

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

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CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.663 of 2019

N.Gopalakrishnan
S/o.Navaneethan
M/s.Sahithya Enterprises
No.1276-D, Periyakaruppan Street
Kamarajapuram Colony
Near SCI Church
Sivakasi 626 189.

... Accused/Appellant/Revision
Petitioner

vs.

S.Chandra Mohan (**died**)

S.Jeyavel
S/o.Shanmugam,
Proprietor of
Sri Sai Baba Waste Paper Company

...Complainant Respondent/Respondent

(Amended as per Order in Crl.RC.No.663/2019
dt.27.06.2022)

Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, to set aside the judgment dated 27.04.2019 in C.A.No.477 of 2018, on the file of the III Additional Sessions Judge, Chennai and the judgment of conviction and sentence dated 20.07.2018 in C.C.No.6825 of 2015, on the file of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.



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For Petitioner Mr.D.Shivakumaran
For Respondent Mr.A.Balasingh Ramanujam
 Mr.M.Manimaran

ORDER

This Criminal Revision Case has been filed against the judgment and order passed by the III Additional Sessions Judge, Chennai in C.A.No.477 of 2018, dated 27.04.2019, dismissing the appeal and confirming the judgment and order passed by the learned Magistrate, Fast Track Court-II, Egmore, Chennai in C.C.No.6825 of 2015, dated 20.07.2018, convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act, 1881 and sentencing him to undergo one year simple imprisonment and to pay a fine of Rs.10,80,000/- as compensation and in default to undergo three months simple imprisonment.

2.The complaint was originally filed by Sri Sai Baba Waste Paper Company, represented by its Power of Attorney Agent Mr.S.Chandra Mohan. The complaint was filed on the ground that the complainant was a dealer in supplying raw materials, waste papers and waste gunny and in the course of business, materials were supplied to one Mr.K.P.Ravindran, who is the Managing Director of J.R. Papers Private Limited. In the said transaction, there was an outstanding amount of a sum of Rs.5,40,000/- due and payable by the said Mr.K.P.Ravindran. It is further alleged in the complaint that the petitioner, who is a friend of Mr.K.P.Ravindran, came forward to settle the amount due and payable by Mr.K.P.Ravindran. In continuation of the same, the



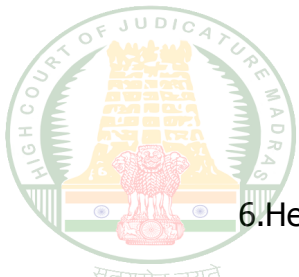
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petitioner issued a cheque dated 05.08.2010, for a sum of Rs.5,40,000/- in favour of the complainant. When this cheque was presented for collection, the same was returned as "funds insufficient" and it was intimated to the complainant by return memo dated 02.02.2011.

3.The complainant issued a legal notice dated 26.02.2011, calling upon the petitioner to pay the cheque amount within a period of 15 days and this notice was received by the petitioner on 02.03.2011. In spite of receipt of the notice, the petitioner neither gave a reply nor repaid back the cheque amount. The same resulted in filing the criminal complaint against the accused/petitioner for offence u/s.138 of the Negotiable Instruments Act, 1881.

4.On the side of the complainant, Power of Attorney Agent was examined as PW.1 and Ex.P.1 to Ex.P.5 were marked. The incriminating evidence that was collected during the course of trial was put to the petitioner and he denied the same as false.

5.The Trial Court on considering the facts and circumstances of the case and on appreciation of the evidence, came to a conclusion that the legal presumption u/s.139 of the Negotiable Instruments Act, 1881 must lean in favour of the complainant and that the same was not rebutted by the petitioner and accordingly, the petitioner was convicted and sentenced for offence u/s.138 of the Negotiable Instruments Act, 1881. The same was subsequently confirmed by the Appellate Court and aggrieved by the same, the present criminal revision case has been filed before this Court.



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6.Heard Mr.D.Shivakumaran, learned counsel for the petitioner and Mr.A.Balasingh Ramanujam, learned counsel for the respondent.

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7.During the pendency of this criminal revision case, the Power of Attorney Agent Mr.S.Chandra Mohan, expired and in his place Mr.S.Jeyavel, who is the Proprietor of Sri Sai Baba Waste Paper Company, was substituted and he is prosecuting this case.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.The admitted case of the complainant is that Sri Sai Baba Waste Paper Company had a business transaction with one Mr.K.P.Ravindran and the said Mr.K.P.Ravindran had an outstanding amount of Rs.5,40,000/- payable to the said entity. This liability of Mr.K.P.Ravindran was taken over by the petitioner and accordingly, the subject cheque for a sum of Rs.5,40,000/-, was issued by the petitioner. On carefully going through the cheque which was marked as Ex.P.2, it is seen that the cheque has not been drawn either in favour of Sri Sai Baba Waste Paper Company or in favour of Mr.S.Jeyavel, who claims to be the Proprietor of this entity. The cheque marked as Ex.P.2 shows that it was drawn in favour of Mr.S.Chandra Mohan. Admittedly, the said Mr.S.Chandra Mohan, is neither the payee nor the holder in due course of the cheque. He is the Power of Attorney Agent of the said Sri Sai Baba Waste Paper Company represented by its Proprietor Mr.S.Jeyavel. Hence, the



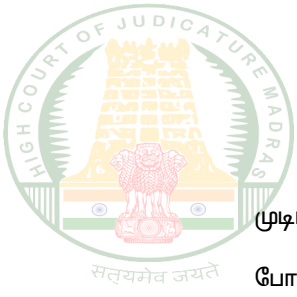
very maintainability of the complaint by Sri Sai Baba Waste Paper Company, is under question. Unfortunately, this fundamental issue has not been looked into by both the Courts below.

10.The next issue to be gone into is, the liability, according to the complainant, is that of one Mr.K.P.Ravindran, who is the Managing Director of J.R.Papers Pvt.Ltd., and whereas, the cheque was drawn by the petitioner towards the said liability. There is no dispute with regard to the fact that the liability of one person can be taken over by another person and the law on this issue is too well settled. The petitioner has taken a very specific defence that he had an independent transaction with the said Mr.K.P.Ravindran and had issued the cheque to him and the said cheque has been misused by the complainant. For this purpose, it will be necessary to take note of the deposition of PW.1 and DW.1.

11.When PW.1 was cross examined, he had deposed as follows:

“எதிரியுடன் ஒன்றாக சோர்ந்தும் நான் தொழில் செய்துள்ளேன். நான் சொல்லும் மில்லுக்கு எதிரி வேஸ்ட் பேப்பர் போட்டுள்ளார். அதன் மூலம் எங்களுக்குள் வியாபாரத் தொடர்பும் இருந்தது. அந்த வியாபாரத் தொடர்பு சம்மந்தமாக எதிரி எனக்கு பாக்கி எதுவும் தரவேண்டி உள்ளதா என்றால் தரவேண்டியது உள்ளது. அந்த பாக்கித் தொகை தொடர்பான கணக்குகள் எதையும் இந்த வழக்கில் தாக்கல் செய்யவில்லை.

எதிரிக்கும் சாய்பாபா வேஸ்ட் பேப்பர் மில்லில் உரிமையாளர் ரவீந்திரனுக்கும் எந்த வியாபாரத் தொடர்பும் இல்லை என்றும் அதனால் தான் அந்த வியாபாரத் தொடர்பை உறுதிப்படுத்த எந்த ஆவணங்களையும் இந்த வழக்கில் தாக்கல் செய்யவில்லை என்றும் சொன்னால் சரியல்ல. ரவீந்திரன் ஒரு சொத்து

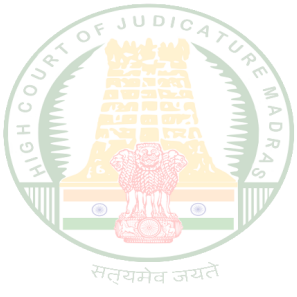


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முடிப்பதற்காக எதிரியிடம் பெற்ற பூர்த்தி செய்யப்படாத கையெழுத்து மட்டும் போடப்பட்ட காசோலையை தவறாக பயன்படுத்தி, ஏன் மூலம் இவ்வழக்கை தாக்கல் செய்துள்ளார் என்றால் சரியல்ல. எனக்கு பவர் கொடுத்த ஜெயவேலுக்கும், ரவீந்திரனுக்கும் என்ன தொடர்பு என்றால் சாய்பாபா வேஸ்ட் பேப்பர் கம்பெனியின் உரிமையாளர்தான் ஜெயவேல். அந்த நிறுவனத்தில் இருந்துதான் ரவீந்திரன் உரிமையாளராக இருக்கும் ஜெ.ஆர்.பேப்பர் மில்லிற்கு ரூ.5,40,000/- க்கு பழைய பேப்பர்களை சப்ளை செய்தோம். வழக்கு காசோலையில் சாகித்யா எண்டர்பிரைசஸ் என்ற நிறுவனத்தின் பெயரைக் குறிப்பிட்டு எதிரி கையெழுத்திட்டுள்ளார் என்றால் சரிதான். எனக்கோ, எனக்கு அதிகாரம் கொடுத்த நபருக்கோ எதிரி சட்டப்படியாக செலுத்தவேண்டிய தொகை எதுவும் இல்லை என்றால் சரியல்ல. அதனால்தான் அது சம்மந்தப்பட்ட பில்களோ, கணக்குகளோ எதுவும் தாக்கல் செய்யப்படவில்லை என்றால் சரியல்ல. இவ்வழக்கை தாக்கல் செய்யவே எனக்கு உரிமையில்லை என்றால் சரியல்ல. எதிரி சட்டப்படியான கடன் எதுவும் செலுத்தவேண்டியது இல்லாத நிலையில் எனக்கு பிரிவு 138 மாற்றுமுறை ஆவணச் சட்டத்தின் கீழ் பரிகாரம் பெற உரிமையில்லை என்றால் சரியல்ல. எனக்கு தரப்பட்ட வா.சா.ஆ.1 பவர் பத்திரமும் சட்டப்படி செல்லத்தக்கதல்ல என்றால் சரியல்ல. ஆகவே இவ்வழக்கை தள்ளுபடி செய்யவேண்டுமென்றால் சரியல்ல. ரவீந்திரனை எனது தரப்பு சாட்சியாக விசாரிக்க போகிறோமா என்றால் இல்லை.”

12. The relevant portions in the deposition of DW.1 is as follows:

“நான் இவ்வழக்கின் எதிரி புகார்தாரரை எனக்கு யாரென்றே தெரியாது. அவருக்கும் எனக்கும் எந்த கொடுக்கல் வாங்கலும் கிடையாது. வியாபார தொடர்பும் கிடையாது. நான் ரவீந்திரன் என்பவருக்கு சொத்து வாங்குவது தொடர்பாக ரூ.5,40,000/- க்கு காசோலை ஒன்று கொடுத்தேன். பூர்த்தி செய்து கொடுத்தேன். தொகையை மட்டும்தான் பூர்த்தி செய்து கையெழுத்து போட்டு கொடுத்திருந்தேன். தேதியையும் பணம் பெறுபவரின் பெயரையும் மட்டும் பூர்த்தி செய்யாமல் கொடுத்திருந்தேன். அந்த காசோலைதான் இவ்வழக்கு சம்மந்தப்பட்ட காசோலை.

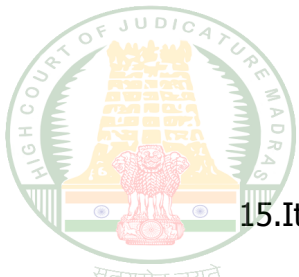


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ரவீந்திரனின் மில்லுக்கு நான் வேஸ்ட் பேப்பர் சப்ளை செய்து வந்ததால் வியாபார ரீதியில் அவரை எனக்கு தெரியும். அவர் எனது பக்கத்து வீட்டுக்காரர் என்றால் சரிதான். ரவீந்திரனின் வீட்டின் அருகே அவரது அலுவலகமும் உள்ளது. அந்த அலுவலகத்தில் வைத்துதான் வழக்கு காசோலையை அவரிடம் கொடுத்தேன். அவரது வீட்டருகே அவருக்கு சொந்தமான காலிமனை ஒன்று உள்ளது. அதனை எனக்கு விற்பனை செய்வதாக கூறி அதற்காகத்தான் நான் அக்காசோலையை கொடுத்தேன். அந்த இடத்தை வாங்குவதற்கு எழுத்துமூலம் ஒப்பந்தம் எதுவும் எழுதிக்கொள்ளவில்லை. வாய்மொழி ஒப்பந்தம்தான் அந்த இடம் ரவீந்திரனின் பெயரில்தான் உள்ளது என்று ரவீந்திரன் கூறினார். அதனை நான் நம்பினேன். உண்மையில் அவர் பெயரில் உள்ளதா என்பதற்கான ஆவணம் எதையும் நான் பார்க்கவில்லை. அதனை நம்பிதான் நான் பெயர் எழுதாமல் நம்பிக்கையின்பேரில் காசோலை கொடுத்தேன். 6 மாதத்தில் அந்த சொத்தை எழுதித் தருவதாக ரவீந்திரன் கூறினார்.”

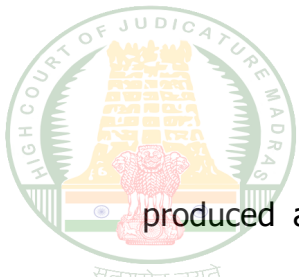
13.It is clear from the above that the petitioner had specifically come up with two stands in the course of cross examination. The first stand is that the petitioner had an independent transaction with Sri Sai Baba Waste Paper Company and it was admitted by PW.1 that in the said transaction, there was an amount due and payable by the petitioner. This admission made by PW.1 becomes significant since from the cheque which was marked as Ex.P.2, it is seen that the cheque has been issued by the petitioner in his capacity as the Proprietor of Sahithya Enterprises.

14.The second stand that has been taken by the petitioner is that he had an independent transaction with the said Mr.K.P.Ravindran and the cheque was given to the said Mr.K.P.Ravindran and that cheque has been misused in the present case.



15.It is true that the presumption u/s.139 of the Negotiable Instruments Act, 1881, is in favour of the complainant. The Larger Bench of the Hon'ble Apex Court in **Rangappa .v. Sri Mohan** reported in **2010 4 CTC 118** has held that the legally enforceable debt or liability is also under presumption u/s.139 of the Negotiable Instruments, Act, 1881 and the same has to be rebutted by the accused. Insofar as the rebuttal is concerned, the standard that is adopted is the test of preponderance of probabilities. In view of the same, the accused need not even enter into the witness box or examine any witness on his side and such rebuttal can take place even during the course of cross examination of the complainant.

16.By applying the above settled position of law, it is seen in this case that the petitioner has rebutted the presumption u/s.139 of the Negotiable Instruments Act, 1881, while establishing that there was an independent business transaction with the complainant and that he had an independent transaction with the said Mr.K.P.Ravindran also and the said cheque was given to Mr.K.P.Ravindran towards that transaction. These facts becomes very material since the case of the complainant is that the petitioner issued the cheque towards the liability of the said Mr.K.P.Ravindran. Once the petitioner had taken such a defence, the burden shifted to the complainant and the complainant must have either produced material before the Court to establish the transaction between the complainant and the said Mr.K.P.Ravindran or the simple method could have been adopted was to have called Mr.K.P.Ravindran into the witness box and examined him. If this had been done by the complainant, the burden would have again shifted back to the petitioner. Unfortunately, the complainant neither



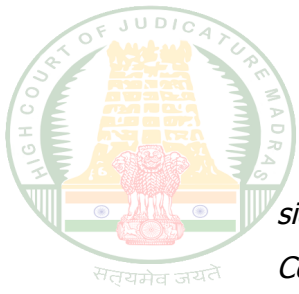
produced any material to establish their transaction with Mr.K.P.Ravindran nor was Mr.K.P.Ravindran examined as a witness in this case.

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17.This Court had an occasion to deal with the effect of non-examination of vital witness to establish the existence of legally enforceable debt and it was held that such non-examination resulted in the burden which shifted to the complainant not being discharged. Useful reference can be made to **Mohan .v Viswanathan** reported in **2018 (2) LW(CrI)424** .

18.There is yet another issue that has been put against the petitioner in this case and that is the fact that the petitioner did not give a reply notice to the statutory notice that was issued by the complainant. The non issuance of a reply notice need not result in an adverse interference taken against an accused person in every case and it will depend upon the facts and circumstances of each case. This Court had an occasion to deal with this issue in **P. Gnanambigai .v. S. Krishnasamy and Ors.** reported in **2011 1 LW (CrI)366** and it was held has follows:

11.Only in this legal matrix the facts of the present case is to be necessarily appreciated. It is true that the Petitioner raised the defence to the effect that the cheque in question is issued not in the circumstances as alleged in the complaint but under different circumstances only after the proceedings under Section 138 is initiated such defence is for the first time raised by way of suggestion to PW1 in the course of his cross examination. The Petitioner has neither sent any reply to that effect to the statutory notice issued by the complainant nor he entered into the witness box and deposed so. As far as his failure to reply the statutory notice, the same is sought to be highlighted on the



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side of the complainant by relying upon the judgment of our Supreme Court reported in 2010 (4) CTC 118 and judgment of our High Court reported in 2006 (1) L.W. 433 in K.P. Chinnasamy V.T.B. Kennedy. It is true that in both the cases, the Supreme Court and our High Court have in the given circumstances attached serious importance to the failure on the part of the accused to reply to the statutory notice and drew adverse inference against the accused. However, whether despite of such failure in the instant case the accused is able to rebut the presumption invoked in this case or not is to be necessarily considered only in the light of the other materials already brought on record as pointed out by the accused in support of his defence.

19.The non issuance of the reply notice in the present case does not completely destroy the defence taken by the petitioner since the petitioner has rebutted the legal presumption u/s.139 of the Negotiable Instruments Act, 1881. Hence, the non issuance of the reply notice cannot be considered to be fatal to the case of the petitioner.

20.In the considered view of this Court, the judgment and order passed by both the Courts below suffers from manifest illegality, perversity and infirmity and the same deserves to be interfered by this Court in exercise of its revisional jurisdiction. Both the Courts below did not properly appreciate the fundamental issue with regard to the maintainability of the complaint itself and also the fact that the petitioner had rebutted the presumption effectively and that the complainant failed to discharge the onus that was caused upon them. Accordingly, the judgment and order passed by both the Courts below are hereby set aside.



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21.In the result, this Criminal Revision Case stands allowed. During the pendency of this criminal revision case, the sentence was suspended by this Court by an order dated 15.07.2019, and the petitioner was directed to deposit a sum of Rs.3,00,000/- before the Trial Court. Accordingly, this amount was also deposited. Since the criminal revision case is allowed in favour of the petitioner, it is left open to the petitioner to file an appropriate memo before the Trial Court and seek for the withdrawal of the amount and the trial Court shall allow the memo and permit the petitioner to withdraw the amount.

30.03.2023

Index : Yes
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
KP

To

1.III Additional Sessions Judge,
Chennai.

2.Metropolitan Magistrate,
Fast Track Court No.II,
Egmore, Chennai.



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N. ANAND VENKATESH, J.

KP

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30.03.2023