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CrI.A.No.677 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2025

DELIVERED ON : 16.05.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.677 of 2021

M/s.P.S.Apparels (India)

Represented by its Admin Manager,

Mr.K.Rajangam

No.15, Race Course Road, Guindy,

Chennai – 600 032.

... Appellant/Complainant

Versus

Annapurni Hariharan @ Mrs.Sumathi,

W/o.Mr.T.S.Hariharan,

M/s.Zaida Exports,

No.2, 3rd Floor, Gokul Arcade,

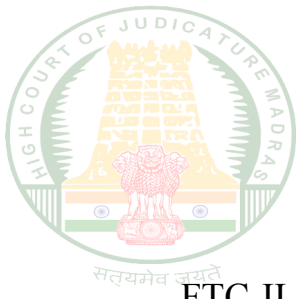
Sardar Patel Road, Adyar,

Chennai – 600 020.

... Respondents/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to allow the present Criminal Appeal by setting aside the judgment made in C.A.No.334 of 2019 dated 13.08.2021 on the file of the XVIII Additional Sessions Judge, City Civil Court, Chennai acquitting the accused by setting aside the order of conviction passed by the learned Metropolitan Magistrate,

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FTC-II, Egmore in C.C.No.1180 of 2015 dated 12.09.2019, for the offence under Section 138 of the Negotiable Instruments Act, 1881.

For Appellant : Mr.S.Manuraj
For Respondent : Mr.Roshan Balasubramnian

JUDGMENT

The appellant as complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.1180 of 2015. The trial Court, by the judgment dated 12.09.2019, found the respondent guilty, convicted the respondent and sentenced him to undergo one year simple imprisonment and to pay a fine amount of 11,60,000/- as compensation. Aggrieved against the same, the respondent preferred an appeal before the XVIII Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.334 of 2019. The learned Sessions Judge, by the judgment dated 13.08.2021 allowed the appeal setting aside the conviction and sentence of the trial Court, against which, the appellant/complainant had filed this present appeal.

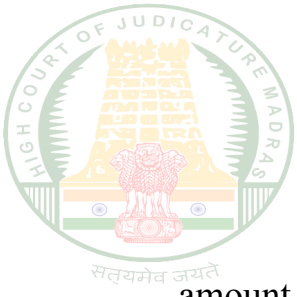


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2.For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

3.The background of the case is that the complainant company and accused had business transactions. The complainant is a manufacturer of ready made garments and the accused approached the complainant for garments work order. Based on which, the complainant entered into a Memorandum of Understanding (MOU) dated 02.02.2011. At that time the accused company a sick unit. On the request of the accused, the complainant extended loan of Rs.20,00,000/- to the accused on condition that the same shall be returned within a period of six months. The accused failed to honour commitment of the complainant and job work MOU cancelled. The complainant demanded the material cost and loss occurred to the company due to the accused and also demanded loan amount of Rs.20,00,000/-, and for the loss all together to the tune of Rs.43,25,000/-. The accused paid the loan



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amount of Rs.20,00,000/- borrowed from the complainant but failed to return the loss caused. Later on the request of the accused, the complainant agreed to share the loss equally between them and thus the accused agreed to compensate the loss suffered by her and issued a cheque bearing No.680013 for a sum of Rs.11,60,000/- on 31.03.2013 drawn on Syndicate Bank, Overseas Branch. At the request of the accused, on 15.02.2013, the cheque was presented for encashment, which was returned for the reason 'Exceed Arrangement'. Again the accused approached and informed the complainant to represent the cheque. Based on the instruction, on 08.04.2013 the cheque was re-presented, which again returned for the same reason. Thereafter, statutory notice dated 05.05.2013 issued and the same was received and following the procedure complaint filed.

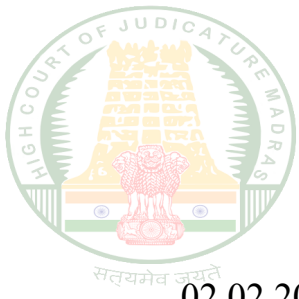
4.The complainant filed a complaint and examined Rajangam as representative of the complainant company to prosecute the



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respondent/accused. During trial on the side of the complainant, PW1 examined and Exs.P1 to P6 marked. On the side of the accused, the husband of the accused examined as DW1 and he marked Ex.D1 to D8. On conclusion of the trial, the trial Court convicted the respondent but the Lower Appellate Court set aside the conviction and acquitted the accused, against which, the present appeal is filed.

5.The contention of the appellant/complainant is that in this case the respondent/accused not denied the issuance of cheque or her signature. The defence taken by the accused is that this cheque was forcibly obtained when she was to sell a industrial shed to third person and complainant made objections for the sale. Once the accused admitted issuance of cheque and signature, Sections 118 and 139 of the N.I. Act come into play. The accused not rebutted the statutory presumption and probabilised her defence. On the other hand, accused admitted business relationship by producing MOU dated



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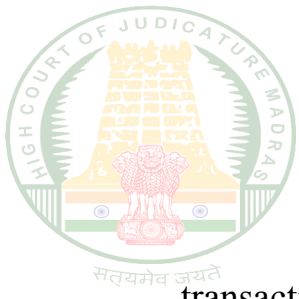
02.02.2011. The accused admitted that the accused company was a sick unit and it was the complainant, who paid Rs.20,00,000/- in advance to revive the sick unit. The accused undertook job work for the complainant. The accused admitted the receipt of loan amount and agreed to repay the amount within a period of six months, but belatedly returned the amount on 10.11.2012 by way of Demand Draft belatedly. Since the garments for export to pass quality test with the foreign buyer failed and goods rejected, due to the inexperienced tailors and improper stitching of garments by the accused, the complainant suffered a loss to a tune of Rs.23,25,000/-. The accused agreed to bear 50% of the loss and issued the cheque. On dishonour of the cheque, statutory notice issued. Thereafter, neither the cheque amount paid nor any reply sent. Strangely the accused latter takes a stand that they entered into a sale agreement with one A.Anand of M/s.A.S.P. Engineering for sale of factory shed at No.16, Maraimalai Nagar. At that time, the complainant raised objection for sale of the property since accused not repaid the agreed amount



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of loss. Now she claims that she instructed her son Ayyappan to issue a cheque/Ex.P2 as security to tide over the situation and further now takes a stand that as per MOU the complaint can only invoke Arbitration Clause, if at all there is any dispute and not to file a complaint under Section 138 of the N.I. Act, which is not proper.

6.It is settled position that the holder of the cheque is at liberty to proceed against drawee of the cheque, if the cheque is dishonoured and there cannot be any negative estoppel. For the first time, during questioning under Section 313 of Cr.P.C. the accused gives an explanation that she was out of country and the cheque was issued due to the pressure exerted and not for any liability. Admittedly, till date the amount covered by the cheque not discharged. Further, she questions that complainant is a partnership firm and not all partners authorised K.Rajangam to prosecute the case and what is the position of Rajangam in the company and whether he is privy to the



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transaction between the complainant and the accused, there is no details, hence the authorisation letter/Ex.P1 is invalid. The trial Court found that Rajangam is an authorised person on behalf of the complainant to proceed against the accused. The trial Court considering the objections and points raised by the accused, by a well reasoned judgment, rightly convicted the accused. On the other hand, the Sessions Judge allowed the appeal on technicality that the said Rajangam representing the complainant is unable to give complete details about the transaction and he is not privy to the MOU entered between the complainant and accused. Further observed that there is no material produced to prove that loss was sustained by the accused and in lieu of the said loss cheque/Ex.P1 was issued. The Lower Appellate Court gave no finding of perversity or wrong appreciation by the trial Court.

7.In support of his contention, the learned counsel for the appellant relied upon the following judgments:



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(i) The Hon'ble Apex Court decision in ***APS Forex Services Pvt. Ltd. vs. Shakti International Fashion Linkers and Others*** reported in ***AIR 2020 SC 945***;

(ii) The Hon'ble Apex Court decision in ***Rangappa vs. Sri Mohan*** reported in ***(2010) 4 CTC 1188***;

(iii) The High Court of Madras (Madurai Bench) decision in ***N.Swarnajothi Nagaraj vs. E.S. Shanmugavel Nadar*** in ***Crl.R.C (MD) No.276 of 2015***;

(iv) The Hon'ble Apex Court decision in ***Rohitbhai Jivanlal Patel vs. State of Gujarat and others*** reported in ***AIR 2019 SC 1876***;

(v) The Hon'ble Apex Court decision in ***Kalamani Tex and others vs. P.Balasubramanian*** reported in ***2021 (115) SCC 322***; and

(vi) The Hon'ble Apex Court decision in ***Rajesh Jain vs. Ajay Singh*** reported in ***AIR 2023 SC 5018***.

For the point that there exists a legally enforceable debt by the accused to the complainant and the Lower Appellate Court failed to consider the

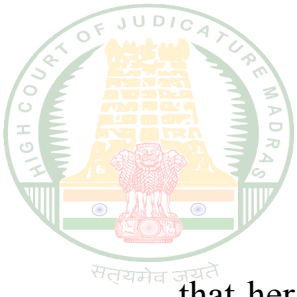


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presumption in favour of the complainant that there exists legally enforceable debt as per Section 139 of the N.I. Act. The Lower Appellate Court shifting the burden on the complainant to prove the debt or liability is not proper. Section 139 of the N.I. Act is an example of reverse onus Clause and therefore, once the issuance of the cheque and signature admitted presumption in favour of the complainant comes to paly that there exists legally enforceable debt or liability.

8.He further submitted that the defence raised by the respondent/accused does not inspire confidence or meet the standard of 'preponderance of probability'. The complainant by cogent evidence and materials independently proved beyond reasonable doubt that the cheque was issued in discharge of a debt or liability by the accused. In this case the accused not proved that there is no debt or liability exists between the complainant and the accused by cogent material. On the other hand, confirms



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that her son handed over her cheque to the complainant and also not proved that there is no debt or liability to be discharged.

9.The learned counsel for respondent/accused strongly opposed the appellant's contention and submitted that in this case there is only an authorisation letter/Ex.P1 and no power of attorney given. Admittedly, Ex.P1/authorisation letter signed by only one partner, whereas all the partners whether agreed to appoint the complainant to file a complaint is not proved. Further submitted that initially the complaint was filed by one Saravanan, Manager (Agri) of M/s.P.S.Apparels, and his sworn statement recorded by the trial Court on 01.08.2014. Thereafter, proof affidavit filed by Rajangam, Manager (Admin) of M/s.P.S.Apparels. No authorisation or Power of Attorney produced authorising the said Saravanan. In view of the same, filing of the complaint and taking complaint on file itself is bad in law. Once the foundational fact gets demolished, the entire case has to necessarily fall. He



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submitted that in the authorisation letter/Ex.P1 there is no seal of the Firm.

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In the proof affidavit again there is no seal of the Firm. Further the complainant failed to produce MOU dated 02.02.2011, which is the genesis of the business transaction between the complainant and the accused. Since it would adversely affect the case of the complainant he withheld and suppressed the MOU, it is the accused who produced Ex.D1.

10.He further submitted that in the MOU nowhere it is recorded that if any loss is sustained, the same to be borne by the accused, much less, 50% of the loss. The complainant/PW1, who is the Manager of complainant company in his evidence admits that the business transaction between the complainant and accused must be roughly 5 years prior to 2013 and with regard to the specifying of MOU he states that he is not aware of it and he has to ask the management. Hence, he is not aware of the genesis of business and the transactions between the complainant and accused. As to the movement



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of materials and piece rate payments and quality control. PW1 again answer, only after enquiring with the Management he can provide details. Further he admits that he had not produced any documents with regard to the liability of the accused. Likewise, he is also not aware about payment of Rs.20,00,000/-, which was given at the time of entering MOU and PW1 is not aware of any transactions between complainant and accused except producing the documents Exs.P1 to P6. Specific question how loss arrived and on what basis the accused agreed to share 50% of the loss, PW1 is unable to given any answer. Thus complaint PW1 actual only as a post man in the above case.

11.On the other hand, the husband of the accused examined as DW1 and through him Exs.D1 to D8 marked. Ex.D1 is the MOU, Ex.D2 is the mail sent to the complainant on 03.08.2011 recording the meetings, fixing of piece rate for the job work and for the expenses incurred in the process of job work, by sudden cancellation of MOU without three months notice. Ex.D3 is the



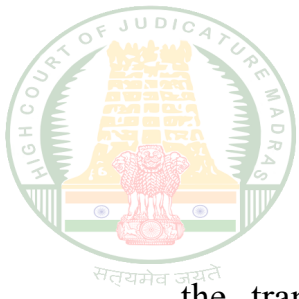
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letter confirming the payment of Rs.20,00,000/- by way of Demand Draft drawn on Syndicate Bank dated 10.11.2012. Ex.D4 is the Passport entry showing that on the date of the issuance of cheque, accused was not in India, the explanation under Section 313 of Cr.P.C. is clean. The cheque was handed over by her son Ayyappan to tide over the obstacles created by the complainant in sale of industrial shed at Maraimalai Nagar to M/s.A.S.P. Engineering. Ex.D6 is the sale deed. Ex.D7 is the letter of M/s.A.S.P. Engineering. The accused thus by cross examination and by producing defence evidence and materials proved that there is no liability for cheque/Ex.P2 and it was only an adjustment to tide over the situation during the sale of industrial shed by the accused to M/s.A.S.P. Engineering.

12.Further submitted that PW1 though represents the complainant company, deposed and marked Exs.P1 to P6, he is not aware of any transaction between the complainant firm and the accused. He does not speak anything with regard to the documents produced and he is not privy to

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the transaction between the complainant and the accused. Hence, the complainant miserably failed to prove issuance of Ex.P2 cheque is for discharge of liability. The trial Court glossed over these facts and convicted the accused but the Sessions Court on independent reappraisal of the evidence and materials produced, found that finding of the trial Court perverse. Hence, set aside the conviction and allowed the appeal. Even before this Court, the complainant is unable to produce any materials or point out to the evidence to show how loss arrived and whether cheque amount of Rs.11,60,000/- is towards any loss. No materials produced or any communication produced between the complainant and accused. The accused taken a loan of Rs.20,00,000/-, which was rightly repaid but with a delay, which is confirmed and not disputed. Apart from this, there is no other transaction between the complainant and the accused, if at all there is any loss sustained by the accused, there is an arbitration clause. Failing to invoke arbitration clause and straight away using a stale security cheque lodging



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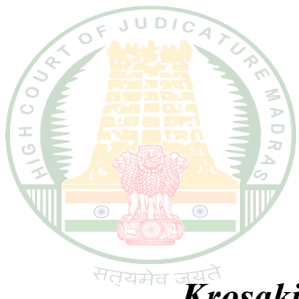
prosecution is not proper. Hence, the Lower Appellate Court had rightly allowed the appeal.

13. In support of his contention, the learned counsel relied upon the following judgments:

(i) The Hon'ble Apex Court decision in ***Ballu and another vs. State of Madhya Pradesh*** reported in ***2024 SCC OnLine SC 481***;

(ii) The Hon'ble Apex Court decision in ***Ashish Jain vs. Makrand Singh and Others*** reported in ***(2019) 3 SCC 770***.

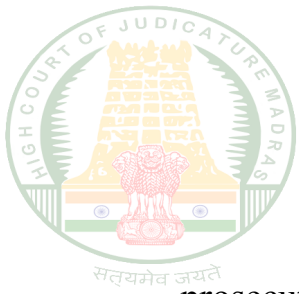
14. The learned counsel primarily relied on the judgment of ***A.C Narayanan vs. State of Maharashtra*** reported in ***(2014) 11 SCC 790***, wherein it is held that Power of Attorney holder or an authorised officer of a company, who is deposing, verifying on oath before a Court in order to prove the contents on the complaint, he must have knowledge and witnessed the transaction. In the case of ***SMS Asia Private Ltd. and Others vs. TRL***



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Krosaki Refractories Ltd. reported in **MANU/OR/1029/2017** it is held that there must be a specific assertion made regarding the knowledge of transaction. In the case of **Aruputham Enterprises vs. J.Jayakumar** reported in **MANU/TN/4344/2018**, it is held that lack of personal knowledge about the transaction on the part of the complainant or his witness, will shake the very root of the case under Section 138 of the N.I. Act. In the case of **Kumar Exports vs. Sharma Carpets** reported in **(2009) 2 SCC 513**, it is held that the accused can *inter alia* rely on circumstantial evidence or Section 114 of the Evidence Act to rebut the presumptions arising under N.I. Act. Further it is held that failure by the complainant to produce books of accounts or stock register to prove the existence of legally enforceable debt would render a case under Section 138 of N.I. Act liable to be dismissed. Further referring to the case of **M.S Narayana Menon vs. State of Kerala** reported in **(2006) 6 SCC 39**, wherein it is held that burden of proof on the accused is only preponderance of probabilities and he does not have to disprove the



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prosecution case in entirety and adverse inferences can be drawn against the complainant for not producing books of accounts and business register to prove the debt. Further referring to the judgment in the case of ***Union of India vs. Raman Iron Foundry*** reported in ***(1974) 2 SCC 231*** and the case in ***E-City Media vs. Sadhrta Retail*** reported in ***MANU/MH/1396/2009*** submitted that a claim for damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of Court or other adjudicatory authority.

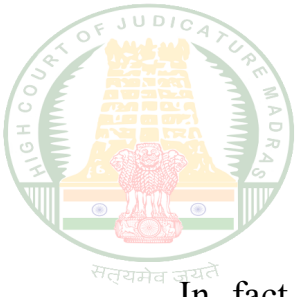
15.Considering the submissions made and on perusal of the material it is seen that the complainant in this case is running a garment export unit and the accused is a job worker doing piece rate work for the garment exporter. On 02.02.2011, a Memorandum of Understanding entered between the complainant and the accused. The accused had all the infrastructure but the unit was sick and closed. To restart the business of the accused and to do



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job work of the complainant, the complainant had given a loan of Rs.20,00,000/-which was to be repaid by six months. This amount of Rs.20,00,000/- repaid with a delay on 10.11.2012. In this case, the complainant was earlier represented by one Saravanan, Manager (Agri), and his sworn statement recorded. Thereafter, the complainant is represented by the Manager (Admin) through him Exs.P1 to P6 marked. Except for producing the documents, he is privy to the business transaction between the complainant and the accused. Complainant is a partnership firm and one of the partner gave authorisation. Ex.P1 is the authorisation letter. In this case, the MOU dated 02.02.2011, which is the basis for the business relationship and subsequent issuance of cheque for alleged loss not produced by the complainant. The accused produced MOU Ex.D1.

16.On perusal of the MOU, it is seen that there is nothing in the MOU recorded to show how if any loss sustained to be calculated and fixed.



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In fact, the MOU states three months prior notice to be given before termination of MOU. Further there is no arbitration clause and as per Ex.D2 dated 03.08.2011, the MOU was unilaterally and abruptly cancelled, the accused sent a mail in this regard. As per MOU, business arrangement commenced on 02.02.2011 and it was terminated by 02.08.2011. What was the job work done, what are the materials given, How job work was not satisfactory or materials returned with any delay, nothing stated in the complaint. When PW1, specifically questioned in this regard he is unable to give any answer. How loss was arrived at, percentage of sharing of loss, no materials and the cheque was given for sharing the loss, there is no evidence. On the other hand, the accused produced documents to show that to tide over a difficult situation, when accused was to dispose a factory shed at Maraimalai Nagar, and the complainant participated in the negotiation obviously created putting spokes to the deal in the last minute, hence, cheque was obtained in a coercive situation, clearly explained by the accused. On



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compulsion and force the cheque obtained, explained by accused during 313 of Cr.P.C. questioning. In this case, the liability not fixed and hence, the cheque/Ex.P2 issued in discharge of the liability cannot be taken as proved. The statutory presumption dislodged by the accused by cross examination of PW1, examining of defence witness, producing documents. Thereafter, it is for the complainant to prove his case but failed to do so.

17.Further, it is to be seen that in this case the cheque/Ex.P2 is said to have been given for the loss caused by the accused, who accepted to share 50% loss and issued the cheque. What is the loss, how it was arrived at, whether loss assessed, deliberated or adjudicated, there is no materials. The trial Court had gone by the statutory presumption and convicted the accused but the Sessions Court by a well reasoned, detailed judgment finding the conviction of the trial Court perverse, set aside the same.



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18.Hence, this Court finds no reason to interfere with the judgment of the Lower Appellate Court, which had acquitted the respondent/accused from the above charges. Accordingly, the judgment passed by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.334 of 2019 dated 13.08.2021 discharge the accused from all charges is hereby confirmed.

19.In the result, the Criminal Appeal is dismissed.

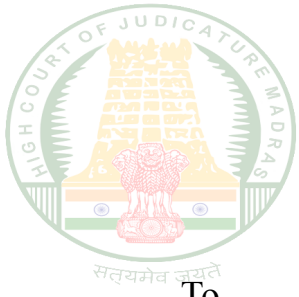
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Index : Yes / No

Neutral citation : Yes / No

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Speaking / Non-speaking order
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To
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- 1.The Metropolitan Magistrate,
Fast Track Court-II, Egmore, Chennai.
- 2.The XVIII Additional Sessions Judge,
City Civil Court, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery judgment in
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