094028 dated 05.01.2006 for Rs.9,00,000/-, demand draft No.094026 dated 05.01.2006 is Rs.9,00,000/- and demand draft No.094029 dated 05.01.2006 is Rs.5,75,805/-, had proved discharge of his liability of Rs.32,75,805/-. Further, by way of two demand drafts of Rs.4,05,173/- and

Rs1,90,817/-, the cheque amount of Rs.5,95,990/- discharged. In this background, the trial Court referring to Ex.P10 and also earlier notice of the respondent, dated 28.04.2006, held that the cheque amount was discharged and the respondent probablized his defence. The appellant sent notice (Ex.P18) confirms that by utilizing the bank guarantee 3/05, the amount of Rs.32,75,805/- paid. In Ex.D9, the payment confirmed. Ex.D7 is the vouchers for Rs.4,05,173/- and Rs.1,90,817/- stands in the name of M/s.Balaji Infotech Services. When Ex.D2 confronted with the appellant, he states that he does not know the same. Through Ex.P16 the appellant confirms that the total business transaction was to the tune of Rs.59,10,226/-, out of which, the respondent paid Rs.20,38,432/- and the balance amount of Rs.38,71,795/- paid is confirmed by Exs.D7 & P19. Further, Ex.D7 confirms the payment of cheque amount. This is the finding of the trial Court and the trial Court by a well reasoned judgment, acquitted and discharged the respondent from the case. The appellant is unable to produce any contra evidence or material to show the finding of the trial Court is perverse needs interference. Hence, he prayed for dismissal of the appeal.

8.This Court considered the rival submissions and perused the materials available on record.

9.In this case, the admitted position is that both appellant and respondent were having business transaction. The goods supplied covered by the invoices (Exs.P2 to P6) and respondent produced Ex.D1 series confirming the business transaction with appellant. The payment details were given in the notice dated 28.04.2006 (Ex.P15). The utilization of bank guarantee admitted and there have been total transaction to the tune of Rs.59,10,226/- and the dispute is with regard to cheque amount of Rs.5,95,990/-. From the defence exhibits and bank guarantee details (Exs.D7 & P19), it is seen that the respondent discharged the liability and probablized his defence. Further, issuance of five security cheques not seriously disputed by the appellant.

10.The appellant's contention that the respondent taking advantage of his wife's business transaction, payments made for that transaction and claiming discharge of liability for the cheque in this case, is not proper. Exs.P22 & P23 confirms that it is the respondent who was dealing business of both M/s.R.S Enterprises and M/s.Balaji Infotech Services, not acceptable. The Bank Guarantee payments made by demand drafts and statement of account produced in this case confirms liability to the cheque (Ex.P7) discharged.

11.The bank guarantee 3/05 confirmed the discharge of business liability. The respondent examined himself as DW1, Bank Manager as DW2 and marked Exs.D1 to D12 and probablized his defence. The appellant failed to establish that the respondent had any existing liability to pay the cheque amount and failed to prove his case beyond all reasonable doubt. The trial Court finding is a well reasoned one, needs no interference.

12.In the result, this Criminal Appeal stands dismissed confirming the judgment, dated 21.09.2012 in C.C.No.2410 of 2007 passed by the learned Metropolitan Magistrate, Fast Track Court No.II, Saidapet, Chennai.

M.NIRMAL KUMAR, J.

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12.This Court appreciates Mr.R.Surya Prakash, Legal Aid Counsel for the respondent for his strenuous efforts in arguing the case.

12.11.2025

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

The Metropolitan Magistrate,
Fast Track Court No.II, Saidapet,
Chennai.

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