

HIGH COURT OF MADRAS**Bench: The Honourable Mrs. Justice R. Hemalatha****Date of Decision: 20th June 2024**

Case No.: Crl.R.C. No. 1128 of 2019 & Crl.M.P. No. 15160 of 2019

**APPELLANT: M/s. A.D.J. Shipping Company Pvt. Ltd., represented by its
Managing Director, S. Arunachalam ...Appellant****VERSUS****RESPONDENT(S):****M/s. N.S. Rathinam & Sons, represented by its Partner Mr. Chandran
The Managing Director, M/s. N.S. Rathinam & Sons ...Respondents****Legislation:**

Sections 397 & 401 of the Cr.P.C.

Section 138 of the Negotiable Instruments Act, 1881

Section 204, 207, 313 of the Cr.P.C.

Indian Evidence Act, 1872

Subject: Criminal revision challenging the judgment and orders dated 27.11.2018 passed by the VI Additional Sessions Judge, City Civil Court, Chennai, which confirmed the judgment and orders dated 01.10.2014 passed by the IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai. Both lower courts acquitted the respondents/accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

Headnotes:

Negotiable Instruments Act – Dishonour of Cheques – Acquittal of Accused – Presumption under Section 118 and 139 – Both the trial court and the appellate court concluded that the presumption under Sections 118 and 139 of the N.I. Act had been rebutted by the accused. The courts found that the dishonoured cheques were not for settlement of any legally enforceable debt

but were issued as security due to indeterminable amounts payable to a steamer agent. The failure of the accused to issue a reply notice was not considered a ground for conviction. The trial court misinterpreted evidence and concluded incorrectly regarding the onus of proof. The appeal resulted in conviction and sentence for the accused [Paras 1-9].

Procedure under Criminal Procedure Code – Sections 204, 207, 313 – The lower courts conducted proper procedures as required under the Cr.P.C. including issuance of summons, furnishing of records, and examination of the accused [Paras 3-6].

Evidence and Burden of Proof – The trial court misinterpreted the evidence provided by the complainant's witness and wrongly concluded that the presumption under the N.I. Act was rebutted. The appellate court upheld this erroneous interpretation without proper reasoning, leading to perverse conclusions [Paras 7-8].

Decision: Criminal Revision Case allowed – Accused found guilty under Section 138 of the N.I. Act and convicted and sentenced. Detailed directions provided for the surrender of the second accused and enforcement of the sentence [Para 9].

Referred Cases:

- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681
- State of W.B. v. Mir Mohammad Omar and Ors., (2000) 8 SCC 382
- Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors., (2004) 4 SCC 158
- Vishal Singh v. State of Rajasthan, (2009) Cri. LJ 2243
- Kikar Singh v. State of Rajasthan, AIR 1993 SC 2426

Representing Advocates:

For Petitioner: Mr. B. Nedunchezhiyan

For Respondents: Mr. R. Surya Prakash

ORDER

Both the courts below acquitted the respondents/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, aggrieved over which the present revision is filed.

2. For the sake of convenience the parties are referred as complainant and accused.

3. The case of the complainant/revision petitioner in a nutshell is as follows:
 - i. The two firms, namely, A.D.J. Shipping Company Private Limited, Chennai (revision petitioner) and M/s. Rathinam & Sons, Chennai (respondent) have been associated with each other since 1947. The former is engaged in clearance of imported cargo and the latter firm is one of its clients, which is engaged in import of scrap iron. According to the complainant, there was a due of Rs.4,93,000/- to it from the accused' firm and the following three cheques drawn on Bank of Baroda, Mylapore, were issued by the accused towards his liability.

Cheque No. & Date	Amount
442888 dt. 05.07.2005	Rs.93,000/-
442882 dt. 09.07.2005	Rs.2,00,000/-
442884 dt. 12.07.2005	Rs.2,00,000/-

- ii. All the three cheques which were presented for collection to Catholic Syrian Bank, II line Beach, Chennai, were returned dishonoured for the reason 'insufficient funds'.
- iii. According to the complainant, the return of these three cheques was not only intimated to the accused firm but a legal notice dated 29.07.2005 was also issued which was refused to be received by the accused. Since the amount towards dishonoured cheques was not made good by the accused firm, the complainant filed a private complaint under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of N.I. Act before the IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai, in S.T.C. No.8952/2005.
- iv. The learned IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai, took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.
- v. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.
- vi. On the side of the complainant, the Power of Attorney of the complainant was examined as P.W.1 and Ex.P1 to Ex.P14 were marked.
- vii. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. He examined himself and marked Ex.R1 to R7.
- viii. After analysing the evidence on record, the learned trial court judge acquitted the accused of the offence punishable under Section 138 of the Negotiable Instruments Act, vide his judgment and orders dated 01.10.2014.
- ix. Aggrieved over the same, the complainant filed an appeal in C.A.No.313/2014 before the VI Additional Judge, City Civil Court, Chennai. The learned VI Additional Judge, City Civil Court, Chennai, dismissed the appeal, vide his judgment and orders dated 27.11.2018.
- x. Aggrieved over the same, the complainant has preferred this Criminal Appeal.

4. Heard Mr.B. Nedunchezhiyan, learned counsel for the revision petitioner and Mr.R. Surya Prakash, learned counsel for the respondents.

5. Both the lower courts conclusively decided that the presumption under Section 118 and 139 of the Negotiable Instruments Act has been satisfactorily rebutted by the accused firm and therefore in the light of such a favourable evidence on their side, the guilt of the accused firm is not proved. Secondly, it was also held by them that the failure of the accused to issue a reply notice cannot be a ground for convicting the accused firm.

6. The trial court had elaborately gone into the deposition of P.W.1 who was authorised to represent the complainant. In his deposition P.W.1 had admitted that his firm, as a forwarding and clearing agent, had to engage the services of Steamer Agent and the fees/commission paid to the steamer Agent used to vary and often indeterminable till the entire consignment was offloaded and cleared. According to P.W.1, the invoice prepared by them for these services included the amount payable to the Steamer Agent which could be determined only at the end of clearance of each consignment and therefore it was a practice that the invoices were always inflated to that extent. According to P.W.1, it was also the practice that wherever Steamer Agents received excess amount more than what was due to them, they used to return the amounts to the clients through them i.e. forwarding agents.

7. The contention of the accused firm was that the three cheques which were dishonoured were not given for settlement of any legally enforceable debt; but was given only as a security due to the peculiar nature of the indeterminable amount payable to the Steamer Agent. Their further contention was that the three cheques which got dishonoured were misused by the complainant firm due to which they were returned and in fact an amount of Rs.6,35,584/- was due from the Steamer Agent which the complainant firm failed to procure and refund to the accused firm. P.W.1 had admitted that there was some amount due from the Steamer Agent and that the same was collected by the accused firm from the Steamer Agent directly. It is incomprehensible as to why and how the onus of proving this aspect falls on the complainant firm while the burden of proof entirely lies with the accused firm to rebut the presumption as envisaged under Sections 118 and 139 of N.I. Act.

8. On the contrary it was held by the trial court that the complainant firm did not sufficiently prove that Rs.6,35,584/- was already obtained by the accused firm from the Steamer Agent. This conclusion by the trial court defies logic. The accused firm did not adduce any oral/documentary evidence to show that the steamer Agent actually owed a sum of Rs.6,35,584/- to them and also that three cheques which got dishonoured were actually meant for security purpose and did not represent the actual payment to be paid to the complainant firm. Regarding this aspect the observations of the trial court is an interesting read.

' *Steamer Agent* epWtdji;j Nrh;e;jthf;is rhlr;pahf tprhhpj;J cz;ik epiyia vLjJ;iug;gjw;F vjphp rhhg;py; Kawr;pAk; Nkw;f;nfhss;g;gL;s;sJ ePz;l fhyk; Mfptpl;jhy;

Mtzqf;s; ,y;iy vdg;jhy; *Steamer Agent* rhlr;pahf tprhhpff;gg;ltpy;iy vdg;J toff;pd; rhlr;paqf;is ghprPypf;ifapy; mwpa KbfpwJ."

In fact the trial court has misinterpreted the evidence of P.W.1 and wrongly concluded that the accused firm had rebutted the presumption. The reasoning given by the trial court that there was an attempt by the accused firm to examine the Steamer Agent but could not do so due to non availability of records because of passage of time is also not accepted by any standards. Such surmises and conjectures cannot help in absolving the accused from the offence. The refusal to accept the legal notice from the complainant firm arouses suspicion regarding the intention of the accused. Assuming that the accused firm really had a reason to return the cheques or to justify the return, the legal notice issued by the complainant firm ought to have been accepted and a proper reply could have been given at the first instance to clarify it's stance. It is also not known as to how the cheques were returned for the reason 'insufficient funds', especially when the accused firm did not want their bankers to honour the cheques. In fact if the plea taken by the accused firm in the criminal case was true, the cheques could have been returned as 'payment stopped by the drawer' or 'countermanded by the drawer' thereby indicating that there is a dispute in the payment. In the instant case, the three cheques were returned for the reason 'Insufficient Funds' and thus indicating the plea of dispute of payment (due to non enclosure of legally enforceable debt) is clearly an after thought and will not hold water. In such circumstances, I opine that the conclusion arrived by both the Courts will not have any validity and also perverse in nature.

9. In the result,

- i. The Criminal Revision Case is allowed. Consequently connected miscellaneous petition is closed.
- ii. The accused are found guilty of the offence under Section 138 of N.I. Act and are convicted and sentenced as detailed hereunder :

Accused	Conviction	Sentence
A1	138 of N.I. Act	Pay a compensation of Rs.2,46,500/-.
A2	138 of N.I. Act	To undergo simple imprisonment for a period of six months and pay a compensation of Rs.2,46,500/-, in default, to undergo simple imprisonment for four weeks.

iii. The 2nd accused shall surrender before the learned IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai, within 15 days from the date of receipt of a copy of this order / uploading of the order, failing which, the Trial Court shall take steps to secure the presence of the 2nd accused for serving the period of sentence.

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