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Crl.A.Nos.249, 251 & 309 of 2022

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 21.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

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M/s. Agri Gold Exims Limited,
Rep. by its Managing Director,
Avva Venkata Subrahmanyeswara Sarma,
New No.601, Old No. 6,
12th Avenue, Ashok Nagar,
Chennai - 600 083.

... Appellant in all cases

Vs

1. Taha Enterprises,
Rep. by its Proprietor,
Imtiaz Ahmed Khan,
No. 126, 7th Main 4th Block,
Jaya Nagar,
Bangalore – 560 011.

2. Imtiaz Ahmed Khan
Prop. Taha Enterprises,
No. 126, 7th Main 4th Block,
Jaya Nagar,
Bangalore - 560 011.

... Respondents in all cases

Prayer in Crl.A.No. 249 of 2022: Criminal Appeal filed under Section 378(3) r/w 372 of the Code of Criminal Procedure, 1973, to call for the records of the case in C.C.No.7790 of 2007 on the file of the learned Metropolitan Magistrate, FTC – III, Saidapet, Chennai and set aside the judgment of acquittal dated 09.11.2017.



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Prayer in Crl.A.No. 251 of 2022: Criminal Appeal filed under Section 378(3)

r/w 372 of the Code of Criminal Procedure, 1973, to call for the records of the case in C.C.No.7789 of 2007 on the file of the learned Metropolitan Magistrate, FTC – III, Saidapet, Chennai and set aside the judgment of acquittal dated 09.11.2017.

Prayer in Crl.A.No. 309 of 2022: Criminal Appeal filed under Section 378(3)

r/w 372 of the Code of Criminal Procedure, 1973, to call for the records of the case in C.C.No.7788 of 2007 on the file of the learned Metropolitan Magistrate, FTC – III, Saidapet, Chennai and set aside the judgment of acquittal dated 09.11.2017.

In all cases

For Petitioner : Mr.Manoj Sreevalsan

For Respondents : Mr.M.Mohammed Rafi

COMMON ORDER

These three appeals are connected and are therefore taken up together and disposed of by this common order. By the judgment in C.C.No. 7788, 7789, and 7790 of 2007 passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, dated 09.11.2017, the learned Magistrate acquitted the accused of the offence under Section 138 of the Negotiable Instruments Act, 1881.



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2. These three cases are private complaints filed under Section 200 of the Code of Criminal Procedure, 1973. The complainant's case is that he is in the business of exporting iron ore and related products. While so, the respondent/accused entered into an agreement to supply iron ore, and according to the memorandum of understanding, the complainant advanced Rs.3,36,00,000/- to the accused. The accused was bound to supply 40,000 tonnes of iron ore at the rate of 2,000 tonnes per working day. However, the iron ore was not supplied. In repayment of the advance and in discharge of his liability, the accused issued cheque No.204224 dated 01.02.2006 for Rs.40,00,000/- and cheque No.204225 dated 01.02.2006 for Rs.10,00,000/-, which are the subject matter of C.C.No. 7788 of 2007. The accused also issued cheque No.396841 dated 30.09.2005 for Rs.50,00,000/-, cheque No.396806 dated 01.02.2006 for Rs.32,00,000/-, and cheque No.396829 dated 01.02.2006 for Rs.62,00,000/-, which are the subject matter of C.C.No. 7789 of 2007. Additionally, the accused issued cheque No.396842 dated 30.12.2005 for Rs.50,00,000/-, cheque No.396843 dated 31.12.2005 for Rs.50,00,000/-, and cheque No.396844 dated 31.12.2005 for Rs.50,00,000/-, which are the subject matter of C.C.No. 7790 of 2007. All these cheques were presented by the complainant for collection but were returned dishonoured with the endorsement "funds insufficient" or "payment stopped by drawer". Subsequently, a statutory notice was issued, but neither was the amount paid nor was any reply given.



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3. Accordingly, these three complaints were presented, and upon recording the sworn statements, the complaints were taken on file and summons were issued to the accused. Upon appearance, furnishing of copies, and questioning, the accused denied the imputations and stood trial. To establish the charges, one *P. Venkatesan*, the Vice-President of the company, was examined as P.W.1, and the respective cheques, return memos, debit advice, legal notice, and the returned covers were marked as exhibits in the respective complaints.

4. During the cross-examination on behalf of the accused, the memorandum of understanding dated 14.08.2004 was marked as Ex.D1. Communications from the accused to the complainant on three different dates were marked as Exs.D2, D3, and D4. Letters sent by the complainant to the accused were marked as Exs.D5 and D6. Correspondence from the complainant to the Port Authorities and the clearing agent was marked as Ex.D7 and D8. When questioned under Section 313 of the Code of Criminal Procedure, 1973, regarding the evidence and incriminating circumstances, the accused denied them as false. No further evidence was presented on behalf of the defence. The trial Court considered the case of the parties. It first concluded that there was no evidence from the complainant regarding the alleged parting of the advance amount of Rs.3,36,00,000/-. Then, the trial Court examined the accused's

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defence that the iron ore was actually supplied to the yard specified in the agreement, and was subsequently stolen. Therefore, the accused claimed to have fulfilled his obligations under the agreement. Through cross-examination and the production of Ex.D1 to D8, the accused established a plausible case that the liability itself was doubtful, leading to an acquittal. Aggrieved, these appeals were filed.

5. Along with the appeal, an application was filed for the production of additional documents. After hearing the parties, my predecessor had deemed it fit that it would serve the interest of justice to allow the complainant to produce those additional documents and also granted an opportunity to the accused to cross-examine the complainant with reference to the additional documents, and with that observation sent the matter to the trial Court for recording the evidence with reference to the additional documents and to submit the additional evidence to this Court. Pursuant thereto, the present Managing Director, namely *Avva Venkata Subramanyeswara Sarma*, was examined as P.W.2 and additional documents were marked. The information about the complainant company from the Ministry of Corporate Affairs website, Government of India, along with the Section 63 certificate under the BNS Act, was marked as Ex.P5. The statement of account of the complainant company in its current account No.1219129000000039, maintained with the Karur Vysya Bank, White Road

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Branch, Chennai, was marked as Ex.P6. Similarly, the statement of accounts of the company's current account No.1441115000002521 in the Karur Vysya Bank, Bunder Road Branch, Vijayawada, was marked as Ex.P7. The letter dated 01.10.2004 from the accused was marked as Ex.P8. It is recorded by the trial Court that the said letter was only a photocopy, and it is marked subject to the objection on the side of the accused. Another letter dated 06.10.2004 from the accused is marked as Ex.P9. A further communication from the accused dated 20.11.2004 is marked as Ex.P10. The minutes of the meeting held between the complainant and the accused on 27.11.2004 is marked as Ex.P11. The minutes of the meeting between the accused and their associates and M/s.Agrigold Exims Limited/complainant, on 02.01.2005, is marked as Ex.P12. Letter dated 01.03.2005 from the accused to the complainant is marked as Ex.P13. There was an objection with reference to Ex.P13 on the ground that it is a photocopy. Due cross-examination was also done by the accused with reference to the additional evidence. Thereafter, this Court heard the arguments of the learned counsel on either side.

6. *Mr. Manoj Sreevalsan*, the learned counsel appearing on behalf of the complainant, would submit that the trial Court acquitted the accused primarily on two grounds. The first ground is that the complainant has not discharged its onus to prove that it has parted with a sum of Rs . 3,36,00,000/- as per the agreement

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as an advance. He would submit that the said finding is erroneous in law inasmuch as this is a case arising out of an offence under Section 138 of the Negotiable Instruments Act, 1881. Upon the complainant deposing in the box and producing the cheque, the presumption under Section 139 is already in favour of the complainant, and, in the first place, the trial Court ought not to have even placed the onus on the complainant. If there is no liability or the amount is not paid, it is the accused who should have produced evidence to the level of preponderance of probability to rebut the presumption. Alternatively, the learned counsel would submit that now, by virtue of the entire evidence on record, all the correspondence between the parties has come on record. From D1 to D8, marked by the defence, taken along with the additional evidence now produced, the transactions between the parties are categorically demonstrated. Now, by virtue of Ex.P6 and Ex.P7 statements of accounts, coupled with the letter of the accused dated 20.11.2004, which contains the details of the payment, the payment made by the complainant stands proved. As a matter of fact, the said letter categorically mentions the payments that are made on 16.08.2004, 21.09.2004, 29.09.2004, 01.10.2004 and 05.10.2004. All these are corroborated by the complainant company's bank statements and acknowledged by the accused. Therefore, now the first finding of the trial Court has to go.



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7. With reference to the legally enforceable liability, on reading Ex.D5 to D8, it would be clear that the plot in the Paradeep Port actually belonged to the side of the accused, that is, either to the accused or to the person engaged by them, namely Maruti Exports. By bringing the iron ore to the said plot, it cannot be said that it is delivered to the complainant. Though the complainant was overseeing the goods being delivered in the said plot, it is only to satisfy the complainant that the goods are coming so that it can release the further payment. As and when the goods kept on coming, believing the accused, the complainant kept on releasing further payments. Unless the last of the metric ton arrives so as to satisfy the entire requirement of the 40,000 metric tons of the complainant and that is handed over to the complainant for export, it cannot be said that the accused has discharged the obligation. The same is clear from the documentary evidence that is now on record. The trial Court has not adequately considered the original evidence on record. When a dispute arose between the accused and the party engaged by them, and the party engaged by them began removing the goods at the accused's request, the complainant issued a letter stating that the goods belonged to them. That does not in any manner demonstrate that the complainant has acknowledged or agreed that the goods have already been delivered to him. Therefore, the trial Court's finding that there is no legally existing liability cannot stand.



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8. Therefore, when the complainant has categorically pleaded and proved that the complainant has paid the money and neither the accused, namely Taha Enterprises represented by its proprietor *Imtiaz Ahmad Khan*, nor their agent, namely Maruti Exports, or *Faiz Khan* who is said to be associated with Maruti Exports, have either repaid the amount or supplied the iron ore, this is a case of pure and simple non-fulfilment of obligations by the accused side and the liability to repay the amount is very much in existence. When the cheques were issued, it can be seen that even the erstwhile dates were struck off and the accused had duly made his signature along with the stamp of his enterprise, namely Taha Enterprises and had handed over the cheque after the final MOU/minutes of the meeting between the parties. It is the specific case of the complainant that even the particulars, including the dates in the cheque, were filled up only by the accused side and therefore, when the cheques have been expressly given acknowledging their liability in discharge of their liability, the trial Court's findings are not sustainable, firstly with the evidence already on record and more so with the additional evidence that is let in on behalf of the complainant.

9. *Mr. M. Mohammed Rafi*, the learned counsel appearing on behalf of the accused, submitted that, firstly, when the complainant claimed that, pursuant to a memorandum of understanding (MOU), the complainant had parted with

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Rs.3,36,00,000/-, he did not even fulfill his initial burden by producing the MOU. It is one thing to argue that the presumption favors the complainant in a case under Section 138, but if the party in possession of better and relevant evidence does not present it to the court, it cannot be said that he has discharged his burden, even to rely on the initial presumption. It is only the accused who introduced all the documentary evidence on record, marked as Ex.D1 to D8. Upon examining Ex.D1 to D8, it is evident that the complainant had even written to the port authorities claiming that the goods belonged to him and that someone else was attempting to steal them. Once such a claim is made by the complainant, it is clear that the accused has fulfilled his obligation in supplying the iron ore.

10. Additionally, he argues that the case is now strengthened by the new evidence filed as Ex.P8, the letter from the accused. From this letter, it is clear that the accused mentions the payment made by the complainant and how, in turn, the accused paid a third party to procure the materials. In fact, the amount paid by the accused is larger than what the accused received. It shows that the accused had no dishonest intent. The accused was only acting as a mediator between the supplier and the procurer, even though the agreement was in the name of the accused. The accused engaged Maruti Exports, who agreed to supply the materials. Any payments received by the accused were properly

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repaid to Maruti Exports. In fact, Maruti Exports had brought the iron ore. Once the iron ore arrived at the designated plot as per the MOU, it became the complainant's responsibility to take care of it. The complainant oversaw the supply and only released the second payment after receiving the first shipment, continuing this pattern. Therefore, it would be incorrect to hold the accused liable at this point.

11. He further submitted that when the complainant has also claimed ownership of the goods and issued Ex.D7 and D8 to the port authorities, then the liability of the accused ends. Not stopping there, it is also shown that both the complainant and the accused jointly took action against a third person, namely Maruti Exports and those connected with it, before the forum in Karnataka to recover the amount. Additionally, by marking the tripartite agreement, specifically the minutes of the meeting as Ex.P12, it becomes clear that after a certain time, the complainant excluded the accused and directly made arrangements with *Faiz Khan*. The meeting minutes between the parties became tripartite, and *Faiz Khan* directly promised to supply the goods at a different port, i.e., Haldia, and the minutes clearly state that *Faiz Khan* would pay Rs.50,000/- per day as compensation for default. Therefore, the complainant's reversal on the original MOU and claim for the refund of the advance amount does not arise, and there is no legally enforceable liability regarding the cheques.



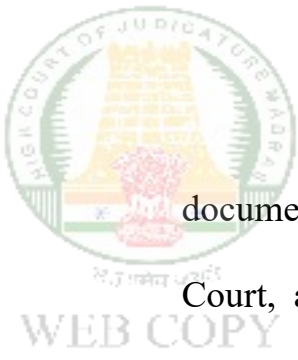
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12. As a matter of fact, the additional evidence Ex.P13, which is marked, is a letter written by the accused. Even in that letter, the accused has clearly stated that *Faiz Khan* was willing to supply the total materials in four shipments, but the complainant did not accept this for reasons best known to them. Therefore, in this dispute between the accused and the complainant, it cannot be determined whether *Faiz Khan* intentionally did not supply the materials or if the complainant rejected the supply offered by *Faiz Khan*. Consequently, no definitive conclusion can be drawn that the accused is still liable to repay the entire amount claimed by the complainant. Since there is no legally enforceable liability based on the original evidence and the additional evidence presented, the final decision by the trial Court, which found the accused not guilty of the offences, cannot be upturned by this Court.

13. I have considered the rival submissions from both sides and examined the material records of the case.

14. After reviewing the case on record, my predecessor permitted the recording of additional evidence, and both parties are not aggrieved by this. The additional documents have also been marked, and the accused has conducted cross-examination of P.W.2. Therefore, with the admission of these additional



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documents, it would not be appropriate to rely solely on the findings of the trial Court, as many documents between the parties, which are admitted by both sides, are now brought on record. Consequently, I believe it is proper to consider all the documentary and oral evidence on record comprehensively and then reach a conclusion.

15. Firstly, the case of the complainant is that the complainant entered into a Memorandum of Understanding (MOU) with the accused for the supply of iron ore. Pursuant to the MOU, the complainant has paid a sum of Rs.3,36,00,000/-, and the accused is legally liable to return this amount since the iron ore was not ultimately supplied to the complainant. A perusal of the complaint, the sworn statement, and subsequent chief examination of the complainant shows that, by making the necessary averments that an MOU was obtained and the iron ore was not supplied, and by producing the cheque and duly proving other ingredients such as dishonour, issue of statutory notice, and filing of the complaint, the complainant has discharged its initial burden. Thereafter, it is incumbent on the accused to rebut the presumption that arises in favour of the complainant under Section 139 of the Negotiable Instruments Act, 1881.

16. It is the contention of the learned counsel appearing on behalf of the respondent/accused that through proper cross-examination and by relying on the

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original documents on record, as well as the additional documents now marked as evidence, the accused has rebutted the presumption to the level of preponderance of probability that he does not have a legally enforceable liability to pay the sum of Rs.3,36,00,000/-. This must be considered by this Court.

17. On a perusal, firstly, the transaction begins with the Memorandum of Understanding between the complainant and the accused dated 14.08.2004. It can be seen that the accused has undertaken to supply 40,000 DMT of iron ore to the complainant, and the schedule and manner of supply are detailed in the MOU. Subsequently, on behalf of the accused, on 23.08.2004, they informed the complainant that the supply would be arranged through one M/s.Maruti Exports and Alloys, Lind Road, Cuttack, Orissa, India, who would be their authorized nominee for supply. By Ex. D 3 dated 25.09.2004, it is shown that the accused notified the complainant that around 4,000 tonnes of materials had been moved, and by the following Monday, they would be able to move more than 4,500 tonnes. Ex. D 4 further records the movement of approximately 2,000 tonnes of material in 200 vehicles to the plot. Ex. D 5 is a letter from the complainant stating that, as of the date of the letter, the accused had supplied 2001. 68 metric tonnes of iron ore against an advance payment of Rs. 32,00,000/-, with account details and proforma invoices included. They also confirmed their additional requirements and provided details of additional advance payments and

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schedules. It also mentions that the accused would allow storage of 22, 000 metric tonnes of iron ore, which they plan to procure from other sources, in the same plot within a designated, segregated area. Via Ex. D 6, an additional quantity of 10,000 metric tonnes and the pricing are communicated to the accused. In Ex. D 8, the complainant writes to the Traffic Manager of Paradeep Port, claiming that the iron ore stored at Zenith/Maruti plot rightfully belongs to them, having been procured from Odisha mines after paying Rs. 3,26,00,000/-. After transportation costs, the goods were unloaded at the specified plot. They request the Traffic Manager not to permit any party to move the ore outside the plot without their consent. Ex. D 7 is a letter sent to the clearing and forwarding agent, M/s. L. M. Haiti & Co., asserting the same claim as Ex. D 8, emphasizing that the goods are theirs and cannot be moved without their approval.

18. Now, as additional evidence, Ex. P 6 is marked to show the details of the complainant company, including the accounts it holds in various banks. The said document is produced to corroborate that the bank statements produced in Ex.P6 & P7 belong to the complainant company. Exs. P 6 and P 7 show that the complainant has made payments on various dates; the summary of which is contained in the letter dated 01.10.2004 written by the accused, marked as Ex. P 8. Ex. P 8 explicitly states the payments received from the complainant. As noted in the arguments of the learned counsel for the complainant, a sum of Rs. 15/26



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Rs.32,00,000/- was paid on 16.08.2004, Rs. 72,00,000/- on 21.09.2004,

Rs.70,00,000/- on 29.09.2004, Rs. 40,00,000/- on 01.10.2004, and another Rs.

30,00,000/- on 27.09.2004, totaling Rs. 2,44,00,000/-. The letter also details the

payments made by the accused to the supplier, namely Maruti Exports and

Alloys, towards materials and transport charges. These letters include details of

payments on various dates amounting to Rs. 2,21,50,000/-. It is stated that the

payment on 27.09.2004 was directly made by the complainant to the third party,

Maruti Exports, to the tune of Rs. 30,00,000/-, and the letter states that a total of

Rs. 2,51,00,000/- was paid to this third-party entity. The letter also highlights a

dispute between the parties, in which the accused informs the complainant that

passing information directly to the associates is causing unnecessary friction.

Marked as Ex. P9, the letter acknowledges receipt of Rs. 62,00,000/- for the

additional supply of 10,000 tonnes of iron ore. A review of Ex. P 9, written by

the accused, shows that discussions took place between the parties, and there

were some changes in the organisational structure of the accused. However, it

was assured that these management changes would not affect the contract with

the complainant or their commitments. The accused also made an endorsement

to provide the complainant with a cheque for the second contract. Furthermore,

the details of payments received up to 09.10.2004 are included in the letter,

which clearly states that a total sum of Rs. 3,36,00,000/- was paid by the

complainant. It appears that Maruti Exports, after bringing in the iron ore to the



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plot, unilaterally removed it without the consent of the accused or the complainant, even while both were objecting.

19. Thereafter, it can be observed that a meeting was held on 27.11.2004, and the minutes of the meeting are recorded, signed by both sides, and now presented as Ex.P11. Through Ex.P11, the accused side confirmed receipt of Rs.3,36,00,000/-. They committed to arranging the delivery of the iron ore, as detailed in the minutes of the meeting. The minutes explicitly state that the meeting follows the agreement dated 14.08.2004 and earlier letters dated 16.09.2004 and 29.09.2004. According to the minutes, the accused agreed to deliver 20,000 metric tonnes of iron ore fines at Dolphin Plot, Paradeep Port, or alternatively, to return the entire advance of Rs . 3,36,00,000/- along with Rs . 30,00,000/- as interest and incidental charges. The minutes also record that on the meeting date, the accused provided security cheques worth Rs. 32,00,000/- to the complainant, and further security cheques for the remaining Rs . 2,54,00,000/- were promised by 28.12.2004. The accused further committed to completing the transaction within 45 days, after which the security cheques would be returned if the transaction was satisfactory.

20. Subsequently, another set of minutes was recorded on 02.01.2005, marked as Ex.P12. This meeting involved three parties: the complainant, M/s.



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Agrigold Exims Limited, represented by *Mr. P. Venkatesan*, Vice-President, and *Mr. Sharma*; the accused side, namely M/s. Taha Enterprises, represented by *Imtiaz Ahmad Khan* and *Mr. Sheikh Ahmed*; and a third party, identified as Taha Enterprises' associate, *Faiz Khan*. These minutes acknowledge the original agreement and the arrangements made between the parties. They also recognize the previous minutes documented in Ex.P11. The following clauses, particularly clauses 1 to 9, are then entered into between the parties, as follows:-

1. *Mr.Faiz, a close associate of Ms.Taha Enterprises, that he will supply the 20000 MT of Iron ore fines at Haldia Port.*

2. *The plot at Haldia will be provided by Faiz, with an authorization to us till we clear the material i.e, 30 days from the date of his complete supply.*

3. *Mr.Faiz will complete the supply of 20000 MT on or before 20th Jan 2005. Failing which he has to compensate for the delay of Rs.50000/- day.*

4. *Mr.Taha Enterprises/Mr.Khan either they can supply the matieral for Rs.62,50,000/- which has been paid additionally as advance for further supply 10,000 MT or they can return the money with bank Interest immediately. The target date will be 25.01.2005 for this supply. The rate of iron ore will remain same as stated in our letter 29.09.2004.*

5. *The iron ore being supplied will meet the required specification as stated in our original agreement along with all penalties.*

6. *Mr.Faiz as a guarantor for Taha Enterprises will provide all documentary evidence for the*



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material, plot at Haldia and also hereby confirms the transfer of due ownership to Ms.Agrigold Exims Limited.

7.Mr.Faiz, hereby the iron ore being supplied will be stored at the following plot in Haldia Port and he will duly document the Plot to Ms.Agrigold Exims Limited. He also provides his consent for Agrigold Exims Limited, executive to inspect, sample, sell, further storing of iron ore in the same without any resistance/resrictions.

8. Mr.Taha Enterprieses, still hold the full responsibility for the successful completion of this transaction, though it has been guaranteed by Mr.Faiz Khan.

9.If Mr.Faiz Khan/Ms.Taha Enterprises fails to comply to supply on the above specified date, they had agreed to provide immovable property or banking instrument as security to cover the total value of money taken from ms.Agrigold Exims Limited.

21. Upon careful review of the above clauses, it is evident that the transaction was further advanced and expanded by the parties through their subsequent agreement, changing from a bipartite to a tripartite arrangement. From the minutes mentioned, it is clear that *Faiz Khan* agreed to supply the goods for the money already received by Maruti Exports and will supply 20,000 metric tonnes on or before 20.01.2005 at Haldia Port, with the same to be taken over by the complainant. The default clause states that, for delays, Faiz Khan will pay compensation of Rs.50,000 per day. Regarding Taha Enterprises, it



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explicitly states that since Rs.62,50,000/- was received for additional procurement—funds that were not paid to Maruti Exports—Taha Enterprises committed to supply 10,000 metric tonnes or return the money. The minutes also include clauses that both parties will act as mutual guarantors: Taha will guarantee and be responsible for Faiz Khan's supply, and *Faiz Khan* will similarly guarantee Taha Enterprises' obligations, providing all necessary documentary evidence of the material plot at Haldia and confirming the transfer of ownership to M/s. Agrigold Exims Limited. It is also clear that within the tripartite agreement, the accused and the third party agreed to provide immovable property or banking instruments as security to cover the total amount borrowed from M/s. Agrigold Exims Limited.

22. After the agreement, another communication in the form of Ex.P13 records that even thereafter the accused continued visiting Chennai with *Faiz Khan* and attempted to negotiate with the complainant to arrange the supply and resolve the issue. However, that letter itself indicates that no supply was made even after the tripartite agreement on 02.01.2005. The original evidence presented by the parties, including the chief examination and cross-examination of the complainant, is also considered. Therefore, after analyzing all the evidence on record, it appears that the original claim by the complainant — that they entered into an MOU with the accused and that the accused defaulted, issuing

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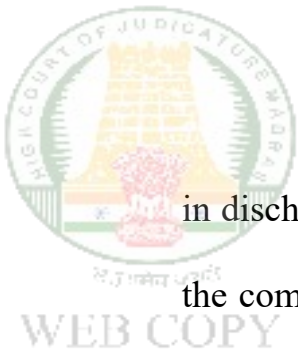
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cheques in repayment of the advance received — is not accurate. The same is only true in regard to the Rs . 62,50,000/- advance paid, for which the accused had committed to repay or supply as per Ex.P12, the last arrangement between the parties.

23. With regard to the balance amount, the original case of the complainant, as if it is a bipartite agreement solely between the complainant and the accused, cannot stand. In view of the tripartite minutes of the meeting in the form of Exhibit P12, which categorically bifurcate the liability between the accused and the third party, while the accused had undertaken to return the advance amount only up to Rs.62,50,000/-, and since it is only the said third party, Faiz Khan, who had committed to discharge the liability concerning the earlier amounts paid by supplying materials at Haldia Port, the evidence now presented by the complainant himself is not consistent with the original case or the sworn statement and the chief evidence initially submitted on behalf of the complainant.

24. The alternative argument of the learned counsel for the complainant/appellant is that even by virtue of the tripartite meeting dated 02.01.2005, Taha Enterprises, the accused, also guaranteed the performance of Faiz Khan and the cheques have been handed over after the tripartite agreement

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in discharge of the said liability as the guarantor. Firstly, that was not the case of the complainant. I have examined the chief examination of P.W.1 and the cross-examination, as well as the evidence of P.W.2 who was now examined by way of additional evidence. There is no clear and definite evidence from the complainant's side that the cheque was issued to fulfil the guarantor's liability. Second, since third-party liability is involved in the private complaint now filed only against the accused, it cannot be conclusively determined under what circumstances Faiz Khan did not supply the materials or whether the statement in Ex.P13 that he had offered to supply the materials in four shipments is willfully refused by the complainant or that the complainant was justified in not acting upon the same as it was yet another false promise.

25. Suffice it to mention that whether the liability of the accused to repay the money as a guarantor or whether there was default or not cannot be established in the present transaction itself, and the accused has done enough to raise doubt and rebut the presumption regarding the claim made by the complainant, with reference to the liability arising out of the non-supply of materials by the Faiz Khan. In fact, it should be noted that the material alteration in the cheques—specifically, that the accused had taken back the cheques from the complainant, scored off the dates, rewrote the dates, initialled, and returned them—is not mentioned in the complaint or in the complainant's evidence. The

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complainant could have provided a clearer account and succeeded. The liability for which the cheque is issued should be clearly presented, and the accused should be given an opportunity to defend himself. If the complainant asserts that the cheques were issued as part of the accused's obligation as a guarantor to *Faiz Khan*, pursuant to Ex.P12, and that the accused took back the original cheque and re-issued it after altering the dates and signing for corrections, this information should have been included in the complaint, the agreement, or at least in the primary evidence of P.W.1, or at the very least, it should have been clearly and categorically pleaded by P.W.2, who was permitted this additional evidence by the Court.

26. However, at the same time, upon a reading of the entire evidence on record, the original case of the complainant remains intact with reference to the sum of Rs. 62,50,000/-, which is the primary liability of the accused even as per Ex.P12, which he has undertaken to supply or return. Admittedly, there is no evidence on record that the accused had supplied. Conversely, the complainant's evidence clearly indicates that the accused has not supplied.

27. In view thereof, out of eight cheques that have been issued, one cheque issued bearing serial number 396829 dated 01.02.2006 for a sum of Rs.62,00,000/- is at least proven by the complainant as issued for a legally

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enforceable liability against the accused beyond any reasonable doubt. A reading of the original and additional evidence on the whole, it can be seen that the complainant's case that he advanced the money pursuant to the original MoU and the goods were not supplied and the cheque was issued in return of the money paid stands proven only in respect of the above mentioned cheque.

28. In view thereof, the appeals are disposed of on the following terms:

(i) The ultimate finding giving the benefit of doubt to the accused in the matter of guilt and acquitting the accused is confirmed in respect of C.C.Nos. 7788 and 7790 of 2007, and accordingly Crl.A.Nos. 309 and 249 of 2022 shall stand *dismissed*.

(ii) Crl.A.No. 251 of 2022 is *partly allowed*. C.C.No. 7789 of 2007, is filed in respect of the offences under Section 138 of the Negotiable Instruments Act in respect of three cheques in the same complaint. The finding of the trial Court to extend the benefit of doubt and acquit the accused is confirmed with reference to cheque No. 396841 and cheque No. 396806. However the finding in respect of cheque No. 396829 dated 01.02.2006 for a sum of Rs.62,00,000/- is reversed. The accused is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881, in respect of the said cheque No. 396829 dated 01.02.2006 for a sum of Rs . 62,00,000/- .



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(iii) Considering the peculiar circumstances of the case and that it has been pending since 2004, and 21 years have passed by, it would be appropriate to impose a sentence of fine alone, with a default sentence. A fine of Rs. 62,05,000/- is imposed on the accused. The fine amount shall be paid before 25.02.2026. Upon payment of the same, a sum of Rs. 62,00,000/- shall be paid out to the complainant as compensation.

(iv) Failing compliance, the accused shall undergo simple imprisonment for a period of six months.

21.11.2025

Neutral Citation: Yes

nsI

To
The Metropolitan Magistrate,
Fast Track Court III,
Saidapet,



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D.BHARATHA CHAKRAVARTHY, J.

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21.11.2025