IN THE HIGH COURT OF JUDICATURE AT MADRAS

RERSERVED ON : 17.04.2025
PRONOUNCED ON : 24.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1447 & 1448 of 2019

R.Baskar,
Proprietor and authorized signatory,
MSP Steel Agencies,
Door No.12, Amman Koil Street,
Vadapalani, Chennai – 600 026. ... Petitioner in both petitions

Vs.

M/s.Rite Steel Industries Pvt Ltd.,
Rep,by Director Mr.P.Vaidyanathan,
101, A& B SIDCO Industrial Estate,
Kakalur,
Thiruvallur District-602003. ... Respondent in both petitions

PRAYER in Crl.R.C.No.1447 of 2018: Criminal Revision Case is filed under Sections 397 & 401 of Code of Criminal Procedure, to call for the records in Court of the I Additional District and Sessions Judge, Tiruvallur in C.A.No.19/2018 dated 13.09.2019 confirming the judgment and sentence passed by the Fast Track Court, Magisterial Level, Tiruvallur in S.T.C.No.13 of 2016, dated 12.12.2017 and to set aside the same.

PRAYER in Crl.R.C.No.1448 of 2018: Criminal Revision Case is filed under Sections 397 & 401 of Code of Criminal Procedure, to call for the records in Court of the I Additional District and Sessions Judge, Tiruvallur in C.A.No.18/2018 dated 13.09.2019 confirming the judgment and sentence passed by the Fast Track Court, Magisterial Level, Tiruvallur in S.T.C.No.12 of 2016, dated 12.12.2017 and to set aside the same.

For Petitioner	:	Mr.K.Rahavan in both petitions
For Respondent	:	Mr.A.Vivekanandan in both petitions

COMMON ORDER

The petitioner in Crl.R.C.No.1447 of 2019 was convicted *vide* judgment, dated 12.12.2017 in S.T.C.No.13 of 2016 by the learned Judicial Magistrate, Fast Track Court, Magisterial Level at Tiruvallur (trial Court) and sentenced to undergo Simple Imprisonment for one year and to pay a compensation of Rs.8,64,506/- to the respondent for offence under Section 138 of Negotiable Instruments Act, 1881. Challenging the same, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Tiruvallur in Crl.A.No.19 of 2018 (lower appellate Court). The lower appellate Court, by judgment, dated 13.09.2019 partly-allowed the appeal modifying the sentence directing the petitioner to pay compensation of Rs.8,64,506/- in default to undergo

Simple Imprisonment for four months. Aggrieved over the same, Crl.R.C.No.1447 of 2019 is filed.

2.The petitioner in Crl.R.C.No.1448 of 2019 was convicted *vide* judgment, dated 12.12.2017 in S.T.C.No.12 of 2016 by the learned Judicial Magistrate, Fast Track Court, Magisterial Level at Tiruvallur (trial Court) and sentenced to undergo Simple Imprisonment for eight months and to pay a compensation of Rs.4,58,562/- to the respondent for offence under Section 138 of Negotiable Instruments Act, 1881. Challenging the same, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Tiruvallur in Crl.A.No.18 of 2018 (lower appellate Court). The lower appellate Court, by judgment, dated 13.09.2019 partly-allowed the appeal modifying the sentence directing the petitioner to pay compensation of Rs.4,58,562/- in default to undergo Simple Imprisonment for four months. Aggrieved over the same, Crl.R.C.No.1448 of 2019 is filed.

3.Earlier, the petitioner has not shown interest in proceeding with the present revisions, hence this Court by order, dated 23.04.2024 dismissed both revisions for non-prosecution, thereafter, the petitioner filed Crl.M.P.Nos.1729 & 1731 of 2025 in Crl.R.C.Nos.1447 & 1448 of 2019 to restore revisions on file. Finding that the revisions dismissed for non prosecution, not on merits and to give one more opportunity to the petitioner, this Court on 04.02.2025 restored both revisions on file. Thereafter, the learned counsel for the petitioner and learned counsel for the respondent advanced their arguments.

4.Gist of the case in STC.No.13 of 2016 is that the respondent engaged in a business of manufacturing and selling rods and bars and the petitioner purchased bars and rods TMT weighing about 9.950 metric tonnes from the respondent *vide* Invoice No.560, dated 20.09.2013 for Rs.4,14,400/- and purchased bars and rods weighing about 10.980 metric tonnes *vide* Invoice No.610 dated 08.10.2013 for Rs.4,50,106/- and thus totally liable to pay Rs.8,64,506. When the respondent demanded the said amount of Rs.8,64,506/-, the petitioner issued cheque (Ex.P2), dated 24.03.2014 bearing No.012378 drawn on Tamil Nadu Mercantile Bank Limited, Chekkadu Branch for a sum of Rs.8,64,506/- towards discharge of liability and instructed the respondent to present the cheque on the same day. The respondent presented the cheque on 24.03.2014 in Bank of Baroda, Tiruvallur Branch and the same was deposited in Royapettah Branch, Chennai, but the cheque (Ex.P2) was returned dishonored on 26.03.2014 for the reason "Funds Insufficient" and the same was intimated to the respondent. Thereafter, the respondent issued a legal notice (Ex.P4) dated 04.04.2014 but the petitioner returned the notice on 07.04.2014 with a postal endorsement "intimation delivered". Since the petitioner failed to pay the cheque amount, the respondent lodged a private complaint under the Negotiable Instrument Act, 1881.

5.Gist of the case in STC.No.12 of 2016 is that the respondent engaged in a business of manufacturing and selling rods and bars and the petitioner purchased bars and rods TMT weighing about 10.950 metric tonnes from the respondent *vide* Invoice No.626 (Ex.P1) dated 14.09.2013 for Rs.4,58,562/-. When the respondent demanded the said amount of Rs.4,58,562/-, the petitioner issued cheque (Ex.P2) bearing No.012379 drawn on Tamil Nadu Mercantile Bank Limited, Chekkadu Branch for a sum of Rs.4,58,562/- towards discharge of liability and instructed the respondent to present the cheque on the same day. The respondent presented the cheque on 17.01.2014 in Bank of Baroda, Tiruvallur Branch and the same was deposited in Royapettah Branch, Chennai, but the cheque was returned dishonored on 18.01.2014 for the reason "funds insufficient" and the same was intimated to the respondent. The respondent issued a legal notice (Ex.P4) dated 14.02.2014, but the petitioner deliberately returned the notice on 24.02.2014 with a postal endorsement "intimation delivered". Since the petitioner failed to pay the cheque amount, the respondent lodged a private complaint under the Negotiable Instrument Act, 1881.

6.The learned counsel for the petitioner in both revisions submitted that the respondent Company for supply of rods and bars was having business relationship with the petitioner. During the course of business, blank promissory note and blank cheque obtained from the petitioner as security. The admitted case of the respondent is that one Mugunthan was Sales Manager who was dealing with the petitioner in the business. It is admitted by the respondent that 15 days grace period was given for payment after supply of goods. In this case, the three invoices (Ex.P1) (2 Nos.) are dated 14.09.2013, 20.09.2013, 08.10.2013 through which the goods were supplied. In discharge of said invoice liability, the cheques (Exs.P2) (2 Nos.) issued by the petitioner. It is admitted by the respondent that through cheque No.1012371, dated 19.09.2013 a sum of Rs.4,51,875/-, through cheque No.1012371, dated 23.09.2013 a sum of Rs.5,39,631/- and through cheque No.1012386, dated 18.11.2013 a sum of Rs.75,000/- paid and credited to the account of the respondent, thereby the entire dues to the invoices cleared. This fact known to Mugunthan, Sales Manager of the respondent Company. Taking advantage of Mugunthan not in service of the respondent Company, the cheques (Ex.P2) (2 Nos) issued as security, filled up and projected as though the cheques issued in discharge of liability.

7.He further submitted that the petitioner closed his business long back, knowing the same, to the closed address, statutory notice (Ex.P4) (2 Nos.) issued to ensure service of notice which is not proper. In this case, the authorization given to the respondent, who is the Director of the Company, is not a valid authorization since the authorization not signed by other Directors and no corresponding resolution produced. On this score alone, the judgment of Courts below to be set aside. He further submitted that in this case, authorized signatory to MSP Steel Agency alone arrayed as accused, not MSP Steel Agency. MSP Steel Agencies is the drawer of the cheque, in view of the same, no prosecution can be proceeded against authorized signatory in the absence of drawer. These facts not considered by the trial Court. The lower appellate Court found that it is only a business transaction and the petitioner has made some payments and also examined the bank officials (DW1 & DW2), marked Exs.R1 to R4 to show there have been payments, modified the punishment setting aside the jail sentence and confirming the payment of compensation for the cheque amount into fine sentence.

8.In support of his submissions, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in ***Bijoy Kumar Moni v. Paresh Manna & Anr.,*** reported in ***2024 SCC OnLine SC 3833*** wherein the Hon'ble Apex Court held that in 138 case, the first and foremost ingredient is that the person who is to be made liable should be the drawer of the cheque. Further, it had held that the authorized signatory acting on behalf of principal cannot be said to be the drawer of the cheque and further, prosecuting a person in the individual capacity without arraying the drawer is not sustainable. He further placed relied on the decision of this Court in ***M.C.Baby v. M/s.Sastha Home Tech*** reported in ***MANU/TN/2776/2023*** wherein it had held that the complainant right to file the complaint and give evidence on behalf of the holder of the cheque must be with proper authorization of the company. In this case, the authorization letter produced is not as per law.

9.Making the above submissions and relying on the decisions, the learned counsel for the petitioner prays for setting aside the judgment of the Courts below.

10.The learned counsel for the respondent in both revisions submitted that it is admitted by the petitioner that the petitioner having business relationship with respondent purchasing steel bars and rods. It is not in dispute 15 days grace period given for payment after supply of goods. In this case, the goods supplied on cover of invoices marked as exhibits (Ex.P1). In discharge of liability, the cheques (Ex.P2) (2 Nos.) issued. The point raised by the petitioner is that after invoice period subsequent payments made, hence there is no liability, is not proper. The respondent further examined himself and produced Ex.P7 (STC.No.13 of 2016) and Ex.P8 (STC.No.12 of 2016) to demonstrate, that the petitioner's claim of payments made for invoices produced, is not proper. Ex.P7 (STC.No.13 of 2016) and Ex.P8 (STC.No.12 of 2016) would prove the payments were made for the other invoices and not for the invoices produced in this case.

11.He further submitted that Mr.P.Vaidyanathan is the Director of the respondent Company and Mugunthan was Sales Manager, who left the service, is not disputed. As a Director of the Company, Mr.P.Vaidyanathan is authorized to file complaint under Section 138 of Negotiable Instruments Act against the petitioner, prosecute the case. The respondent produced the authorization letters Ex.P6 (STC.No.13 of 2016) and Ex.P7 (STC.No.12 of 2016) attested by the Directors. The contention of the petitioner that the authorization letters does not contain the signature and no resolution produced, is a ground presently raised. The authorization not questioned or disputed during trial or during appeal. The Hon'ble Apex Court in ***Bhupesh Rathod v. Dayashankar Prasad Chaurasia and Anr.,*** reported in ***(2022) 2 SCC 355*** clearly held that the authorization letter would form part of the minutes of the board meeting. The authorization extracts produced in this case considered by the trial Court and lower appellate Court and both confirmed authorization was proper and valid. Further, the address of respondent Company and its Director are one and the same, hence there is nothing to discredit the authorization. In this case, the petitioner neither disputed his signature in the cheque (Ex.P2) (2 Nos.) nor the genuineness of invoices (Ex.P1) (2 Nos.). His only defence is that the amount paid in cash through Mugunthan, Sales Manager but no corresponding materials produced. The other defence raised is that the cheques (Ex.P2) (2 Nos.) given as security in advance for supply of goods. Referring to the invoices, the respondent submitted that the goods were supplied with 15 days grace period for payment, thereafter only, the payments by way of cheques received. In such circumstances, advance payment procedure is not followed. Now such claim is made in defence to wriggle out from the liability. Such ground taken by the petitioner rightly disbelieved by the Courts below.

12.He further submitted that in this case, the statutory presumption comes into play coupled with the material evidence of invoice confirming liability of the petitioner to pay the cheque amount, proved. The trial Court held that the defence exhibits (Exs.R1 to R4) fortified the case of the respondent/complainant. Thus, the respondent proved his case beyond all reasonable doubt and the trial Court rightly convicted the petitioner. Though the lower appellate Court confirmed the conviction, it had set aside the jail sentence. This further embolden the petitioner not to comply with the judgment and filed revisions before this Court, thereafter not shown any interest to proceed with the revision cases. Only after dismissal of revision cases for non-prosecution, the petitioner filed restoration petitions. Now, the revisions taken up for final hearing and heard the petitioner in detail on merits. The learned counsel for the respondent/complainant prayed that jail sentence of trial Court to be restored, with direction to pay the cheque amount as compensation.

13.This Court considered the rival submissions and perused the materials available on record.

14.In this case, the petitioner used to purchase steel rods and bars from the respondent Company for his business and both had business relationship for ten years. It is admitted by the petitioner that Mugunthan was the Sales Manager from the respondent Company who dealt with the petitioner. In this case, the invoices (Ex.P1) (2 Nos.) for supply of goods and issuance of cheques (Ex.P2) (2 Nos.) in discharge of the liability, produced and marked as exhibits. Neither the invoices (Ex.P1) (2 Nos.) nor the cheques (Ex.P2) (2 Nos.) disputed by the petitioner. The defence taken is on two fold. One is invoice amount paid in cash in advance and other defence is after supply of goods, some payments made which covered the invoices produced in this case. The respondent by Ex.P7 (STC.No.13 of 2016) and Ex.P8 (STC.No.12 of 2016) clarified and confirmed that the invoice amount pertaining to the present cases not paid. Further, Exs.R1 to R4 confirms the business transaction and dishonour of the cheques (Ex.P2) (2 Nos.) in this case.

15.The contention of the petitioner that without arraying MSP Steel Agency, the drawer of the cheque *i.e.,* the authorized signatory Mr.R.Baskar/petitioner arrayed as accused, hence the complaint to be dismissed, is not sustainable. In this case, the petitioner is the Proprietor and authorized signatory of MSP Steel Agency, is not in dispute. For legal proceedings involving a Proprietorship concern, it can be proceeded either in the name of the Proprietor or in the name of the Proprietorship Firm. In this case, the petitioner is the Proprietor of MSP Steel Agency, hence, initiation of proceedings against the petitioner is proper. Likewise, the respondent, Director of M/s.Rite Steel Industries Private Limited was authorized by the Company to prosecute and proceed against the petitioner, is proved by the authorization letters Ex.P6 (STC.No.13 of 2016) and Ex.P7 (STC.No.12 of 2016). The same not questioned or disputed either during trial or during appeal, but now raised belatedly which is not permissible.

16.The Hon'ble Apex Court in ***Bhupesh Rathod*** case (cited supra) held that in the event of production of the copy of authorization letter, it is not required to be signed by the Board Members as it would form a part of the minutes of the Board Meeting. In this case, proper authorization produced without any defects. The respondent address and address found in the authorization letters are one and same. Finding that the respondent proved its case beyond all reasonable doubt, the trial Court convicted the petitioner and the lower appellate Court confirmed the same. The only error committed by the lower appellate Court that considering it is a business transaction and imposition of fine will suffice and set aside the jail sentence, is not proper.

17.In view of the above, this Court finds restoration of jail sentence imposed by the trial Court would only have desired effect and would serve the purpose and object of the Act.

18.Accordingly, this Court set asides the judgment, dated

13.09.2019 in Crl.A.Nos.18 & 19 of 2018 passed by the learned I Additional District and Sessions Judge, Tiruvallur, restores and confirms the trial Court judgment, dated 12.12.2017 in S.T.C.Nos.12 & 13 of 2016 passed by the learned Judicial Magistrate, Fast Track Court, Magisterial Level at Tiruvallur.

19.Since the petitioner is facing two concurrent findings, this Court directs the trial Court to issue conviction warrant against the petitioner not waiting for the complainant to take steps. Once the conviction warrant is issued by the trial Court, the Jurisdictional Police to execute the conviction warrant without delay. It is the duty of the State to execute the orders of the Magistracy and enforce the rule of law without delay.

20.It is made clear that in the interregnum, if the petitioner comes forward for settlement and discharge his liability, he can approach the complainant for compounding the offence which can be entertained even by the trial Court.

21.In the result, Criminal Revision Cases are dismissed.

24.06.2025

Speaking Order/Non Speaking Order
Index : Yes/No
Neutral Citation: Yes/No
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To

1.The I Additional District and Sessions Judge,
Tiruvallur.

2.The Judicial Magistrate,
Fast Track Court,
Magisterial Level at Tiruvallur.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDERS IN
Crl.R.C.Nos.1447 & 1448 of 2019

24.06.2025