



CrI.R.C.No.1330 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 17.04.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision No. 1330 of 2019
and
CrI.M.P. No. 17872 of 2019

B. Vengateswaran

.. Petitioner

Versus

U. Thenappan,
Prop. of Ragavendra Enterprises,
No. 41/52, K.K. Road,
Venkatapuram, Ambattur,
Chennai – 600 053.

.. Respondent

Criminal Revision is filed under Section 397 and 401 of Cr.P.C to set aside the order dated 30.11.2017 passed in S.T.C. No. 252 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial level at Ambattur confirmed in the Judgment dated 20.09.2019 passed in CrI.A. No. 4 of 2018 on the file of the learned I Additional District and Sessions Judge, Tiruvallur.

For Petitioner : Mr. A.R. Nixon

For Respondent : Mr. Karthick
for M/s. AL.Gandhimathi



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ORDER

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This Criminal Revision is filed to set aside the judgment dated 20.09.2019 passed in C.A.No.4 of 2018 on the file of the learned I Additional District and Sessions Judge, Tiruvallur modifying the order dated 30.11.2017 passed in S.T.C.No.252 of 2016 on the file of the Judicial Magistrate, Fast Track Court, Magisterial level at Ambattur.

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

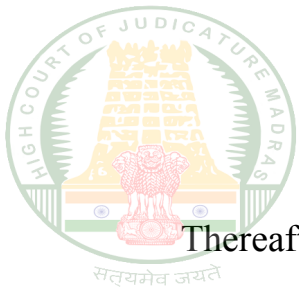
2.1. As per the complaint filed by the Respondent/Complainant, the Complainant is engaged in the business of selling electronic goods in the name and style of M/s. Ragavendra Enterprises, having his showroom at No.41/52, K.K. Road, Venkatapuram, Ambattur, Chennai. According to the Complainant, the Revision Petitioner/Accused is his close friend for more than 15 years. It was stated that the Revision Petitioner/Accused is engaged in the contractual business with T.I. Cycles of India, Ambattur. During March 2011, the Revision Petitioner/Accused represented to the Complainant that the payment bills were not cleared by T.I. Cycles Company and for clearance of the bills, they are expecting gifts such as LCD Television, Air Conditioners etc., Therefore, the Revision Petitioner/Accused requested the Complainant to



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supply those items on credit basis. Accordingly, during May 2011, the Respondent/Complainant supplied those goods. Similar supplies were effected as and when requested by the Revision Petitioner/Accused until June 2012 to the total value of Rs.49,50,600/-. When the Complainant demanded payment, during October 2012, the Revision Petitioner/Accused stated that he will make the payment during November 2012. Accordingly, to discharge his liability, the Revision Petitioner/Accused issued two cheques dated 01.11.2012 for Rs.30,00,000/- and another cheque dated 26.11.2012 for Rs.19,50,600/- drawn on United Bank of India, Mount Road Branch. On 26.11.2012, when the Respondent/Complainant presented the cheques with his bankers Syndicate Bank, Ambattur, the same was returned unpaid with an endorsement “funds insufficient” and it was communicated to the Respondent/Complainant on 28.11.2012. Therefore, on 30.11.2012, the Respondent/Complainant sent a notice to the Revision Petitioner/Accused calling upon him to pay the cheque amount. On receipt of the notice, the Revision Petitioner/Accused issued a reply notice dated 13.12.2012 with false allegations. Therefore, the Respondent/Complainant had filed the complaint under Section 138 of The Negotiable Instruments Act, 1881.

2.2. After receipt of the complaint, the Complainant/Respondent herein was examined on oath and his sworn statement was recorded.



Thereafter, summons were issued to the Accused for his appearance. On appearance of the Accused, copies were furnished to him. When he was questioned, he pleaded not guilty and claimed to be tried. Therefore, trial was ordered. During trial, the Respondent/Complainant examined himself as P.W-1 and marked Ex.P-1 to Ex.P-8. On behalf of the Revision Petitioner/Accused no witness was examined, but eight documents were marked as Ex.D-1 to Ex.D-8.

2.3. On assessment of evidence, the Trial Court, by the Judgment dated 30.11.2017 concluded that the cheques were issued for a legally enforceable debt and liability by the Revision Petitioner/Accused. It was also held that the initial presumption raised by the Respondent/Complainant was not rebutted by the Revision Petitioner/Accused. Accordingly, the trial Court allowed the Complaint filed by the Complainant and convicted the Revision Petitioner/Accused for the offence under Section 138 of The Negotiable Instruments Act, 1881 and sentenced him to undergo 8 months simple imprisonment, besides directed to pay Rs.49,50,600/- being the cheque amount, in default, to undergo two months simple imprisonment.

2.4. Aggrieved by the judgment of conviction, the Accused preferred Criminal Appeal No. 4 of 2018 before the learned I Additional District and



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Sessions Judge, Tiruvallur which was dismissed on 20.09.2019

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2.5. Challenging the dismissal of the Appeal, the Appellant in Criminal Appeal No. 4 of 2018 on the file of the learned I Additional District and Sessions Judge, Tiruvallur had filed this Criminal Revision.

3. Mr. A.R. Nixon, learned Counsel for the Revision Petitioner submitted that the Revision Petitioner/Accused had been purchasing materials for his shop/show room and the Respondent/Complainant had been supplying the materials. In the course of transaction, the outstanding has accrued to the tune of Rs.1,90,00,000/- and the Revision Petitioner/Accused settled Rs.90,00,000/- and an amount of Rs.1,00,00,000/- was pending. At this stage, the Complainant preferred a Complainant before the Police. On enquiry, the Police referred the same to the learned Judicial Magistrate, Ambattur by filing R.C.S as it is a Civil dispute. Subsequently, cheques which were given by the Revision Petitioner/Accused towards surety has been filled up by the Respondent/Complainant to file the instant complaint under Section 138 of The Negotiable Instruments Act, 1881.

4. The learned Counsel for the Revision Petitioner also submitted that when statutory notice was issued by the Complainant, the Revision



Petitioner sent a reply and stoutly denied the contents of the statutory notice.

In the reply notice, it was specifically stated that there is no liability on the part of the Revision Petitioner to the Respondent. In spite of the same, the complaint was taken on file by the learned Judicial Magistrate, Fast Track Court (Magisterial level) Ambattur.

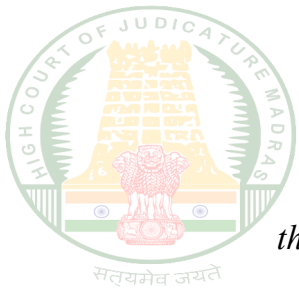
5. In support of his contentions, the learned Counsel for the Revision Petitioner relied on the following decisions:-

5.1. In the case of **Krishna Janardhan Bhat v. Dattatraya G.Hegde** reported in **2008 STPL 2464 SC**, the Honourable Supreme Court had held as follows:

“21. The proviso appended to the said section provides for compliance of legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.”

5.2. In **Techi Doya vs. State of Arunachal Pradesh and another** reported in **II (2016) CCR 229 (Gau.)**, particularly in para 21, it is held as follows:

“21. It is a settled law that existence of debtor other liabilities has to be proved in the first instance by the Complainant and thereafter



the burden of proving to the contrary shifts on the accused.”

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5.3. In ***HMT Watches Ltd vs. M.A.Abida and Others*** reported in ***MANU/SC/0296/2015***, it was held that “*debt or other liability*” means a *legally enforceable debt or other liability*.

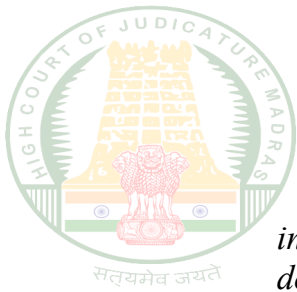
5.4. In the case of ***Niranjan Kaur vs. M/s.New Delhi Hotels Ltd*** reported in ***AIR 1988 DELHI 332***, it was held thus:-

“When a party in possession of best evidence which would throw light on the issue in controversy withholds it, Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him, and such party cannot rely on the abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.”

5.5. In the case of ***Smt. Gangabai v. Smt. Chhabubai*** reported in ***AIR 1982 Supreme Court 20***, it was held thus:-

“...the sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever...”

The bar imposed by sub-sec(1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never



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intended to be acted upon at all between the parties and that the document is a sham”.

5.6. In the case of ***Muthammal (died) and another v. The State of Tamil Nadu*** reported in ***2006-3-L.W.361***, it is held as follows:

“If a party, who is having records in his possession withholds the same which will throw light on the facts in issue, then the court is entitled to draw adverse inference against such party.”

5.7. In the case of ***K.Prakasam v. P.K.Surenderan*** reported in ***2007 STPL 19605 SC***, it was held as follows

“12. The Act raises two presumptions; firstly, in regard to the passing of consideration as contained in Section 1 18(a) therein and, secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability. Presumptions both under Sections 1 18(a) and 139 are rebuttable in nature. Having regard to the definition of terms proved and disproved as contained in Section 3 of the Evidence Act as also the nature of the said burden upon the prosecution vis-a-vis an accused it is not necessary that the accused must step into the witness box to discharge the burden of proof in terms of the aforementioned provision.”

5.8. In the case of ***Mrs. M. Mallika v. Mr. Kasi Pillai*** in ***S.A.No.740 of 2015*** in para 18 it was held as follows:-

“18. The material alteration is visible to the naked eye and the very fact that the amount which is the basis for the claim had been written in two different inks, raises a strong suspicion regarding the circumstances surrounding the execution of the promissory note. It also gives rise to the doubt whether the digit 3 had been subsequently appended after the defendant had signed the promissory note. This would render the document void as against the plaintiff/appellant herein.”

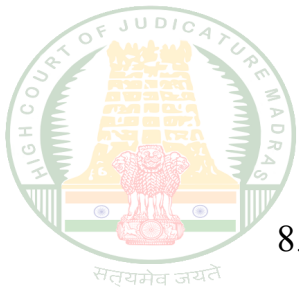
6. By placing reliance on the above decisions, it was submitted by



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the learned Counsel for the Revision Petitioner/Accused that by issuing reply notice, the initial presumption raised by the Complainant has been successfully rebutted. Further, the Revision Petitioner/Accused had marked documents to disprove the fact that the cheque was not issued for a legally enforceable debt and liability. However, the Courts below over looked the above and recorded a conviction against the Revision Petitioner/Accused. Therefore, the learned Counsel for the Revision Petitioner/Accused prayed for allowing the Criminal Revision as prayed for.

7. Per contra, Mr. Karthick, learned Counsel for the Respondent submits that the cheque was issued for a legally enforceable debt. The relationship between the Complainant and the Accused was dealer and agent. The Accused used the electrical and electronic goods supplied by the Complainant for being disbursed to V.V.I.P's as bribe. In any event, the Accused had not denied the signature in the cheque. The Revision Petition preferred by the Accused has no merit as the trial Court as well as the Appellate Court had on appreciation of evidence had rejected the defense of the Accused. Both trial Court as well as the Appellate Court had arrived at the same conclusion that the Accused had committed the offence under 138 of Negotiable Instruments Act, 1881.



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8. The learned Counsel for the Respondent also submitted that earlier, the Respondent/Complainant had given Police complaint against the Revision Petitioner/Accused based on which the case in Crime No. 2029 of 2012 was registered for the offences punishable under sections 420 and 506(2) of I.P.C. But except registering the complaint, no further action was taken. Therefore, the Respondent/Complainant filed Crl.OP No. 29885 of 2015 before this Court. When the said case was taken up for hearing, the Inspector of Police, T-1 Ambattur Police Station had given instruction to the State Counsel who made a submission before this Court that the case in Crime No.2029 of 2012 was closed as mistake of fact. However, the copy of the closure report was not furnished to the Respondent/Complainant. When the Complainant approached the learned Judicial Magistrate with an application dated 18.08.2014 and sought for certified copy of the documents in Crime No.2029 of 2012, the application was returned on the ground that no closure report had been filed before the learned Judicial Magistrate, Ambattur. This is evident that the Inspector of Police did not even file the closure report before the learned Judicial Magistrate, Ambattur but represented before this Court that the case in Crime No. 2029 of 2012 was closed as mistake of fact. This exposes the conduct of the Accused in subverting the process of law.

9. The learned Counsel for the Respondent/Complainant also



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submitted that the documents marked before the trial Court by the Revision

Petitioner/Accused will not establish the Preponderance of Probabilities in his

favour. On perusal of the documents marked through cross examination of

P.W-1 through Ex.D-1 to Ex.D-7, it will be clear that the Revision

Petitioner/Accused is only attempting to find ways to wriggle out of his

liability without actually paying the amount. The Revision Petitioner/Accused

issued a reply notice stating that he does not have any liability with the

Complainant and directed the Complainant to return all the cheques. The

Complainant parted with electrical and electronic goods but he had not paid the

amount thereof when demanded. Here, the contract between the Complainant

and the Accused is oral contract but for having supplied the goods, bills are

available and they were filed as documents. Ex.P-8 is the carbon copy of the

series of bills. The learned Additional District Judge, Fast Track Court,

Tiruvallur in the Judgment had clearly discussed the liability and the evidence

before the trial Court under Ex.P-7 and Ex.P-8. The Accused failed to raise

probable defence. The transaction between Complainant and Accused alone is

available for consideration by the learned Magistrate. Whether the Accused

procured the devices to influence persons in power with whom he has to get

bills for the contract undertaken by him is not a consideration either for the

Complainant or for the Court. The Accused cannot wriggle out of this case

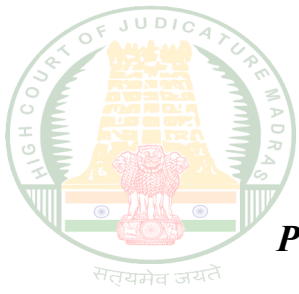
stating that the Complainant attempted to enforce an illegal contract. As a



dealer in electrical goods, the Complainant is well within his rights to enforce the contract for purchase of electrical and electronic goods by the Accused.

The bills marked as Ex.P-7 and Ex.P-8 would clearly prove the nature of contract between the Complainant and the Accused.

10. The learned Counsel for the Respondent/Complainant submitted that the Judgment relied on by the Counsel for the Revision Petitioner/Accused in S.A.No.740 of 2015 will not help the Revision Petitioner/Accused. The Complainant is within his powers to fill up the cheques as per the reported ruling of the Honourable Supreme Court in ***K. Bhaskaran v. Sankaran Vaidhyan Balan and another*** reported in (1999) 7 Supreme Court Cases 510. The holder in due course is given the power to fill it according to the liability between the drawer of the cheque and the holder of the cheque. Therefore, it is an enforceable contract in the normal human conduct. Therefore, the Accused cannot take advantage of the ruling in S.A.No.740 of 2015. The defence of the Revision Petitioner/Accused was rightly rejected by the learned Judicial Magistrate, Fast Track Court (Magisterial level-2), Ambattur and it was confirmed by the Appellate Judge. The learned Counsel for the Respondent/Complainant therefore prayed for dismissal of this Criminal Revision.



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Point for Consideration:

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Whether the concurrent finding of fact recorded by the learned Judicial Magistrate, Fast Track Court (Magisterial level) Ambattur in S.T.C.No.252 of 2016, dated 30.11.2017 and confirmed in appeal by the learned I Additional District and Sessions Judge, Thiruvallur in Criminal Appeal No. 04 of 2018, dated 20.09.2019 are to be set aside?

11. Heard Mr. A.R. Nixon, learned Counsel for the Revision Petitioner and Mr. Karthick, learned Counsel for the Respondent. Perused the materials available before the trial Court including judgment of the learned Judicial Magistrate and the documents under Ex.P-1 to Ex.P-8 and Ex.D-1 to Ex.D-8.

12. On perusal of the Judgment, the learned Judicial Magistrate had properly analysed the evidence in the light of the provisions of Section 118 and Section 139 of the Negotiable Instruments Act, 1881. The learned Judicial Magistrate relied on the ruling cited by the learned Counsel for the Accused in ***2013 1 DCR 98 Madras*** to contend that the Accused need not enter the witness box. Such defence was rejected by holding that the Accused had not rebutted the initial presumption raised by the Complainant. Therefore, the learned Judicial Magistrate, Fast Track Court (Magisterial level), Ambattur had on



proper assessment of evidence convicted the Accused based on Sections 118 and 139 of the Negotiable instruments Act, 1881.

13. The Accused had not denied his signature in the cheques and admitted having handed over cheque leaves duly signed as could be evident from Ex.P-6 and Ex.D-7. When a strong presumption has been raised by the Respondent/Complainant, the burden is on the Accused to rebut such presumption through material evidence to the satisfaction of the Court. The Appellate Judge had on assessment of evidence under Ex.D-1 to Ex.D-7 concluded that the claim of the Accused that VAT Tax was not paid by the Complainant to the authorities will not help him to wriggle out of his liability. It is a separate action to be initiated by the authorities, if VAT Tax was not paid. The non-payment of VAT Tax by the Complainant will not in any way help the Revision Petitioner/Accused to disprove the case projected against him. Similarly, the closure of the case in Crime No. 2029 of 2012 before the Ambattur Police for the offence under Sections 420 and 506 (ii) of the IPC cannot help the Revision Petitioner/Accused to come clean from the rigors of the complaint under Section 138 of Negotiable Instruments Act, 1881 or to question the maintainability of a private complaint under Section 138 of the Negotiable Instruments Act, 1881 dealt with by the learned I Additional District and Sessions Judge. This was clearly discussed by the Appellate Court



in para 11 of the Judgment. Taking note of the documentary evidence available and the non-examination of the Revision Petitioner/Accused as a witness, this Court is of the view that the Revision Petitioner/Accused failed to probablise his case and the presumption raised by the Respondent/Complainant had not been rebutted in a manner required under law. In such circumstances, the conviction and sentence passed by the Courts below are legally acceptable over which this Court does not find any reason to interfere. Further, this Court, in exercise of Revisional Power can interfere with the Judgment of the Courts below only if they are perverse and based on irrelevant consideration. In this case, this Court finds that the Judgment of the Courts below are based on evidence made available and therefore, the exercise of revisional power by this Court is not warranted.

14. In view of the above discussion, the point for consideration is answered in favour of the Respondent/Complainant and against the Revision Petitioner/Accused. The concurrent finding of fact recorded by the learned Judicial Magistrate, Fast Track Court (Magisterial level) Ambattur in S.T.C.No.252 of 2016, dated 30.11.2017 and confirmed in appeal by the learned I Additional District and Sessions Judge, Thiruvallur in Criminal Appeal No. 04 of 2018, dated 20.09.2019 are found proper which does not warrant any interference by this Court.



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WEB COPY In the result, **this Criminal Revision is dismissed.** The Judgment dated 30.11.2017 passed in S.T.C. No. 252 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial level) at Ambattur confirming the Judgment dated 20.09.2019 passed in Crl.A. No. 4 of 2018 on the file of the learned I Additional District and Sessions Judge, Tiruvallur is confirmed. Consequently, connected miscellaneous petition is closed.

The learned Judicial Magistrate, Fast Track Court (Magisterial level) Ambattur is directed to issue warrant to the Accused through the jurisdictional Police to secure him and to undergo imprisonment as per the judgment of conviction recorded in S.T.C.No.252 of 2016. The Complainant is within his power to seek recovery of the amount either by filing execution petition before the competent Civil Court to enforce the judgment of compensation or before the learned Judicial Magistrate for the same as per law including attachment of the properties of the Accused both movable and immovable.

17.04.2025

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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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- To
1. The Judicial Magistrate.
Fast Track Court (Magisterial level),
Ambattur.
 2. The I Additional District and Sessions Judge
Tiruvallur.
 3. The Section Officer
Criminal Section
High Court of Madras.

SATHI KUMAR SUKUMARA KURUP, J

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Crl.R.C.No.1330 of 2019

Order made in
Crl. R.C. No. 1330 of 2019

17.04.2025