



Crl.Re. No.1289 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision No.1289 of 2019

J. Ambrose,
S/o. Joseph,
Proprietor,
M/s.Venus Paper and Paper Board,
A.K.K.P.C. Apartment, New Hospital Street,
Gobichettipalayam.

Office Address at:
Proprietor,
M/s.Venus Paper & Paper Board,
No.30, Dhandal Raman Street,
New Sangapur,
Coimbatore – 641 027.

.. Petitioner

Versus

M/s. Shri Pavazhambigai Paper & Board Pvt. Ltd.,
Power Agent P. Madhanmohan,
No.24, Annamalai Gounder Nagar,
Opp. to Royal Theatre,
Erode- 638 011.

.. Respondent

Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C., praying to set aside the Judgment passed in Crl.A.No.113 of 2019 on the file of the Principal Sessions Court at Erode dated 09.07.2019 confirming the Judgment in STC.No.81 of 2016 on the file of the Judicial Magistrate, Fast Track Court No.2 at Erode dated 27.03.2019.

For Petitioner : Mr. Ma.P. Thangavel



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For Respondent
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: Mrs. S. Yogalakshmi
for Mr. M. Guruprasad

ORDER

This Criminal Revision had been filed to set aside the Judgment dated 09.07.2019 passed in Crl.A. No. 113 of 2019 on the file of the learned Principal Sessions Judge, Erode confirming the Judgment dated 27.03.2019 in STC.No.81 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode.

2. The brief facts, which are necessary for the disposal of this Criminal Revision Case, are as follows:-

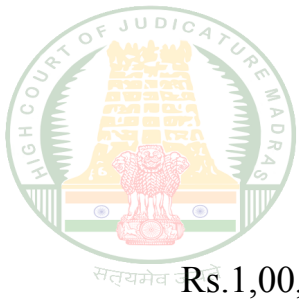
2.1. The Complainant is a Private Limited Company carrying on business of manufacture of paper and paper boards. During the course of such business, the Revision Petitioner/Accused/Accused approached the Complainant during May, 2014 and submitted that the Accused is the sole Proprietor of Venus Paper and Paper Boards having his place of business at Gobichettipalayam. The Accused also expressed his desire to run the Complainant's Company together with land and building measuring 7.47 Acres along with superstructures building to an extent of 19,200 square feet as well as 32 machineries on lease. The Complainant was impressed with the proposal



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given by the Accused. Thereafter, a Memorandum of Lease Agreement dated 17.06.2014 came to be executed between the Complainant and the Accused in which certain terms and conditions were incorporated, including the period of lease, payment of monthly lease rentals, payment towards consumption of electricity charges, water and sewage tax etc., Pursuant to the Memorandum of Lease Agreement dated 17.06.2014, the Accused was put in possession of the property on 09.05.2014. After taking possession of the premises, the Accused did not honour any of the terms and conditions incorporated in the Memorandum of Lease Agreement dated 17.06.2014. Therefore, a meeting was held during third week of August, 2014. In the said meeting, the Accused agreed to vacate the leased property and accordingly, handed over the possession of the property to the Complainant on 19.08.2014.

2.2. After taking possession of the premises, the Complainant noticed that the Accused had illegally removed machineries belonging to the Complainant. On assessment, it came to light that the value of assets totalling Rs.1,85,39,279/- was taken over by the Accused. Adding up the outstanding rental dues, electricity charges etc., the Accused was liable to pay Rs.2,14,98,262/-. When demands were made to make good the loss, the Accused issued two cheques bearing Cheque No. 152808, dated 03.09.2014 for



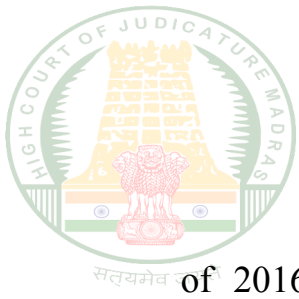
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Rs.1,00,00,000/- and another cheque No. 152809, dated 30.09.2024 for Rs.1,31,71,387/- drawn on Syndicate Bank, T.S. Colony Branch, Coimbatore.

When the cheque dated 03.09.2014 was presented for collection on 03.09.2014 with the bankers of the Complainant namely Tamilnadu Mercantile Bank, Erode, it was returned on 05.09.2014 on the ground that there are “insufficient funds”. Therefore, a notice dated 03.10.2014 was issued calling upon the Accused to pay the cheque amount. However, the notice was returned on 07.10.2014. Therefore, the Complainant had filed the instant complaint in S.T.C. No. 81 of 2016 on the file of the Judicial Magistrate/Fast Track Court No.II, Erode. In the said Complaint, the Complainant had examined Mr. Madhan Mohan as P.W-1 and Ex.P-1 to E.P-13 were marked. On behalf of the Accused neither a witness was examined nor document was marked.

2.3. The Trial Court, on conclusion of the trial, passed the Judgment dated 27.03.2019 convicting the Accused for the offence under Section 138 of The Negotiable Instruments Act, 1881 and sentenced him to undergo rigorous imprisonment for a period of one year with fine of Rs.5,000/-, in default, to undergo 3 months simple imprisonment.

2.4. Assailing the Judgment dated 27.03.2019 passed in S.T.C. No. 81



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of 2016, the Accused had filed Criminal Appeal No. 113 of 2019. The Appellate Court, by the impugned Judgment dated 09.07.2019, dismissed the Appeal and confirmed the Judgment of conviction and sentence passed by the trial Court.

2.5. Aggrieved by the Judgment dated 09.07.2019 passed in Criminal Appeal No. 113 of 2019, the present Criminal Revision had been filed.

3. Mr. Ma.P. Thangavel, learned Counsel for the Revision Petitioner/Accused submitted that there are civil suits and Arbitration proceedings initiated between the parties, but the same were not mentioned in the complaint filed by the Complainant. According to the learned Counsel, the Accused had filed a suit in O.S. No. 259 of 2014 on the file of District Munsif Court, Gobichettipalayam against the Directors of the Complainant Company for a bare injunction restraining them from trespassing into the plaint scheduled property or interfering with the peaceful possession and enjoyment of such property by the Accused. In the said suit, the Defendants have filed I.A. No. 1304 of 2014 in O.S. No. 259 of 2014 under Order VII, Rule 11 of CPC to reject the plaint by referring to the clause for Arbitration contained in the Lease agreement to resolve the dispute through an Arbitrator. It was also stated that



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already Arbitration Proceedings have been initiated in AOP No. 104 of 2014 before the District Judge, Erode under Section 9 of the Arbitration and Conciliation Act and therefore, prayed for rejection of the plaint in O.S. No. 259 of 2014 filed by the Accused. The learned District Munsif, Gobichettipalayam by an order dated 21.09.2015 allowed the application in I.A. No. 1304 of 2014 in O.S. No. 259 of 2014 and rejected the plaint in O.S. No. 259 of 2014 filed by the Revision Petitioner/Accused/Accused. However, the plaint or the order dated 21.09.2015 have not been mentioned in the complaint filed by the Complainant in S.T.C. No. 81 of 2016 and it led to the passing of the judgment of conviction and sentence against the Revision Petitioner/Accused/Accused.

4. The learned Counsel for the Revision Petitioner/Accused submitted that the entire case of the Complainant is based on Stock Statement. The Statement of Stock Accounts dated 31.03.2014 had been marked as Ex.P-4, issued by the Tamil Nadu Mercantile Bank but it does not bear any signature of a responsible Officer of the Bank or contains any seal of the Bank. It is the further submission of the learned Counsel for the Revision Petitioner/Accused that the Complainant while filing the Complaint had enclosed copy of the Stock Statement dated 31.03.2014 which was sealed by the Court of the



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learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Erode. The Complainant after filing the Complaint had tampered with the seal of the Court containing the statement of account dated 31.03.2014, and included the statement of stock issued by the Tamil Nadu Mercantile Bank on 30.04.2014. It is the further submission of the learned Counsel for the Revision Petitioner/Accused that the defence of the Accused that Ex.P-4 had been tampered with was not at all considered by the learned Judicial Magistrate, Fast Track Court-II, (Magisterial level), Erode but erroneously recorded a finding holding the Accused liable for the amount mentioned by the Complainant in the complaint.

5. It is the further contention of the Revision Petitioner/Accused that prior to filing of the complaint, there was an Arbitration proceeding. The Accused entered into a lease agreement with the Respondent for a period of 3 years commencing from 09.05.2014. By this agreement, he had handed over the cheques as security to the Respondent which had been filled up by the Respondent and presented before the Bank. Also, within two months from lease agreement, he was forcibly evicted by the Revision Petitioner/Accused from the premises. As per the lease agreement, the total lease period was three years. However, within two months, on 19.08.2014, the Revision



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Petitioner/Accused was illegally evicted by force. There was a Police complaint and the Complainant admitted that two cheques were issued by the Accused for security purposes. Those two cheques were presented for collection on 03.09.2014 and dishonoured. The cheque dated 30.09.2014 was for Rs.1,13,71,387/- (Rupees One Crore thirteen lakhs seventy one thousand three hundred and eighty seven) and on presentation it was dishonoured. On dishonour of the cheque, a legal notice was issued on 03.10.2014 under Ex.P-7. The notice under Ex.P-7 was sent to the residential address of the Petitioner viz., the premises where the Petitioner resided and forcibly evicted by the Respondent. This could be evident from the postal cover returned with an endorsement 'Vacated from premises'. It is the submission of the learned Counsel for the Revision Petitioner/Accused that both the cheques were issued as security. The trial Court did not consider the defence of the Accused properly. The cheques had been filled up by the Respondent which were given towards security and therefore, the Complaint under Section 138 of The Negotiable Instruments Act, 1881 ought not to have been allowed.

6. It is the further submission of the learned Counsel for the Revision Petitioner/Accused that the Revision Petitioner/Accused was confronted with innumerable family problem. The wife of the Revision Petitioner/Accused, due



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to a matrimonial dispute, had filed H.M.O.P. seeking divorce and divorce was granted. Furthermore, the wife of the Revision Petitioner/Accused had also filed G.W.O.P.No.1127 of 2017 before the Principal Family Judge, Coimbatore. Pending G.W.O.P.No.1127 of 2017, the wife of the Petitioner also filed I.A.No.476 of 2018 under Section 12 of The Guardian and Wards Act seeking an order to permit her to visit the minor son A. Jeevan, who was in the custody of the Revision Petitioner/Accused. It is further submitted that the minor son of the Revision Petitioner/Accused was taking treatment in Adyar Cancer Institute, Chennai for cancer and after battling for a year, he died on 03.09.2018. Therefore, the Revision Petitioner/Accused was under immense depression and he could not effectively defend the case filed against him by the Complainant. The trial Judge refused to accept the explanation offered by the Revision Petitioner/Accused and convicted the Accused. Even the Accused had preferred Crl.A.No.113 of 2019 which was also dismissed by the learned Principal Sessions Judge, Erode by judgment dated 09.07.2019. Therefore, this Revision Petition had been filed. The learned Counsel for the Revision Petitioner/Accused submitted that there was an arbitration proceeding initiated in O.P. No. 104 of 2014 and the petition was marked as Ex.P-14 in the complaint. While so, initiating the present proceedings under Section 138 of The Negotiable Instruments Act, 1881 is illegal. Therefore, the learned



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Counsel prayed for allowing this Criminal Revision.

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7. *Per contra*, the learned Counsel for the Respondent submitted that this Revision is not maintainable as the revisional Court cannot re-assess evidence appreciated by the trial Court as well as the Appellate Court. The Revision Court cannot sit in Appeal by re-appreciating evidence. The trial Court had on proper appreciation of evidence, arrived at a conclusion and convicted the Accused, based on evidence. The learned Appellate Judge/Second Additional District and Sessions Judge also, on re-assessment of the same evidence had arrived at the same conclusion, thereby confirmed the conviction recorded by the learned Judicial Magistrate, Fast Track Court No.II, Erode in STC.No.81 of 2016, dated 27.03.2019 and thereby dismissed the Appeal in Crl.A.No.113 of 2019, dated 09.07.2019. Therefore, both Courts had on independent assessment of evidence arrived at the same conclusion which cannot be considered or reconsidered by this Court while exercising the power of Revision under Section 397 r/w. 401 of Cr.P.C., Accordingly, the learned Counsel for the Respondent/Complainant prayed for dismissal of the present Criminal Revision.

Point for consideration:-



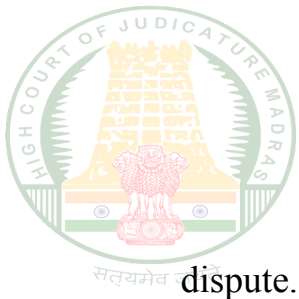
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Whether the Judgment dated 09.07.2019 passed in Crl.A.No.113 of 2019 by the learned Principal Sessions Judge, Erode, confirming the Judgment dated 27.03.2019 in STC.No.81 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode are to be set aside as perverse?

8. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. Perused the Judgment dated 27.03.2019 in STC.No.81 of 2016 passed by the learned Judicial Magistrate, Fast Track Court – II, Erode and the Judgment dated 09.07.2019 in C.A.No.113 of 2019 passed by the learned Principal Sessions Judge, Erode.

9. The submission of the learned Counsel for the Respondent/ Complainant is that both Courts had on proper appreciation of evidence recorded a finding of guilt against the Accused which cannot be re-appreciated by this Court as Revision Court. This Court cannot sit as an Appellate Authority exercising the power of the Appellate Judge and re-assess the evidence. The said argument of the learned Counsel for the Respondent has to be rejected since this Petition is filed invoking the powers of the Court under Section 397 r/w. 401 of the Cr.P.C., as well as Section 401 of Cr.P.C. Section 397 of the Code gives the power to peruse the records and find out if there is any miscarriage of justice and to render complete justice to either party to the

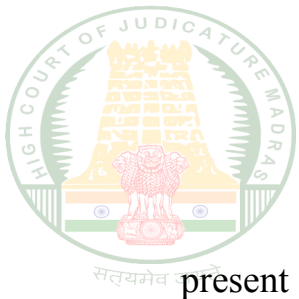


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dispute. For this purpose, grounds raised by the Revision Petitioner/Accused and the Judgment of the trial Court as well as the Appellate Court is required to be examined.

10. In the present case, the dispute between the parties arose when the Revision Petitioner/Accused, pursuant to taking over the premises of the Complainant on lease, failed to adhere to the terms and conditions of the lease. Admittedly, the Memorandum of Lease Agreement dated 17.06.2014 contains a clause for arbitration. The Respondent also filed AOP No. 104 of 2014 before the Principal District Judge, Erode. That apart, the Respondent/Complainant also filed O.P.No. 662 of 2016 before this Court to appoint a sole Arbitrator in terms of the lease agreement dated 17.06.2014. However, OP No. 662 of 2016 was dismissed as withdrawn on 27.06.2017. Thus, it is evident that when arbitration proceedings have already been initiated, the present complaint under Section 138 of The Negotiable Instruments Act, 1881 is not maintainable.

11. As far as the disputed cheque is concerned, it is the contention of the Revision Petitioner/Accused that the cheques have been handed over at the time of taking over the leased premises, towards security. One such cheque issued by the Revision Petitioner/Accused has been utilised to initiate the

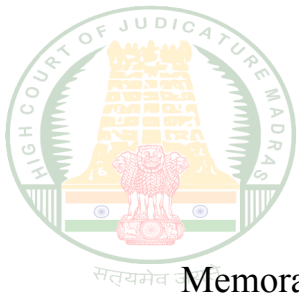


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present complaint under Section 138 of The Negotiable Instruments Act, 1881.

Thus, the dispute between the parties springs out of a Lease agreement dated 17.06.2014, which contained certain terms and conditions, including appointment of an Arbitrator to resolve the dispute, if any. Admittedly, the present dispute emanated out of the breach of the terms and conditions mentioned in the lease agreement dated 17.06.2014. While so, the Complainant ought to have sorted out such dispute by appointing an Arbitrator. When the dispute is between the dealer and agent covered under Lease Agreement, a Criminal Complaint cannot be maintained. The learned Judicial Magistrate, Fast Track Court – II, Erode, ignored those facts and had mechanically, convicted the Accused based on presumption available under Section 139 of the Negotiable Instruments Act, 1881.

12. The liability of the Accused or the dispute relating to non-payment of amount emanated out of the Memorandum of Understanding entered into between the Complainant and the Accused on 17.06.2014. For breach whereof, the Complainant can only work out the remedy by appointing an Arbitrator, as has been expressly mentioned in the Lease Agreement dated 17.06.2014. There was a contractual dispute between the parties which has to be resolved through Arbitration in the light of the arbitration clause contained in the



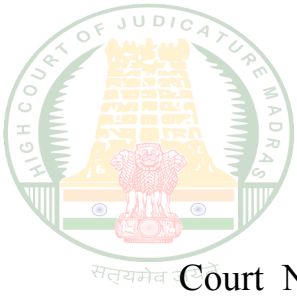
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Memorandum of Understanding dated 17.06.2014. In fact, Arbitration proceeding also initiated by the Complainant. When Civil remedy is available, the conduct of Complainant, who is also a signatory to the memorandum of understanding, in initiating proceedings under Section 138 of The Negotiable Instruments Act, 1881 is not proper. The dispute has to be referred to the Arbitration when both parties are signatories to Lease Agreement dated 17.06.2014. Ignoring the Memorandum of Understanding, the attempt of the Complainant to seek remedy through Criminal Law cannot be countenanced.

13. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner/Accused and against the Respondent/Complainant. The Judgment dated 09.07.2019 passed in Crl.A.No.113 of 2019 by the learned Principal Sessions Judge, Erode, confirming the Judgment dated 27.03.2019 in STC.No.81 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode are found perverse and the same are to be set aside.

In the result, this ***Criminal Revision is allowed.*** The Judgment dated 09.07.2019 passed in Crl.A.No.113 of 2019 on the file of the learned Principal Sessions Judge, Erode confirming the Judgment dated 27.03.2019 in STC.No.81 of 2016 on the file of the learned Judicial Magistrate, Fast Track



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Court No.II, Erode are set aside. The bail bond executed by the Revision
Petitioner/Accused before the learned Judicial Magistrate in STC.No.81 of
2016, if any, is to be cancelled. The fine amount deposited by the Accused, if
any, is to be refunded to the Accused.

17.04.2025

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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SATHI KUMAR SUKUMARA KURUP, J

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To

1. The Principal Sessions Judge,
Erode.
2. The Judicial Magistrate,
Fast Track Court No.II, Erode.

Order made in
Crl.R.C.No.1289 of 2019

17.04.2025