

**HIGH COURT OF KARNATAKA****Bench: Justice S Rachaiah****Date of Decision: 7th May 2024**

CRIMINAL REVISION PETITION NO. 391 OF 2022

**Petitioner:****Sri M R Narasimha Murthy, Authorized Signatory of M/S Sam Tourist****Versus****Respondent:****M/S Elgi Rubber Company Limited, Retreading Division****Legislation:**

Section 138 of the Negotiable Instruments Act (NI Act)

Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.)

**Subject:**

Criminal revision petition challenging the conviction for issuing cheques that were dishonored due to insufficient funds. The case involves the interpretation of the liability under Section 138 of the NI Act and the presumptions therein.

**Headnotes:**

Criminal Law – Conviction under Section 138 of NI Act – The petitioner was convicted by the Trial Court and the conviction was upheld by the Appellate Court – Petitioner issued cheques which were dishonored due to insufficient funds – Trial Court relied on the presumption under Section 139 of the NI Act – Petitioner argued that cheques were issued as security for other transactions, not for clearing a debt [Paras 1-16].

Burden of Proof – Section 139 of NI Act – The Court reiterated that the accused must rebut the presumption of liability by leading cogent evidence – In this case, the petitioner successfully rebutted the presumption by establishing that cheques were issued as security, not for payment of a debt – Prosecution failed to produce invoices or any documentary evidence to prove the transaction [Paras 12-15].

Evaluation of Evidence – Invoices and Supply of Goods – The complainant failed to produce any invoices or documentation to substantiate the supply of goods claimed – Cross-examination of the complainant revealed admissions that contradicted the prosecution's case – No sufficient evidence to establish that the accused owed the amount stated in the cheques [Paras 13-15].

Decision – Criminal Revision Petition allowed – Judgment of conviction and order of sentence by the Trial Court and its confirmation by the Appellate Court set aside – Petitioner acquitted of the offence under Section 138 of NI Act – Bail bonds cancelled [Para 16].

**Referred Cases:**

- Rangappa v. Sri Mohan, (2010) 11 SCC 441
- Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513

Representing Advocates:

For petitioner: Sri. Samuel S Dandin

For respondent: Sri. Narayana T H

**ORDER**

1. This Criminal Revision Petition is filed by the petitioner / accused, being aggrieved by the judgment of conviction and order of sentence dated 29.11.2018 in C.C.No.1526/2018 on the file of XXIV Additional Small Causes Judge and XXII Additional Chief Metropolitan Magistrate (SCCH26) at Bengaluru and its confirmation judgment and order dated 26.11.2021 in CrI.A.No.33/2019 on the file of the LX Additional City Civil and Sessions Judge, Bengaluru (CCH-61), seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused is convicted for the offence under Section 138 of Negotiable Instruments Act (for short 'N.I. Act').

2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

**Briefs facts of the case:-**

3. The complainant is a registered company and doing business of sales of tyres. It is stated in the complaint that the accused had placed order for supply of tyres as per the invoices. The complainant supplied the tyres as per the invoices and the amount for having supplied the tyres was to be paid to the complainant. As per the invoice, the complainant supplied tyres

worth of Rs.4,49,000/-. To clear the said balance, the accused is said to have issued cheques to the complainant. When those cheques were presented for encashment, the cheques were returned with an endorsement as 'funds insufficient'. Thereafter, the complainant issued legal notice to the accused and asked him to make payment, however, the accused even after receipt of notice, neither replied nor repaid the amount. Hence, complainant filed a complaint before the Jurisdictional Magistrate having jurisdiction.

4. To prove the case of the complainant, the complainant himself examined as PW.1 and got marked 10 documents as Exs.P1 to P10. On the other hand, the accused did not chose to lead any evidence. The Trial Court after appreciating the oral and documentary evidence on record, recorded the conviction of the accused and the same has been confirmed by the Appellate Court in the appeal filed by the accused/appellant. Hence this revision petition.

5. Heard Sri. Samuel S Dandin, learned counsel for petitioner and Sri. Narayana T H, learned counsel for the respondent.

6. It is the submission of learned counsel for petitioner that he had not purchased any tyres nor raised any invoices. In fact, the cheques were issued as security for other transactions, other than any debt or liability. Therefore, the accused need not pay the amounts stated in the cheques, however, the Trial Court and the Appellate Court failed to appreciate the evidence in such manner and recorded the conviction which is erroneous and bad in law.

7. It is further submitted that the complainant has not produced any documents for having raised invoices. In the absence of cogent documents to show that the complainant had supplied the tyres to the accused, mere possession of the cheques would not create any liability. The accused in the cross-examination has contended and elicited that the

complainant did not supply the tyres worth of Rs.4,49,000/-. Therefore, the accused has rebutted the presumption by raising the probable defence and in fact the complainant failed to prove the debt or liability beyond all reasonable doubt, however, the Courts below have committed error in raising the presumption in the absence of proof of liability. Therefore, the concurrent findings are required to be set aside. Making such submission, learned counsel for petitioner prays to allow the petition.

8. Per contra, learned counsel for respondent vehemently justified the concurrent findings and submitted that the signatures on the cheques and issuance of the cheques have been admitted by the accused. It is settled principle of law that once signatures and issuance of the cheques are admitted, the Court has to raise the presumption that those cheques were issued for the purpose of clearing debt or liability. Accordingly, both the Courts have concurrently held that the accused found guilty for the offences under Section 138 of N.I Act.

9. It is further submitted that mere non-production of documents for having supplied the tyres would not take away the case of the complainant as the complainant had paid the tax like KST and CST to the Government for having sold the tyres to the accused.

10. It is further submitted that the accused purchased the tyres from the complainant and issued cheques to clear the debt and the transaction has been admitted by the accused. Therefore, the conviction has been recorded by the Trial Court and the said conviction has been affirmed by the Appellate Court. Hence, there is no error or illegality committed by the Courts below in recording the conviction. Making such submission, learned counsel for respondent prays to dismiss the petition.

11. After having heard learned counsel for the respective parties and also perused the findings of the Courts below, it is relevant to refer to the

evidence of PW.1 to ascertain as to whether any error committed by the Courts below, not only in appreciating the evidence but also applying the proper law on the Negotiable Instruments Act or not.

12. It is settled principle of law that initially, the accused has to rebut the presumption by leading the cogent evidence as the complainant is protected by the presumption envisaged under Section 139 of N.I. Act.

13. In the present case, the complainant stated in his complaint that the accused had purchased the tyres for a sum of Rs.4,49,000/- and issued cheques to clear the debt. According to complainant, the accused had raised invoices to purchase the tyres, however, on perusal of the documents produced by the complainant, no such invoices are produced to substantiate the contention. In the absence of relevant material documents for having sold the tyres, in my considered opinion, the complainant has not proved the transaction.

14. Be that as it may, the accused had contended that the transaction was being done with the complainant. The accused used to purchase the tyres and also giving old tyres for the purpose of retreading the tyres. The complainant for the purpose of security said to have received three cheques from the accused. However, those cheques have been misused and produced for encashment in order to gain wrongfully.

15. In the cross examination of PW.1, certain admissions have been made by him that usually the invoices would be raised at the time of transactions and KST and CST would also be paid for having sold the tyres. PW.1 further admitted that he did not disclose as to how many tyres were sold to the accused and how much amount the accused was to be paid to PW.1. Further admitted that PW.1 did not produce any documents or invoices for having sold the tyres to the accused. After having considered the admission of PW.1 in the cross-examination, I am of the considered opinion that the

contention of the accused that the cheques were issued as security for the purpose of transaction has to be accepted as true. Thus, the accused has successfully rebutted the presumption. However, the complainant has failed to prove the transaction as he could not produce any documents for having sold the tyres. Therefore, I am of the considered opinion that, both the Courts have erred in not only appreciating the evidence of PW.1, but also failed to apply proper law on the Negotiable Instruments Act., hence, the concurrent findings are deserved to be set aside.

16. In the light of the observations made above, I proceed to pass the following:-

ORDER

- (i) The Criminal Revision Petition is *allowed*.
- (ii) The judgment of conviction and order of sentence dated 29.11.2018 in C.C.No.1526/2018 on the file of XXIV Additional Small Causes Judge and XXII Additional Chief Metropolitan Magistrate (SCCH-26) at Bengaluru and its confirmation judgment and order dated 26.11.2021 in CrI.A.No.33/2019 on the file of the LX Additional City Civil and Sessions Judge, Bengaluru (CCH61), are set aside.
- (iii) The petitioner is acquitted for the offence under Section 138 of Negotiable Instruments Act.
- (iv) Bail bonds executed, if any, stand cancelled.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.