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Crl.R.C.No.911 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No. 911 of 2024

1.M/s.Pacific Infotech Pvt.Ltd.,
Rep.by its Director Ashok B Jeswani,
Plot No.A/2, First Floor,
Tahira Industries Compound, Inside Premson Premises,
Opp.Jain Mandir, Caves Road, Jogeshwari (East)
Mumbai – 400 060.

2. Ashok B Jeswani
Director
M/s.Pacific Infotech Private Limited,
10/B, ABBAS Building, 1st Floor,
Jalbhair Street, Near Dreamland Cinema,
Grand Road (East), Mumbai – 400 004.

3. Kishore B Jeswani
Director
M/s.Pacific Infotech Private Limited,
10/B, ABBAS Building, 1st Floor,
Jalbhair Street, Near Dreamland Cinema,



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Grand Road (East), Mumbai – 400 004.

4. Sanjay Daudayal Sharma

Director

M/s.Pacific Infotech Private Limited,

10/B, ABBAS Building, 1st Floor,

Jalbhair Street, Near Dreamland Cinema,

Grand Road (East), Mumbai – 400 004.

... Petitioners

..VS..

M/s.Redington India Limited,

Rep.by its Power of Attorney

Mr.M.Sundarrajan

SPL Guindy House,

95, Mount Road, Guindy,

Chennai – 600 032.

... Respondent

Criminal Revision Petition filed under Sections 397 and 401 Cr.P.C., to set aside the conviction and sentence dated 19.06.2023, passed by the Fast Track Court – V, Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1425 of 2016 to undergo simple imprisonment for 9 months and to pay a sum of Rs.1,34,23,970/- to the the complainant towards compensation in default to undergo simple imprisonment for 3 months and confirmed by XXI Additional Sessions Judge at Chennai in C.A.No.405 of 2023 by judgment dated 29.04.2024 and call for the records and acquit the petitioners 1 to 4.



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For Petitioners : Mr.S.Suresh
For Respondent : Mr.V.J.Narendiran

ORDER

This Criminal Revision Petition has been filed against the conviction and sentence passed by the Metropolitan Magistrate, Fast Track Court – V, Saidapet, Chennai in C.C.No.1425 of 2016 dated 19.06.2023, which was confirmed by the XXI Additional Sessions Judge at Chennai in Crl.A.No.405 of 2023 dated 29.04.2024 and acquit the petitioners.

2. The respondent filed a private complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act') before the learned Metropolitan Magistrate, Fast Track Court-V, Saidapet, Chennai in C.C.No.1425 of 2016.

3. The case of the respondent/complainant, as per the complaint filed before the trial Court is that, the respondent is engaged in the business of computers and allied products of various companies. The first



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petitioner/A1 Company, acting through its Directors, the second and third accused, had approached the complainant-Company and placed orders for purchase of D link Routers, Dongles and goods, which were supplied to the accused under invoices and all the accused had received the goods and issued two cheques i.e., Cheque dated 29.11.2015, bearing No.996272 for Rs.19,26,750/- and Cheque dated 04.01.2016, bearing No.996164 for Rs.1,14,97,220/-, totaling to Rs.1,34,23,970/-. When the respondent/complainant presented the said cheques through its banker -- HDFC Bank Ltd., Radhakrishnan Salai, Chennai on 01.02.2016, the same were returned with an endorsement "Payment Stopped by Drawer" through a return memo, dated 02.02.2016.

4. Therefore, the respondent issued a statutory notice on 24.02.2016, which was received by the petitioners/accused on 26.02.2016 and 27.02.2016. On receipt of the statutory notice, the revision petitioners neither re-paid the amount within the statutory period, nor sent any reply denying the liability. Hence, the respondent was constrained to file a complaint for the offence under Section 138 of N.I.Act.



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5. In order to prove the case, on the side of the complainant, one M.Sundararajan was examined as P.W.1 and 13 documents were marked as Ex.P-1 to Ex.P-13. On the side of the revision petitioners/accused, no oral and documentary evidence was let in.

6. The learned Metropolitan Magistrate, after trial, convicted the revision petitioners/accused and sentenced each of them to undergo simple imprisonment for a period of nine months and directed the petitioners/accused to pay the cheques amount of Rs.1,34,23,970/- as compensation under Section 357(3) Cr.P.C., to the respondent/complainant, in default, each of them to undergo simple imprisonment for a period of three months. Challenging the judgment of conviction and sentence imposed by the trial Court, the revision petitioners/accused filed an appeal in CrI.A.No.405 of 2023 on the file of the XXI Additional Sessions Judge, City Civil Court, Chennai, which was dismissed, confirming the conviction and sentence imposed and compensation ordered by the trial Court. As against the judgment of conviction and sentence as confirmed by the appellate Court, the revision petitioners/accused have filed the present revision petition.



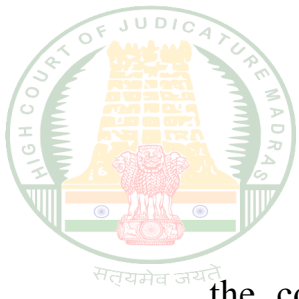
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7. It is represented by the learned counsel for the petitioners that the petitioners/accused have taken all efforts to amicably settle the matter, but they are not able to settle the matter within the time as prescribed by this Court. Therefore, he seeks further time to settle the matter.

8. Though this Court had already given sufficient opportunities to the petitioners/accused to settle the matter, but they failed to do so. Since the present revision petition arises out of the concurrent findings of both the Courts, and the scope of revision is very limited, and therefore, this Court is inclined to dispose of the matter on merits.

9. It is the contention of the learned counsel for the respondent/complainant that from date of filing of this revision petition, the petitioners/accused made representations before this Court that they are ready to settle the matter. However, they did not settle the matter till date. Only to drag on the proceedings, they filed petitions one after another. The respondent/complainant ran from pillar to post for getting



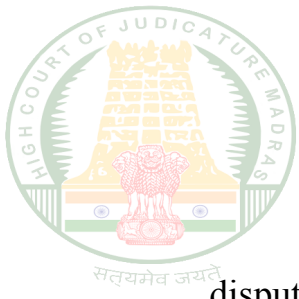
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the compensation amount. He further submitted that the petitioners/accused have not denied the issuance and signature of the cheques. Despite receiving statutory notice, the petitioners-accused neither sent reply, nor made payment to the complainant. Therefore, the respondent was constrained to approach the trial Court by invoking Section 138 of N.I. Act. Even though, respondent/complaint had got judgments in its favour before the Courts below regarding the said dispute, once again, the petitioners/accused moved this Court without any merits in the revision case.

10. Heard the learned counsel for the respondent/complainant and perused the materials.

11. On a perusal of the entire materials, particularly Ex.P7/statutory notice and deposition of P.W.1, it is seen that after receipt of the statutory notice, the petitioners/accused neither sent any reply, nor repaid the amount. When the complainant was examined as P.W.1, he has clearly narrated the averments made in the complaint and also the execution of the cheques – Ex.P.4. The respondent/complainant had substantiated the foundational fact that the petitioners issued the



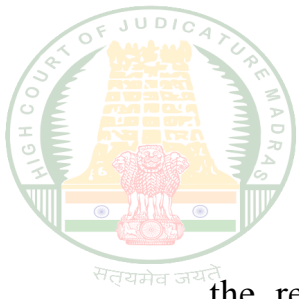
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disputed cheques to discharge their liability by way of filing oral and documentary evidence. Therefore, it is for the petitioners/accused to prove that there is no legally enforceable debt. However, the petitioners/accused neither sent any reply nor let in any oral and documentary evidence to prove that they have not issued the said cheques for discharging legally enforceable debt.

12. It is settled proposition of law that when once the execution of cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was issued for discharge of legally enforceable debt or other liability. No doubt, the presumption under Section 139 of the N.I. Act is a rebuttable presumption and the onus is on the accused to raise the probable defence, wherein, the existence of a legally enforceable debt or liability can be contested. The standard of proof for rebutting the presumption is not with the same rigor as prosecution is required to prove its case beyond reasonable doubt in the criminal matters.

13. Considering the facts and circumstances, this Court finds that



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the respondent/complainant has established his foundational fact that the petitioners issued the disputed cheques to discharge their legally enforceable debt, whereas, the petitioners/accused have not rebutted the presumption in the manner known to law. Both the Courts below had rightly appreciated and re-appreciated the entire materials placed by the respondent/complainant, and came to the conclusions that alleged cheques/Ex.P4 are given for discharging legally enforceable liability or debt and petitioners/accused have committed the offence under Section 138 of N.I.Act and convicted and sentenced them as stated above.

14. The scope of revision is very limited. The lower Appellate Court had already re-appreciated the entire evidence and also given findings and while exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. While deciding the revision, the revisional Court has to see as to whether there is any perversity or infirmity in the judgment of the lower appellate Court.

15. On a perusal of the entire materials, this Court does not find



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any perversity, infirmity or illegality in appreciation of evidence by the trial Court or re-appreciation by the appellate Court and there is no merit in this revision and the same is liable to be dismissed. Accordingly, this Criminal Revision Petition is dismissed.

28.04.2025

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To

1. The Metropolitan Magistrate,
Fast Track Court – V,
Saidapet, Chennai.
2. The XXI Additional Sessions Judge,
Chennai.



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P.VELMURUGAN, J.

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