IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.06.2025

Pronounced on : 10.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.7 of 2023

M/s.Silver Wood
(Interior Decorators)
Represented by its Proprietor
G.Vasudevan,
No.23, (Old No.01A/15)
Agathiyar Nagar, Villivakkam,
(Opp.PSMHS School)
Chennai 600 049 ... Petitioner

Versus

M/s.Kameo
Proprietrix, Kashmira Chitale,
Rep by Power Agent Tilak Chitale,
No.16, (Old No.14)
Subbao Rao Avenue, 1st Street,
College Road,
Chennai 600 006 ... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 & 401 of the Code of Criminal Procedure praying to call for the records in criminal appeal No.200 of 2019 on the file of the learned III Additional

Sessions Judge, Chennai dated 01.11.2022 confirming the conviction in CC.No.6189 of 2012 on the file of the learned Fast Track Judge-1, Egmore, Allikulam, Chennai and set aside both the judgments and consequently acquit the petitioner/accused from the above case.

For Petitioner : Mr.M.Abdul Razak

For Respondent : Mr.S.L.Sudarsanam

ORDER

This criminal revision has been preferred against the judgment dated 01.11.2022 passed in Crl.A.No.200 of 2019 on the file of the III Additional Sessions Judge, Chennai, thereby confirmed the order dated 25.04.2019 passed in CC.No.6189 of 2012 on the file of the Fast Track Court /No.1, Egmore, Allikulam, Chennai thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner was entrusted for doing interior decoration at the office of M/s.Sriram Capital at Chennai. In this regard, the petitioner had issued a cheque in favour of the respondent for a sum of

Rs.3,00,000/- along with an undertaking letter as security deposit. It was presented for collection, but it was returned dishonoured for the reason 'insufficient funds'. After causing statutory notice, the respondent filed complaint and the same was taken cognizance by the trial court.

3. On the side of the respondent, he had examined himself as P.W.1 and marked Ex.P1 to Ex.P8. On the side of the petitioner, he was examined as D.W.1 and marked Ex.D1 to Ex.D6. On the basis of the oral and documentary evidence, the trial court convicted the petitioner and sentenced him to undergo six months simple imprisonment and also awarded compensation to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and the judgment of conviction was confirmed and the sentence imposed by the trial court was upheld, against which the present revision has been filed.

4. The learned counsel for the petitioner would submit that the cheque was marked as Ex.P3 and the same was a 'stale one'. After expiry

of the cheque, it was presented for collection. The cheque was issued on 21.05.2012 and the same was presented for clearing on 22.08.2012 i.e. after validity period of three months. Therefore, no offence is made out under Section 138 of NI Act as against the petitioner. Before the trial court, the petitioner did not examine the banker of the respondent. But he filed application under Section 391 of Cr.P.C. before the appellate court and he was permitted to examine the banker of the respondent. Accordingly the respondent examined the bank manager as DW2 and he categorically deposed that Ex.P3 i.e. the cheque was presented only on 22.08.2012. Though the cheque was returned for the reason 'insufficient funds', it does not mean that it was presented in time. However, the appellate court, without considering the evidence of DW2, mechanically confirmed the judgment of the trial court and convicted the petitioner.

5. Per contra, the learned counsel for the respondent would submit that DW2 deposed that Ex.P3 was returned dishonoured for the reason 'unsufficient funds'. Therefore, it was presented for collection within the validity period i.e. within the period of three months from the

date of issuance of the cheque. If the cheque was presented beyond the validity period of the cheque, the banker definitely would have returned the same as stale one. Admittedly, the cheque was taken for collection and the same was returned for the reason 'insufficient funds'. Therefore, both the courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

6. Heard, the learned counsel appearing on either side and perused the records produced before this Court.

7. The only point arising in this case is that whether the cheque was presented beyond its validity period and if the cheque was presented within the validity period, whether the cheque was issued for any legally inforceable debt or not?

8. Even according to the respondent, the petitioner was entrusted with some interior works at the offence of M/s.Sriram Capital, Chennai. In this regard, the petitioner, who was being a contractor,

issued Ex.P3 as security deposit for the work to be done by the petitioner, that too with undertaking letter which was marked as Ex.P2. On perusal of Ex.P2, revealed that the petitioner issued the letter dated 21.05.2012 stating that the cheque i.e. Ex.P3 was issued towards security deposit and the same may be negotiated if required by the respondent at will. It means that if there is any failure on the part of the petitioner for the work entrusted with the petitioner after receipt of the contract amount, the cheque can be presented by the respondent. On perusal of the complaint, it is very clear that it is not the case of the respondent that the petitioner failed to complete with the work which was entrusted to the petitioner, for which the respondent presented the cheque for clearance. It was issued merely as security deposit and not for any legally enforceable debt. Even according to the respondent, no amount was borrowed or entrusted with the petitioner by the respondent. Ex.P3 was not issued for any legally enforceable debt. There is absolutely no whisper about any allegation against the petitioner with regards to the entrustment of work and failure of work on the part of the petitioner to deposit Ex.P3. Therefore, the cheque itself was not at all issued for any legally enforceable debt and it was issued only as a security deposit. Hence the offence under Section 138 of NI Act is not not all made out as against the petitioner.

9. Another ground raised by the petitioner is that the cheque itself became stale one since it was presented for collection after its validity period. On perusal of the records, the cheque was issued on 21.05.2012. It had validity for three months i.e. till 21.08.2012. Though the petitioner raised this ground before the trial court, the petitioner failed to examine the banker of the respondent to prove that Ex.P3 itself is stale one. However, in the appellate stage, the petitioner filed application under Section 391 of Cr.P.C. and the same was allowed and the petitioner had examined the banker of the respondent as DW2. On perusal of deposition of DW2, it is clear that the cheque was presented only on 22.08.2012 i.e. after its validity of three months. Though Ex.P3 was returned dishonoured for the reason 'insufficient funds', it was presented beyond its validity. Therefore, the banker of the respondent made a mistake while returning the cheque i.e. Ex.P3 as 'insufficient

funds'. Mere return of cheque for the reason 'funds insufficient', does not mean that the cheque was presented on time. It is also evident from Ex.D7, which is the bank statement of the respondent marked through DW2, that Ex.P3 was presented for collection on 22.08.2012 and a sum of Rs.3,00,000/- was credited to the respondent's account. However, after returning the cheque for the reason 'funds insufficient', a sum of Rs.3,00,000/- was debited from the respondent's account on 24.08.2012 and issued return memo dated 24.08.2012. Therefore, Ex.P3 was presented for collection only on 22.08.2012 i.e. after its period of validity. Hence, DW2 ought not have returned the cheque for the reason 'funds insufficient' instead of returning the cheque as 'stale one'. Unfortunately, without considering the above facts and circumstances, the trial court as well as the appellate court convicted the petitioner for the offence punishable under Section 138 of NI Act and as such, the impugned judgments cannot be sustained and the same are liable to be set aside.

10. Accordingly, the judgment dated 01.11.2022 passed in Crl.A.No.200 of 2019 on the file of the III Additional Sessions Judge, Chennai and the judgment dated 25.04.2019 passed in CC.No.6189 of 2012 on the file of the Fast Track Court /No.1, Egmore, Allikulam, Chennai are set aside. The petitioner is acquitted of all charges in the aforesaid case in CC.No.6189 of 2012. The bail bond, if any executed by the petitioner, shall stand cancelled. Fine amount, if any paid, shall be refunded to the petitioner forthwith.

11. In the result, this criminal revision stands allowed.

10.06.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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To
1.The learned III Additional Sessions Judge, Chennai
2.The learned Fast Track Judge-1, Egmore, Allikulam, Chennai

G.K.ILANTHIRAIYAN. J,

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