



Crl.A.No.377 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2026

PRONOUNCED ON : 30.03.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.377 of 2021

T.Md.Irfan

... Appellant

Vs.

1.M/s.Benson Tranquillity Owners Association,
Rep. by its President & Treasurer,
C.V.Tarun Raj Barnham,
No.30, Benson Cross Road,
Benson Town, Jayamahal,
Bangalore 560 046.

2.C.Tarun Raj Barnham

... Respondents

PRAYER: Criminal Appeal is filed under Section 378(4) of Code of Criminal Procedure, to set aside the order of learned VI Additional Sessions Judge, City Civil Court, Chennai in Criminal Appeal No.523/2018 dated 10.12.2020 and restore the order of conviction passed by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai in C.C.No.3905/2017.

For Appellant : Mr.I.Abdul Basith

For Respondent : Mr.P.V.Selvakumar



Crl.A.No.377 of 2021

JUDGMENT

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The respondents were convicted by judgment dated 10.09.2018 in C.C.No.3905 of 2017 by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai and sentenced the 2nd respondent to undergo ten months Simple Imprisonment and to pay the cheque amount of Rs.30,00,000/- as compensation to the appellant in default to undergo two months Simple Imprisonment. Challenging the same, the respondent preferred an appeal before the learned VI Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.523 of 2018 and the same was allowed on 10.12.2020 setting aside the judgment of the trial Court. Aggrieved over the same, the present Criminal Appeal is filed by the appellant/complainant.

2.Gist of the case is that the appellant entered into a construction agreement with the builder viz., M/s.Imperium Construction Private Limited, represented by its Managing Director Mr.Syed Najmul Hassain Saleh in respect of Flat Nos.03 & 04 in the third floor of residential apartment known as Benson Tranquility Owners Welfare Association and paid total sale consideration of Rs.80,00,000/-. The builder unable to construct the building as per the contractual obligations, thereafter, entrusted the construction work to be completed to Mr.Mohammed Fayaz Ahmed and Mr.Abdul Wajid. The



Crl.A.No.377 of 2021

Residential Flat Association named as Benson Tranquility Owners Welfare Association. The Benson Tranquility Owners Welfare Association took over all assets and liabilities of the construction company of Mr.Syed Najmul Hassain Saleh and a tripartite agreement was entered between the appellant and respondents, M/s.Imperium Construction Private Limited whereby the respondents agreed to refund the aforesaid advance sale consideration amount with compensation, totalling a sum of Rs.1,15,00,000/-. As per the registered agreement dated 09.12.2006, 11 cheques to the value of Rs.1,15,00,000/- issued. The respondents agreed to clear the payment favouring the aforesaid cheques. The 2nd respondent as President and Treasurer of the 1st respondent Association, in discharge of the said liability, issued eleven cheques. Out of 11 cheques, 2 cheques honoured and 9 cheques dishonoured. Of the 9 dishonoured cheques, 6 cheques issued in the name of the appellant's father for Rs.10,00,000/- each and one cheque for Rs.15,00,000/- and the balance 3 cheques issued in the name of appellant for Rs.10,00,000/- each. Totally six cheques (Ex.P1 Series) is for consideration of Rs.65,00,000/- which is the subject matter of this case in C.C.No.3906 of 2017 and three cheques is for consideration of Rs.30,00,000/- which is the subject matter of the case in C.C.No.3905 of 2017.



Crl.A.No.377 of 2021

3.All 3 cheques (Ex.P1 series) drawn on the State Bank of Mysore, Benson Town Branch, Bangalore. When the appellant presented the three cheques (Ex.P1 Series) for encashment through the appellant's banker Canara Bank, Park Town Branch, Chennai on 13.11.2017, the same returned for the reason "Payment Stopped by the Drawer". Thereafter, the appellant caused a statutory notice (Ex.P3) to the respondents on 20.11.2017 which served on the respondents on 22.11.2017. Despite receipt of notice, the respondents neither paid the cheque amount nor sent any reply. Thereafter, following procedures, complaint in C.C.No.3905 of 2017 filed before the trial Court.

4.During trial, the appellant examined himself as PW1 and marked four documents Exs.P1 to P4. On the side of defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the respondents as stated above. In the appeal in Crl.A.No.523 of 2018, the lower appellate Court dismissed the petition filed by the respondent under Section 391 Cr.P.C. in Crl.M.P.No.21297 of 2018 to let-in additional evidence and 11 documents marked, thereafter, allowed the appeal setting aside the judgment of the trial Court.



Crl.A.No.377 of 2021

5.Learned counsel for the appellant submitted that the trial Court judgment is a well reasoned one with reasons considering the factual aspects and referring to the judgment of the Hon'ble Apex Court. The trial Court finding is that the respondents not denied the issuance of the cheques (Ex.P1 series) and its signature. The respondents took a stand that the cheque required to be signed by two signatories viz., President and Treasure, for this defence, the trial Court found totally 10 cheques issued and signed by the 2nd respondent alone, out of ten cheques, two cheques already honoured, the bank has not taken any objections and the cheques dishonoured in this case is for the reason payment stopped and not for any other reason. In this case, the 2nd respondent is a President and Treasurer and the cheques (Ex.P1 series) but no mandate produced to the contrary. If at all the defence taken by the respondents is sustainable, the same ought to have proved by summoning and examining the bank witness to show there was no violation of any such mandate.

6.Learned counsel further submitted that the respondents received the notice (Ex.P3) but not sent any reply. The appellant gave money to Mr.Syed Najmul Hassain Saleh and not to the respondents directly, hence, there is no legally enforceable debt is the another ground raised by the respondents. Referring to the evidence, the trial Court held that the 1st respondent



Crl.A.No.377 of 2021

Association took over further construction of flats, all assets and liabilities of Mr.Syed Najmul Hassain Saleh and the cheques (Ex.P1 series) issued after the Memorandum of Understanding. Hence, the defence is not sustainable and the trial Court rejected the contention of the respondents.

7.He further submitted that the respondents not denied the issuance of cheques (Ex.P1 series) and its signature and no suggestion put to the appellant during cross examination that the appellant not purchased any flat as claimed by him. Referring to the evidence and materials and to the judgment of the Hon'ble Apex Court, the trial Court rightly convicted the respondents. On the contrary, the lower appellate Court in its judgment in paragraph No.11 tabulated the case details in C.C.No.3906 of 2017 filed by the appellant's father and C.C.No.3905 of 2017 filed by the appellant and referred to the cross examination of the appellant dated 14.08.2018 in both the cases and observed that the Advocate who conducted trial for the respondents not conducted the cross examination properly, it was copy and paste, hence, there is no detailed cross examination. This is the own interpretation of the lower appellate Court. Further the lower appellate Court in paragraph No.16 held that all the cheques issued in the name of Benson Tranquility Owners Welfare Association and that the cheques required to be signed by both the President and Treasurer which is



Crl.A.No.377 of 2021

against the facts and evidence. It is further observed that the 2nd respondent not issued the cheques in his individual capacity but only in his capacity as an office bearer of the said Association. But the lower appellate Court failed to consider that the trial Court, on this aspect, assigned clear and cogent reasons, which neither considered nor overruled. Further the lower appellate Court referred to the petition filed by the respondents under Section 391 Cr.P.C. in Crl.M.P.No.21297 of 2018 and extracted the averments made in the petition in detail in paragraph No.20 and the counter filed by the appellant in paragraph Nos.21 to 24 and held that the respondents/accused cannot shift and throw the blame on their Advocate. Further the lower appellate Court dismissed the petition filed under Section 391 Cr.P.C. The lower appellate Court referred to the dismissal of quash applications filed by the respondents in Crl.O.P.Nos.9535 of 2018 & 9556 of 2018 wherein the proposed additional documents were considered and rejected. But on the contrary, the lower appellate Court gives a finding in paragraph No.26 that the appellant should have filed these documents but withheld vital documents such as Memorandum of Understanding entered between the appellant and the respondents. Thus, the trial Court invoking Section 139 of N.I. Act is not sustainable and allowed the appeal, is against the basic tenements of law. In the 391 Cr.P.C. petition, the respondents referred to 11 documents which are as



Crl.A.No.377 of 2021

follows:

- (i) Joint Development Agreement dated 23.01.2013 between Mr. Ghouse Saheb, Mr. Mohamed Fayaz Ahmed & M/s Imperium Constructions Pvt Ltd.
- (ii) Sharing Agreement dated 17.08.2013 between Mr. Ghouse Saheb, Mr. Mohamed Fayaz Ahmed & M/s Imperium Constructions Pvt Ltd.
- (iii) Memorandum of Understanding dated 26.05.2016 between Dr. Mohan & 17 others with Mr. Mohammed Fayaz Ahmed & Mr. Abdul Wajid.
- (iv) Deed of Assignment dated 26.05.2016 between M/s Imperium Constructions Pvt Ltd and Mr. Mohammed Fayaz Ahmed & Mr. Abdul Wajid.
- (v) Registration of Benson Tranquillity Owners Welfare Association dated 11.08.2016.
- (vi) Memorandum of Understanding dated 10.12.2016 between Benson Tranquillity Owners Welfare Association, Mr. T.Mohammed Moin, Mr. T. Mohammed Irfan and M/s Imperium Constructions Pvt Ltd.
- (vii) Reply Notice dated 18.12.2017 with Ack Card.
- (viii) Complaint in C.C.No.3906 of 2017.
- (ix) Proof Affidavit of Complainant in C.C.No.3906 of 2017.
- (x) Crl.O.P.No.9556 of 2018 against C.C.No.3906 of 2017.
- (xi) Deposition of Complainant dated 14.08.2018.



Crl.A.No.377 of 2021

Out of 11 documents, 5 documents are Joint Development Agreement, Sharing Agreement, Memorandum of Understanding, Deed of Assignment and Registration of Benson Tranquillity Owners Welfare Association/A1. The 6th document is the Memorandum of Understanding dated 10.12.2016 wherein the issuance of cheques in discharge of liability and the details of the cheques all given. The 7th document is the reply notice and the 8th to 11th documents are the complaint in other case in C.C.No.3906 of 2017, proof affidavit of the complainant in C.C.No.3906 of 2017, quash application in Crl.O.P.No.9556 of 2018 filed against C.C.No.3906 of 2017 and deposition of the complainant dated 14.08.2018, documents 7 to 11 formed part of the case bundle. Though the lower appellate Court dismissed 391 Cr.P.C. petition, but referring to these documents and allowing the appeal on the ground that the appellant withholding unfavourable documents amounts to suppression and the appellant failed to prove the case beyond all reasonable doubt. This finding is against procedure of law and completely misreading of evidence and considering extraneous materials. In view of the above, the finding of the lower appellate Court is perverse and not sustainable.

8.In support of his submissions, learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in the case of ***P.Rasaiya v. Abdul***



Crl.A.No.377 of 2021

Nazer and Another reported in 2022 SCC OnLine SC 1131 for the point that once the complainant discharges the initial burden by proving cheque was issued by the accused and the signature not disputed, then it is for the accused to prove that the cheque was not issued towards any debt or liability.

9.Learned counsel for the respondents submitted that during trial, the appellant marked four documents Exs.P1 to P4. Ex.P1 is the three cheques, Ex.P2 is the return memo, Ex.P3 is the statutory notice and Ex.P4 is the acknowledgment card. Apart from it, no other supporting document marked to substantiate that there was any agreement and undertaking by the respondents issuing the cheques in discharge of any liability. The appellant was specifically cross examined with regard to the dates on which the payments made to the builder Mr.Syed Najmul Hassain Saleh. The appellant answered that in the year 2012 on various dates, the payments made, but unable to give any details. The appellant further admitted that he has not made any payments to the respondents. It is for the appellant to establish how and in what manner the payments made and the appellant ought to have produced relevant documents to show he booked the flat and paid amounts to the builder. Merely producing the cheques and proceeding against the respondents without any supporting document, is not proper. The trial Court mechanically convicted



Crl.A.No.377 of 2021

the respondents relying on the statutory presumption, but failed to consider the cross examination done by the respondents questioning the transactions.

10.Learned counsel further submitted that before the lower appellate Court, the respondents filed 391 Cr.P.C petition in Crl.M.P.No.21297 of 2018 to let in additional evidence and mark 11 documents. Though the lower appellate Court extracted the respondents' contention and the complainant's objection for marking 11 documents, but for reasons best known the petition was dismissed. But the lower appellate Court considered the respondents' defence and rightly set aside the trial Court conviction on the ground that the appellant withholding material documents is proved. In view of the above, the appeal to be dismissed and the judgment of lower appellate Court to be confirmed.

11.Considering the submissions and on perusal of the materials, it is seen that the respondents' primary contention before the trial Court is that appellant in his cross examination admitted that there was no privity of contract between the respondents and the appellant. The appellant admits the cheques issued to the builder Mr.Syed Najmul Hassain Saleh and not to the respondents, hence, the cheques (Ex.P1 series) not issued for any legally



Crl.A.No.377 of 2021

enforceable debt or liability is the defence taken by the respondent. The cross examination cannot be taken in isolation only to a particular portion. The appellant further admits that he took over the project with all assets and liabilities and issued cheques (Exs.P1 series) in discharge of the liability. This contention was raised in statutory notice (Ex.P3), complaint and in proof affidavit, which is the consistent claim of the appellant.

12.In this case, the trial Court framed six questions and held that the cheques (Ex.P1 series) issued by the respondents for legally enforceable debt and the appellant proved the case. The respondents not denied the issuance of cheques (Ex.P1 series) and its signature. In support of this finding, the trial Court relied on the decision of the Hon'ble Apex Court, extracted the relevant portion and gave a finding in paragraph No.14 that there was no dispute regarding the signatures in the cheques (Ex.P1 series) is that of the 2nd respondent, further held statutory notice (Ex.P3) not replied and no defence witness examined. During cross examination, defence taken by the respondents is that the appellant gave money to the builder Mr.Syed Najmul Hassain Saleh and not to the respondents directly, hence, there was no legally enforceable debt. For this proposition, the trial Court referring to the evidence of the appellant and held that the respondents took over the assets and



liabilities of the builder, thereafter only, the cheques (Ex.P1 series) issued in discharge of the liability. The other defence taken by the respondents is that the cheques (Ex.P1 series) required to be signed by the President and Treasurer. But the cheques (Ex.P1 series) produced in this case signed by one person. For this point, the trial Court finding is that there were 11 cheques initially given, of which, two cheques signed by the 2nd respondent. Out of the 11 cheques, two cheques honoured and for dishonour of balance 9 cheques, cases in C.C.Nos.3905 & 3906 of 2017 filed. The two cheques were honoured by the Bank with the signature of the 2nd respondent, to substantiate this defence, the respondents failed to examine any bank witness to establish any such mandate, but there is only a suggestion that the cheques were invalid. Mere suggestion would not be sufficient to discard the evidence already in record. Considering the evidence and materials, the trial Court rightly came to the conclusion that the appellant proved the case beyond all reasonable doubt and the respondents failed to probablize the defence.

13.The lower appellate Court finding is that the appellant not gave any details and particulars how he came to know the respondents, what was the transaction, under what circumstances the cheques (Ex.P1 series) issued. The 2nd respondent is in Bangalore and the appellant is in Chennai, in two different



states, under such circumstances, it is the initial burden on the appellant to prove that was some transaction between them and in course of transaction, the cheques (Ex.P1 series) issued. The consistent claim of the appellant/complainant is that the respondents finding the builder M/s.Imperium Constructions Private Limited and its Managing Director Mr.Syed Najmal Hassain Saleh could not complete the construction of the residential complex, took over the project, all assets and liabilities, admitted the appellant paid advance amount confirming to purchase flat Nos.3 to 4 in the floor. This advance amount with interest was agreed to be repaid by the respondents and in discharge of the said liability, 11 cheques issued, of which, two cheques honoured. Out of nine cheques dishonoured, 6 cheques in the name of the appellant's father and three cheques in the name of appellant. The consistent claim of the appellant is that the cheques issued in discharge of debt due. The lower appellate Court, by taking into consideration only a portion of the cross-examination of the appellant and failing to consider the subsequent answer confirming that the respondents took over the liability and issued the cheques (Ex.P1 series), is not proper. Further the lower appellate Court on its own gave a finding that the Advocate who conducted the trial had conducted cross examination in a lethargic manner by copying and pasting of cross examination from one case to another, which in the absence of any such



CrI.A.No.377 of 2021

ground, is not proper.

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14.The lower appellate Court gives a finding in paragraph No.26 that the appellant should have filed all the documents which he relied upon, but he withheld vital documents more particularly Memorandum of Understanding entered between the appellant and the respondents and not proved that there was legally enforceable debt and denied the opportunity to the respondents to explain the reason for issuance of cheques. The finding of the lower appellate court that the trial court invoking Section 139 of the N.I. Act is not sustainable, is contrary to the basic tenements of law. Further the lower appellate Court allowed the appeal on the ground that the respondents filed a petition under Section 391 Cr.P.C. in CrI.M.P.No.21297 of 2018 to let-in additional evidence and to mark 11 documents. The lower appellate Court has observed that these documents were submitted by the respondents to their counsel, but not marked during trial and only on the date of judgment on 10.09.2018, the respondents appeared before the trial Court and found documents not marked and filed a petition under Section 391 Cr.P.C. The lower appellate Court having found that in the quash petitions filed before the High Court in CrI.O.P. Nos.9535 and 9556 of 2018 all 11 documents were produced and that the respondents had given instructions to their counsel with regard to those documents, held that



Crl.A.No.377 of 2021

the respondents could not take a different stand and, on that basis, dismissed the petition under Section 391 Cr.P.C. The lower appellate Court referred the petition under Section 391 Cr.P.C. in paragraphs 19 to 24, but in paragraphs 26 and 27 held withholding and suppression, is not proper. When earlier the lower appellate Court finds adducing additional evidence cannot be permitted during the 391 Cr.P.C. petition, thereafter taking an opposite view that there is suppression, is not sustainable and perverse. As referred earlier, out of 11 documents, the documents 7 to 11 already in the case bundle and document No.9 produced before this Court by the learned counsel for the respondents which is a registered document. The respondents not disputed the same. This Memorandum of Understanding dated 10.12.2016 would answer the doubts raised by the respondents. For better appreciation, scanned reproduction of the same is as follows:



CrI.A.No.377 of 2021

INDIA NON JUDICIAL
Government of Karnataka

e-Stamp



सत्यमेव जयते

Certificate No.	IN-KA500854873699680
Certificate Issued Date	09-Dec-2016 02:13 PM
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Unique Doc. Reference	SUBIN-KAKABACSL08497460808866500
Purchased by	T MD MOIN
Description of Document	Article 37 Note or Memorandum
Description	M O U
Consideration Price (Rs.)	0 (Zero)
First Party	BENSON TRANQUILITY
Second Party	T MD MOIN
Stamp Duty Paid By	T MD MOIN
Stamp Duty Amount (Rs.)	200 (Two Hundred only)

City
Advocates
Society Ltd



Please write or type below this line

MEMORANDUM OF UNDERSTANDING

THIS DEED OF MEMORANDUM OF UNDERSTANDING is made and executed on this the Tenth day of December Two Thousand Sixteen (10-12-2016) at Bangalore by and between :

For Imperium Constructions Private Limited

Sanjay Benson CV
Sanjay Benson CV

Prakash C.
Prakash C.
Managing Director

Statutory Alert:
1. The value of the Stamp Certificate should be verified at www.e-stamp.com. Any discrepancy in fee details on this Certificate and as available on the website renders it invalid.
2. The only document to be attached to the certificate is the certificate.



Crl.A.No.377 of 2021

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-2-

"BENSON TRANQUILITY OWNERS WELFARE ASSOCIATION"
Municipal bearing No. 30 (Old No.3, Site No.10), Benson Cross Road,
Jayamahal, Bengaluru Represented by

1) **Mr. G.V. TARUN RAJ BARNHAM**
S/o. Late. C.H. Vivekananda
Aged about 31 years
No.4, Benson Road,
Benson Town
Bangalore -48.

2) **Mr. MOHAMMED FAYAZ AHMED**
S/o. Late. Abdul Gaffar
Aged about 47 years
C/o: No.4, Benson Road
Benson Town, Bangalore -45.

Hereinafter referred to as the **FIRST PARTY**(which term shall mean and include all their legal heirs, legal representatives, administrators, executors, successors and assigns) of the **ONE PART...**

And

1) **Mr. T. MOHAMMED MOIN**
Son of Late. T. Abdulaziz Sahib
Aged about 63 years,
Represented by Authorised person and son
Mr. T. MOHAMMED IRFAN

2) **Mr. T. MOHAMMED IRFAN**
Son of T. Mohammed Moin
Aged about 38 years,

Both are residing at No.18,
Atkinson Road, Vapery, Chennai 600 007,
Campling at Bangalore

Hereinafter referred to as the **SECOND PARTY** (which term shall mean and include all their legal heirs, legal representatives, administrators, executors, successors and assigns) of the **SECOND PART.**



For Imperium Constructions Private Limited
.....3

[Signature]
Managing Director



CrL.A.No.377 of 2021

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-3-

M/s. IMPERIUM CONSTRUCTION PVT LTD
Represented by its Managing Director
MR. SYED NAJMUL HASSAIN SALEH
No.18, Cannigham Road
Bangalore 560 052.



Hereinafter referred to as the **CONFIRMING PARTY** (which term shall mean and include its successors in title and assigns) of the Third Part.

Whereas First Party are the purchasers / owners of Various Residential Flat in the residential apartment known as **BENSON TRANQUILITY OWNERS WELFARE ASSOCIATION**" Bensons Town, Bangalore they having had entered into construction / sale agreement with the builder M/s. Imperium Construction Pvt Ltd., the party of the **Third Part** in the said premises.

And whereas the party of the second party herein and also entered into a construction agreement respectively with the aforesaid builder i.e., the confirming party herein in respect of Flat No. 03, 04, in the third floor of the said residential complex and had paid advance sale consideration amount of **Rs.80,00,000/- (Rupees Eighty Lakhs only)** collectively to the party of third part builder and where to the builder i.e., confirming party herein due to unavoidable circumstances **Could not complete the construction of the said residential complex BENSON TRANQUILITY.**

.....4

Imperium Construction Pvt. Ltd.

[Signature]

[Signature]

[Signature]



CrL.A.No.377 of 2021

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-4-

AND WHEREAS the builder confirming party herein assign is contractual obligations entered into between it and the owners of the property bearing No.30 (Old No.3, Site No.10) Benson Cross Road, Jayamahal, Bengaluru including the sale agreements entered into between him and the prospective purchasers of the various flats to Mr. Mohammed Fayaz Ahmed and Mr. Abdul Wajid who formed an association of various flat owners of **BENSON TRANQUILITY** which was earlier known as Imperium Tranquility under the name and style of "**BENSON TRANQUILITY OWNERS WELFARE ASSOCIATION**" No.30, Benson Cross Road, Jayamahal, Bengaluru. The assignment agreement includes the liability to refund the advance sale consideration of Rs.80,00,000/- the said amount was received from the party of the second part by the confirming party builder along with compensation.

And whereas by the virtue of said assignment agreement between the builder the confirming party herein and the aforementioned flats owners association the first party herein the liability of refunding the advance sale consideration amount paid by the party of the second party to the party of third party herein along with compensation the party of first part after negotiations and that intervention of well wishers the party of first part represent by Mr. C.V. Tarun Barnham and Mr. Mohammed Fayaz Ahmed offered and agreed to re-fund the aforesaid advance sale consideration amount along with compensation totally a sum of Rs.1,15,00,000/- only for which the respective party of

Tarun Barnham C.V.

5
Mohammed Fayaz Ahmed



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-5-

the second part herein agreed and accepted to receive the aforesaid sum of Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs only) in full and final satisfaction of their claim against the confirming party builder which stood transferred to the party of first part herein by virtue of assignment agreement entered into between the party of first part and the party of third part herein.

NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS FOLLOWS :

1. That in pursuance aforesaid agreement arrived at amongst the parties to this MOU the party of first part herein agreed to refund the said sum of Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs only) to the party of first part herein by way of ten cheques of Rs.10,00,000/- (Rupees Ten Lakhs only) and one cheque of Rs.15,00,000/- all drawn on state bank of Mysore, Benson Town Branch, Bangalore. The details of each of the cheques is as under.

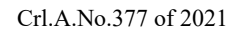
Cheque No	Amount	Date
769066	Rs.10,00,000/-	25-08-2017
769067	Rs.10,00,000/-	25-08-2017
769068	Rs.10,00,000/-	25-08-2017
769069	Rs.10,00,000/-	25-08-2017
769070	Rs.10,00,000/-	28-08-2017
769071	Rs.10,00,000/-	28-08-2017
769072	Rs.10,00,000/-	28-08-2017
769073	Rs.10,00,000/-	28-08-2017
769075	Rs.10,00,000/-	31-08-2017
769076	Rs.10,00,000/-	31-08-2017
769077	Rs.15,00,000/-	31-08-2017
Total	Rs.1,15,00,000/-	
Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs only)		

John P. B. B. B. B.

[Signature]

[Signature]

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- John Roy Robinson C.V.



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6. Any laps in pursuance to the aforesaid covenants the second party has legal rights to enforce the same.

IN WITNESS WHEREOF the parties to this deed have set their hands before the witnesses mentioned here under on the date, month and year first above mentioned.

WITNESSES:

1. *Ruff*
(SYED RIYAZUDDIN)
No. 27/1, 2nd Cross,
R. Sonnappa Block,
J.C. Nagar, 8th Cross-2nd-
2. *Syed Shujauddin*

Tarun Raj Barnham C.V.
(C.V. TARUN RAJ BARNHAM)

Mohammed Fayaz Ahmed
(MOHAMMED FAYAZ AHMED)

FIRST PARTY

For: *T. Mohammed Irfan*
(T. MOHAMMED IRFAN)
Represented by Mr. T. Mohammed Irfan)

T. Mohammed Irfan
(T. MOHAMMED IRFAN)
SECOND PARTY

MR. IMPERIUM CONSTRUCTION PVT LTD.

ATTESTED BY ME

Prakash C. Balla
PRAKASH. C. BALLA,
ADVOCATE & NOTARY
EWS # 16/2, 1st Cross, 2nd Main
KHB, Basaveshwara Nagar
BENZALURU-560 079

Syed Nasirul Hassan Saleh
(SYED NASIRUL HASSAN SALEH)
CONFIRMING THIRD PARTY



Crl.A.No.377 of 2021

15.From the Memorandum of Understanding, it is seen that three cheques (Ex.P1 series) pertains to this case and six cheques pertains to the appellant's case (C.C.No.3906 of 2017) and two cheques encashed, all details given. Though a defence taken that the cheques will be honoured after registration of the builders share of the flats in favour of respective purchasers, learned counsel not disputed and now all flats sold and balance amounts collected from the prospective purchasers. As regards the appellant's flat Nos.03 and 04, not available to the appellant and amounts collected from the purchasers. In view of the same, there is no contingency that impedes the respondents to honour the cheques and pay the appellant.

16.In view of the above, this Court finds the finding of the lower appellate Court is based on extraneous consideration rather than on evidence and materials. Hence, the judgment of the lower appellate Court is perverse and liable to be set aside.

17.In the result, this Criminal Appeal stands allowed. The judgment dated 10.09.2018 in C.C.No.3905 of 2017 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai is restored and confirmed and the judgment dated 10.12.2020 in Crl.A.No.523 of 2018 passed



Crl.A.No.377 of 2021

by the learned VI Additional Sessions Judge, City Civil Court, Chennai is set aside.

18.The trial Court is directed to secured the respondents to undergo the sufferance of the sentence. In the interregnum, if the respondents come forward for a settlement and to return the cheque amount, the same can be entertained by the trial Court and the case can be compounded.

30.03.2026

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

vv2

To

1.The VI Additional Sessions Judge,
City Civil Court, Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.



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Crl.A.No.377 of 2021

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY JUDGMENT IN
Crl.A.No.377 of 2021

30.03.2026