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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 22.01.2025
Judgment pronounced on: 18.02.2025

+ **CRL.L.P. 7/2018**

M/S VIJAY POWER GENERATORS LTDPetitioner
Through: Mr. B.K. Pandey, Adv.

versus

M/S TARUN ENGINEERING SYNDICATERespondent
Through: Mr. Dalip K. Sharma and Mr.
Subhash Chawla, Adv.

+ **CRL.L.P. 14/2018**

VIJAY POWER GENERATORS LTDPetitioner
Through: Mr. B.K. Pandey, Adv.

versus

TARUN ENGINEERING SYNDICATERespondent
Through: Mr. Dalip K. Sharma and Mr.
Subhash Chawla, Adv.

+ **CRL.L.P. 15/2018**

VIJAY POWER GENERATORS LTDPetitioner
Through: Mr. B.K. Pandey, Adv.

versus

TARUN ENGINEERING SYNDICATERespondent
Through: Mr. Dalip K. Sharma and Mr.
Subhash Chawla, Adv.

+ **CRL.L.P. 16/2018**

VIJAY POWER GENERATORS LTDPetitioner
Through: Mr. B.K. Pandey, Adv.

versus

TARUN ENGINEERING SYNDICATERespondent
Through: Mr. Dalip K. Sharma and Mr.
Subhash Chawla, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T



: **JASMEET SINGH, J**

1. These four petitions are filed under section 378(4) of the Code of Criminal Procedure, 1973 (“**CrPC**”) seeking grant of leave to appeal against the judgment dated 30.10.2017 passed in C.C. No. 2895/2017, C.C. No. 2894/2017, C.C. 2900/2017 and C.C. 2896/2017 by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi wherein the learned Trial Court acquitted the respondent for the offence under section 138 of the Negotiable Instruments Act, 1881 (“**NI Act**”) and also seeks setting aside of the order dated 14.10.2017 wherein the learned Trial Court dismissed the application filed by the petitioner under section 311 of CrPC seeking examination of Sales Tax Officer.

FACTUAL BACKGROUND

2. The brief facts of the case are that the petitioner is a company engaged in the business of selling power generators and related equipment and has claimed that the respondent namely M/s Tarun Engineering Syndicate has purchased materials related to Diesel Generator Sets etc. against bills. The respondent issued the following cheques for making part payments against the said purchases:-

S. No.	C.C. No.	Cheque No.	Cheque Date	Cheque Amount	Drawn on
1.	289 4/20 17	092288	22.07.199 7	Rs. 9,79,151/-	Corporation Bank, Greater Kailash, New Delhi



2.	289 5/20 17	092285	01.08.199 7	Rs. 8,00,000/-	Corporation Bank, Greater Kailash, New Delhi
3.	289 6/20 17	092284	25.07.199 7	Rs. 8,00,000/-	Corporation Bank, Greater Kailash, New Delhi
4.	290 0/20 17	092286	15.07.199 7	Rs. 8,00,000/-	Corporation Bank, Greater Kailash, New Delhi

3. On presentation of these cheques, the same were returned dishonored with endorsement “account closed” (wrongly mentioned as “payment stopped by drawer” in LP No. 16 of 2018). Thereafter, legal demand notice was issued by the petitioner to the respondent. As the respondent failed to pay within the stipulated time, the petitioner filed four (4) separate complaints against the respondents.
4. The petitioner in support of his complaints examined three witnesses to prove its version of the case, namely:-
 - A. Authorized Representative (AR) Sh. G. K. Pachauri (CW1),
 - B. Managing Director (MD) Rajesh Kumar Sharma (CW2),
 - and



C. Account officer Kishore Kumar (CW3).

5. Thereafter, statement of the respondent under section 313 of CrPC was recorded and the respondent examined VAT Inspector Sh. Ramesh B. Rohit as DW1 and partner of respondent's firm namely Ms. Mukta Seth as DW2 for proving his plea of defence.
6. *Vide* impugned judgment, learned Trial Court after going through the entire evidence, was of the view that the respondent has successfully discharged the rebuttable presumption that the cheques in question were not issued for valid considerations. The petitioner has not been able to substantiate the cheques in question were issued for legally enforceable debt.
7. Relevant portion of the impugned judgment is extracted below:-

“12. Having noted the relevant testimony of all material witnesses and documents of the case, the court proceeds to appreciate the same in proper prospective. In this case, the material complainant witness was not even aware about the diesel engine or alternator, against which cheques in question were issued. MD of the company Rajesh Sharma (CW2) could not even tell about the alleged material against which the dishonoured cheque was issued by the accused. CW2 did not tell about the invoice against which the cheque was issued. The MD of complainant company claimed in the cross-examination that they were maintaining trading account, profit & loss account and balance sheet. CW2 admitted that the amount of Rs. 1,09,71,948.02p was not reflecting in the balance sheet in respect of accused firm



although same was mentioned in company's debtors, which are being shown in the balance sheet every year without showing the amount of individual party. Such casual and vague manner of preparation of balance sheet by the complainant company does not inspire the confidence of the court because it is hard to believe that after preparing list of debtors separately, same being entered in the balance sheet without showing the due amount against their names.

13. Let us examine the credibility of the witness. CW2 Rajesh Kumar Sharma admitted receiving of Rs. 4 lacs and Rs. 6,56,663/- from the accused firm vide cheques but claimed to have received from the accused on account and not against the dishonoured two cheques, the subject matter of other related matter. Accused stated that he had paid the said amount to the complainant through cheques dated 08.08.1997 and 20.08.1997 respectively under pretest. The explanation of CW2 Rajesh Kumar Sharma cannot be believed because such facts were never disclosed by the complainant and if the payment was not against the cheques, it would be hard to believe that amount, which were exactly the same as mentioned in two dishonoured cheques of connected case between same parties. It shows that complainant did not approach the court of law with clean hand and truthful facts with reasonable details.

.....

15. The complainant has not produced anything to prove



that the goods in question were delivered to the accused firm against which the cheque in question was allegedly issued in favour of Complainant Company. CW2 in cross examination accepted that no receipt of delivery was filed and no Civil Recovery Suit has been instituted against the accused firm by the complainant company in respect to cheques in question. In a particular case, non-filing of civil suit for recovery of due amount may give some credence to the claim of the accused that goods were not supplied for which cheques were issued as advance payment. Here, it is noteworthy that the complainant is not an individual person but same is a limited company, which has to account for profit and loss to several persons, stakeholders and authorities.

.....
22.....

In instant nature of particular case in hand, the mandatory presumption u/s 139 of NI Act does not relieve the complainant from establishing the foundational facts. The burden of proof on the complainant would be so heavy that no blemishes in the story of the accused can give him any right to claim that his version should be preferred, whereas the burden on the accused is slightly light as he has to discharge the burden by preponderance of probabilities only.....

23. In the present case, it has been consistent plea of



accused that he had not placed any specific order for the alleged goods and no goods had been supplied by the complainant to the accused firm qua cheque in question, which was lying with it as advance security cheque and same was not supposed to be encashed by it unilaterally without supplying goods. Here, complainant did not file any goods delivery receipt qua supply of articles to the accused firm or even any order of accused for supplying specific goods in respect of cheque in question. In these circumstances, the possibility of use of advance security cheque of accused by the complainant unilaterally without supportive consideration cannot be ruled out outrightly, particularly in view of non-genuine cited sale tax forms and non-filling of purchase order and goods delivery receipts in reference to accused qua cheque in question. The court is also cognizant of prevailing practices in commercial world, where a signed cheque is given to potential or regular seller by the potential or even regular buyer for further transaction, which may not fructified in due course of time for various reasons.

24.this court is of considered view that accused has created reasonable doubt over the veracity of story of complainant with standard of balance of probabilities and complainant failed to prove his case beyond all reasonable doubts thereafter as matter of fact before the court. The court is also mindful of basic tenant of criminal



jurisprudence as to benefit of doubt must go in favour of accused and in case of two possible version, the version favouring the innocence of accused should be opted by the court. Accordingly, in upshot of the same, I return the finding of acquittal of accused for offence u/s 138 of NI Act in the case.”

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Mr Pandey, learned counsel appearing for the petitioner submits as under:-

A. The impugned judgments and orders are erroneous and unsustainable on both facts and law because the learned Trial Court did not appreciate section 118 and 139 of NI Act that there is a presumption in the favour of the petitioner that the cheques were given for a valid legally enforceable debt. The burden of proof lies solely on the respondent who was duty bound to discharge the same only by adducing reliable, cogent, unimpeachable evidence. Reliance is placed on ***Rangappa v. Sri Mohan (2010) 11 SCC 441***.

B. Learned Trial Court also did not appreciate that the NI Act imposes on the drawer of a cheque very strict liability so as to deter, discourage the drawer from not honoring the cheque after issuance.

C. He further states that as per the ledger account of the respondent, a sum of Rs. 1,09,71,948.02 is due and payable by the respondent to the petitioner and the cheques were issued for repayment of the said amount.



D.The impugned judgments and orders are passed on presumptions and conjectures because the learned Trial Court has failed to appreciate that the respondent has issued Sale Tax Forms and C forms against the purchased materials from the petitioner for Rs. 20,181,780/- for the financial year 1997-1998 and Rs. 2,37,227/- during the financial year 1998-1999 and against the said purchased materials the cheques in question were issued to the petitioner as part payment.

E.Learned Trial Court failed to appreciate that in case the respondent had not received the materials then why the respondent did not take any action against the petitioner. There are no complaint/suit/letters/reminders etc. against the petitioner from the side of respondent against the cheques in question since the date of receiving the notice to till date.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. *Per Contra*, Mr Sharma, learned counsel appears for the respondent and submits as under:-

A. The respondent has been dealing in sales and purchase of Diesel Generators and in that process various cheques of respondent were lying with petitioner as advance cheques for the material to be supplied by the petitioner against specific purchase order of the respondent.

B. The respondent has taken categorical stand that he has not placed any order for supply of material against the referred cheque and no material has been received by the respondent



against the cheques in question, hence, the cheques are without consideration.

C. The petitioner did not file any signed Goods Receipt (G/R) regarding delivery of alleged purchased material by the petitioner to the respondent through truck or specific purchase order/invoice of alleged sold material on the record in respect of respondent.

D. Learned counsel further draws my attention towards the fact that the sales tax department could not have issued C-form of year 1992 as respondent has been registered only in 1995. Accordingly, it is submitted that petitioner has filed forged and fabricated sale tax and C-form to give credence to his bogus claims.

ANALYSIS AND FINDINGS

- 10.** I have heard the submissions advanced by the learned counsel for the parties and perused the material available on record.
- 11.** In the present case, learned Trial Court has categorically observed that the petitioner herein failed to prove its case beyond reasonable doubt and the respondent has created reasonable doubt over the veracity of the story of the petitioner.
- 12.** The petitioner herein has argued that in view of the facts and evidence on record, the statutory presumption under Section 118 (a) read with Section 139 of NI Act has to be drawn in favour of the petitioner and it was the respondent who has to rebut the same.
- 13.** It is pertinent here to discuss the law regarding the nature and extent of legal presumption in favour of complainant under NI Act and the



possibility and manner of rebuttal of the same by the accused while balancing reverse onus of proof under the NI Act and presumption of innocence of accused under normal criminal jurisprudence.

14. The nature and extent of such presumption came up for consideration before the Hon'ble Supreme Court in the case of ***M.S. Narayana Menon @ Mani v. State of Kerala & Another***, (2006) 6 SCC 39 wherein it was observed as under:-

“30. Applying the said definitions of ‘proved’ or ‘disproved’ to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

.....

33. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another.

.....



38. If for the purpose of a civil litigation, the defendant may not adduce any evidence to discharge the initial burden placed on him, a 'fortiori' even an accused need not enter into the witness box and examine other witnesses in support of his defence. He, it will bear repetition to the state, need not disprove the prosecution case in its entirety as has been held by the High Court.

39. A presumption is a legal or factual assumption drawn from the existence of certain facts."

15. The Hon'ble Supreme Court in ***Kumar Exports v. Sharma Carpets (2009) 2 SCC 513*** has held that where the complainant (respondent therein) did not produce any books of account or stock register maintained in the course of regular business or any acknowledgement for delivery of goods to establish that as a matter of fact woolen carpets were sold to the appellant therein (accused), it was opined that the complainant has failed to establish its case under section 138 of NI Act as required under law. Relevant part of the said judgement is extracted below:-

"19. The use of the phrase 'until the contrary is proved' in Section 118 of the Act and use of the words 'unless the contrary is proved' in Section 139 of the Act read with definitions of 'may presume' and 'shall presume' as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies



the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the



accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumption arising under Sections 118 and 139 of the Act.

21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden



shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

16. Furthermore, this Hon’ble Court in ***Pine Product Industries & Another v. R.P. Gupta & Sons & Another 2007 (94) DRJ 352*** has held that if the complaint itself is vague about the nature of liability in discharge of which the cheques were issued and no details as to how the amount in question was arrived at, mere liability of the respondent to pay her dues towards purchase of goods is not enough to proceed under section 138 of NI Act. Relevant portion of the above judgement is extracted below:-

“11. Considering the arguments advanced on behalf of the counsel for the parties, I find that there is no difficulty with the proposition that Section 139 of the Negotiable Instruments Act, 1881 raises a presumption that the holder of the cheque, received the cheque for the discharge, in whole or in part, of any debt or other liability. There is also no dispute that this presumption is a rebuttable presumption. The presumption has to be rebutted in the course of the trial and once rebutted the onus would shift on the complainant to establish and prove beyond reasonable doubt that the cheque was, in fact, issued for the discharge, in whole or in part, of any debt or other liability. Once this presumption is rebutted then the case has to be considered from the standpoint of the explanation contained in Section 138 which says that for the purposes of that Section, “debt



or other liability” means a legally enforceable debt of other liability. So, once the presumption is rebutted, the onus shifts on to the complainant to not only establish that the cheque was issued for the discharge of a debt of other liability but that such debt or liability was legally enforceable.”

17. It is now well settled that the accused can always rely upon the material and circumstances brought on record by the complainant. It is also well settled law that the accused is not required to prove innocence by establishing the defence beyond all reasonable doubts as accused can always prove his innocence on basis of preponderance of probabilities. It is also noteworthy that as per basic tenets of our criminal jurisprudence, the accused is entitled to benefit of doubt and the case of prosecution has to stand on its own legs without taking any benefit in the lacuna of the defence. Therefore, in my considered opinion, in the instant nature of the particular case in hand, the mandatory presumption under sections 118(a) read with section 139 of NI Act does not relieve the petitioner from establishing the foundational facts.
18. With this backdrop, I proceed to note the relevant testimony of all material witnesses and documents of the case in order to appreciate the same in proper perspective.
19. In the present case, the petitioner in its complaints has only stated that the respondent has purchased some goods for which the petitioner raised bill and to repay the amount, the respondent issued cheques which were dishonored and hence the complaints. Relevant portion of



the complaint is extracted below:-

“3. That the accused purchased Some Materials/goods for which the complainant raised their bills against the Accused.

4. That the Accused sent their payment against the purchases through a Cheque bearing No.092285 dated 1.8.97 for Rs. 8,00,000/- (Rs. Eight lacs Only) drawn on Corporation Bank Greater Kailash II, New Delhi

5. That the Complainant Company received the abovementioned Cheque dated 1.8.97 issued by the Accused against the purchases and the same Cheque was deposited by the Complainant Company with his Banker Syndicate Bank; Nirman Vihar Delhi on 17.11.97, and the same Cheque was returned unpaid by the Accused Banker which was received on 18.11.97 with remarks SL No.23 “Account closed”.

6.

7. That when Complainant received unpaid Cheque through his Banker on 19.11.97 he issued a Registered AD/UPC, a demand/Legal Notice dt.3.12.97 to the Accused for making the payment of above dishonoured amount of Rs.8,00,000/-.

8. That the Accused received the complainant's Legal Notice for making the payment within 15 days after receiving the Notice on 10.12.97 and failed to make the payment of above dishonoured Cheque within clear 15 days as statutory time.”



20. The AR of the petitioner, through whom the complaints have been filed, has stated nothing regarding his personal knowledge about the transactions or about his witnessing the transactions, if any, between the parties herein. The relevant part of his cross examination is cited as below:-

“I am looking after the legal matters of the complainant company. I do not have any connection with the purchases, sales, supply of material or recovery of the material sold of the complainant company. I do not have any personal knowledge regarding transactions held by the Complainant Company with the accused.”

...

“The original cheque was never handed over to me and the same was never presented for payment by me. Whatever I have said in my affidavit is based upon the record given to me by the Complainant Company and I do not have the personal knowledge of the same.”

21. The absence of proof regarding the delivery of goods is a critical weakness in the petitioner’s claim. The discrepancies in the balance sheet, particularly the absence of the specific amount owed by the respondent, weakens the petitioner’s case. The Trial Court finds that the petitioner’s financial records are insufficiently detailed. Further, the MD’s admission that no civil recovery suit has been filed against the respondent further undermines the petitioner’s position, as a civil suit would be a standard procedure to recover dues as in the present case, goods were not supplied for which cheques in question were



issue as advance payment. Relevant part of the cross-examination of MD is extracted below:-

“I do not know against which diesel engine or alternator the cheque Ex. CW-2/1 was issued. Vol. I can tell after seeing the record. Every material is sold against the invoice issued by the Complainant Company. I cannot tell against which material the cheque Ex. CW-2/1 was issued. Vol. I can tell after seeing the records, the records being running account. I cannot tell which invoice the cheque in question was issued by the accused. Vol. I can tell after seeing the records, the records being running account.

I cannot tell how the delivery of the sold material was given or handed over. (Vol. I can tell after seeing the record). The alleged material was delivered to the accused as per the bills and as per sale tax norms. I have not placed on record any receipt of delivery. I cannot tell whether the accused issued any purchase order against the sold material, I can only tell after seeing the record. It is correct that the material relating to D.G set as allegedly sold can only be delivered through truck, tempo or mini truck. I have not placed any such G. R on record. (Vol. The material related to D. G set as per the sales tax norms some time we sold the G. R and we sometime sell the material directly from our place against ST forms).

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Q. Whether the alleged outstanding amount of Rs. 1,09,71,948.02 is being reflected in your balance sheet as outstanding against the name of the accused in the year 2010-11 or not?

A. No such amount is reflected in the balance sheet for the year 2010-11 but are reflecting in the company debtors.

.....
Our company has not filed any suit for civil recovery for recovery of the amount of the dishonored cheque against the accused/accused firm.

.....
Q. Is it correct that the payment of Rs.4 lacs that is against the dishonoured cheque Exh.CW2/3 was made by the accused/accused firm vide Cheque No.512859 dated 08.08.1997 and the payment of the dishonoured cheque Exh.CW2/2 of Rs.6,56,633/- was made by the accused/accused firm vide Cheque No.512668 dated 20.08.1997 under protest to complainant company ?

Ans. The payment received for Rs.4 lacs and Rs.6,56,633/- respectively received by our company on account but not against Exh.CW2/2 and Exh.CW2/3.

It is wrong to suggest that the aforesaid two payments were made by the accused/accused firm under protest against the dishonoured cheques Exh.CW2/2 and Exh.CW2/3 vide letters dated 08.08.1997, 20.08.1997 and letter dated 22.08.1997 to your counsel Sh. H.K.



Chaturvedi.”

22. The MD’s admission of receiving amounts from the respondent via cheques, while claiming they were not in relation to the dishonored cheques, creates a contradiction. Further, his failure to disclose relevant facts about the payments and their connection to the dishonored cheques leads the Trial Court to question the bonafide of the petitioner’s case.
23. The testimony of the accounts officer of the petitioner indicates that the Sales Tax Office issues forms specific to assessment years. If the forms in question relate to 1997-98 and 1998-99, it is impossible for a government office to issue forms for those years in 1992. This discrepancy casts doubt on the authenticity and relevance of the documents presented by the petitioner. The absence of evidence or established practice by the petitioner to support the issuance of forms from a future assessment year 1997 in 1992 further weakens their position. The testimony of CW3 (Accounts Officer) is cited below:-

“It is correct that for one sale transaction in a year only one sale tax form has to be issued by the purchaser. (Vol. But one sales tax form can be used for more than one transaction also in a year). Further (Vol. Separate sales tax forms are required for separate units). The documents collectively Exh.CW3/3 are correct as per our books of account and records. It is also correct that during the period 1997-98 and 1998-99, sales tax forms were issued for a particular assessment year according to sales tax rates and transactions.



It is correct that the sales tax forms filed by me collectively Exh.CW3/3 are relating to the years 1997-98 and 1998-99. It is further correct that the Sales Tax Office, Delhi issues the forms for a particular assessment year only and also mentions the year of assessment on every form. For that the purchaser has to apply to the sales tax office on prescribed form in advance.”

24. Furthermore, the accounts officer brought on record sale tax forms at the fag end of the trial. Learned Trial Court has rightly observed the delay in the said documents brought in by the accounts officer of the petitioner. In this regard, relevant part of the impugned judgement is extracted below:-

“It was only at the time of final arguments, the complainant moved an application under Section 311 CrPC to file such documents which was eventually allowed by the Ld. Revisional Court later on. In the affidavit filed by the CW3, no explanation has been given about non-filing of such documents at earlier stage or as to how those documents were traced later on by the petitioner. However, in its application under Section 311 CrPCa reason was provided i.e. the sale tax forms were not available/misplaced at the time of filing the complaint and that the same were found in the month of June-2011. The present complaints were filed in the year 1997 & 1998 and there has been no averment about sale tax form and even CW1 and CW2 filed their affidavits in evidence



in the year 2008 but they did not mention anything about issuance of sale tax forms and misplacement thereof. It is not claimed by the complainant that any complaint with any authority was made regarding misplacement of such said valuable documents, which were relevant to the pending six cases between the same parties.”

(Emphasis added)

- 25.** Furthermore, the VAT Inspector from the VAT Office Silvassa has categorically stated that the respondent was registered with the sales tax office on 29.08.1995 and the said sales tax form was never issued to the respondent as the same has been issued to some other firm namely M/s Avon Agencies on 02.01.1992. The same is cited below:-

“The witness has been confronted with the original sales tax form bearing no 00JJ029425 dated 02.01.1992 which is already Ex.CW3/3 / A-1. which he confirms that this form was never issued to M/s Tarun Engineering Syndicate. The witness further clarifies that as per our letter DW1/A, issued by Value Added Tax Officer, Silvassa, it has been clarified that point 5 that the form no JJ0029425 dated 02.01.1992 was issued to Avon Agencies on 02.01.1992 as per record available in their office. Certified copy of the register containing record of C forms issued is Ex.DW1/7, which shows that point A that the aforesaid sales tax form has been issued to M/s Avon Agencies. It is correct that the sales tax forms can only be issued to a party after registration of the firm under the



Sales Tax Act.”

26. The partner of the respondent has categorically stated that she never signed the said sales tax form and the same had never been issued to the petitioner or issued by the tax authority at Silvassa. The same is cited below:-

“I am a partner in the accused firm since 1995. I have seen the sales tax form Ex.CW3/3/A-1. This document does not contain my signatures and the signatures at point 'A' are not mine. I have never signed Ex.CW3/3/A-1 and have never issued the sales tax form to the complainant company. The sales tax authority at Silvassa have never issued this form to us against our transactions and this form does not belong to the accused firm. The stamp of the accused firm beneath my signatures at point A' has also not been put by me or by the accused firm. The transactions as shown on the backside of Ex.CW3/3/A-1 have not been mentioned/typed by the accused firm. The signatures shown at point A' in Ex.CW3/3/A-1 are forged and have been traced by someone.”

(Emphasis added)

27. From a perusal of the above testimonies, it is clear that the petitioner did not lead any evidence regarding transaction, supply of materials against which the cheques in question were issued. Further, the bills have neither been placed on record nor proved by the complainant/petitioner.
28. Also, it is not the case of the petitioner that the petitioner was



supplying the goods on credit or the petitioner was maintaining a running account and the respondent was making “*on account payments*”. Therefore, in my consideration of the above circumstances, the witnesses of the petitioner cannot be treated as credible witnesses and neither the sale tax forms nor the statement of account can be relied upon safely, due to various inconsistencies and contradictions. Hence, the learned Trial Court has correctly acquitted the respondent.

29. The petitioner has also challenged the order dated 14.10.2017 wherein the application filed under section 311 of CrPC seeking calling and examination of Sales Tax Officer, Dadar and Nagar Haveli, Silvassa with records was dismissed. Learned Trial Court has rightly rejected the said application on the ground that the matter is more than 15 years old and multiple opportunities were given to the petitioner, despite that the said application was moved at belated stage of final arguments and no satisfactorily reasons have been given. I find no reasons to interfere with the said order.

CONCLUSION

30. From the above discussions, the respondents have successfully rebutted the statutory presumption under section 118(a) read with 139 of NI Act. Once the respondent has successfully rebutted the presumption, the petitioner is not able to prove its case beyond reasonable doubt.
31. To my mind, the impugned judgment passed by the learned Trial Court is well reasoned based upon the evidences and materials and documents placed on record.



32. With these findings as noted above, the leave to appeals are dismissed.
33. Since leave to appeals are dismissed, the appeals have also become infructuous and are disposed of along with the pending applications, if any.

JASMEET SINGH, J

FEBRUARY 18th, 2025
SA/MSQ

Click here to check corrigendum, if any