



WEB COPY



Crl.R.C.No.1192 & 1258 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2026  
PRONOUNCED ON : 27.03.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1192 & 1258 of 2020

Crl.R.C.No.1192 of 2020:

Yamuna Ramesh Female Aged 47 years,  
Wife of Ramesh,  
No.2372, 16<sup>th</sup> Main HAL II Stage,  
Indira Nagar,  
Bangalore-560008.

... Petitioner

Vs.

Nalina Senthilkumar,  
Wife of Chinnu Senthilkumar,  
No.130, III Main, I Block,  
Koramangala,  
Bangalore-560034.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 399 & 401 of Criminal Procedure Code, to set-aside the judgment of learned Principal District & Sessions Judge, Namakkal in Crl.A.No.80 of 2019 dated 22.09.2020 confirming the conviction and sentence passed by the Judicial Magistrate, Paramathi by the judgment in S.T.C.No.28 of 2018 dated 14.11.2019.



CrI.R.C.No.1192 & 1258 of 2020

For Petitioner : Ms.K.Sumathi

For Respondent : Mr.S.Sheik Ismail

WEB COPY

CrI.R.C.No.1258 of 2020:

Nalina Senthilkumar, Femal, Aged 51 Years,  
W/o.Chinnu Senthilkumar,  
Represented by the Power of Attorney,  
P.Arulmuguran,  
S/o.D.Periasamy,  
No.56/7-3, Teachers Colony,  
Swamy Sivanandha Salai,  
Rasipuram, Town and Taluk,  
Namakkal District,  
Tamil Nadu-637 408.

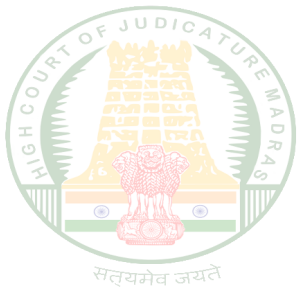
... Petitioner

Vs.

Yamuna Ramesh,  
W/o.Ramesh,  
No.2372, 16<sup>th</sup> Main HAL II Stage,  
Indira Nagar, Bangalore 560 008,  
Karnataka.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 & 401 of Criminal Procedure Code, to call for the records and set aside the judgment dated 22.09.2020 passed by the learned Principal District and Sessions Court, Namakkal in CrI.A.No.83/2019 and consequently enhance the punishment imposed and the compensation awarded as against the respondent vide judgment dated 14.11.2019 in S.T.C.No.28/2018 passed by the learned Judicial Magistrate, Paramathi.



WEB COPY



Crl.R.C.No.1192 & 1258 of 2020

For Petitioner : Mr.S.Sheik Ismail

For Respondent : Ms.K.Sumathi

### COMMON ORDER

The petitioner was convicted by the learned Judicial Magistrate, Paramathi (trial Court) *vide* judgment dated 14.11.2019 in S.T.C.No.28 of 2018 and sentenced to undergo one month Simple Imprisonment and to pay a fine of Rs.16,72,000/- as compensation to the respondent in default to undergo one month Simple Imprisonment for offence under Section 138 of Negotiable Instruments Act, 1881. Challenging the same, the petitioner preferred an appeal before the learned Principal District & Sessions Judge, Namakkal (lower appellate Court) in Crl.A.No.80 of 2019 and the same was dismissed by judgment dated 22.09.2020 confirming the judgment of trial Court. Aggrieved over the same, Crl.R.C.No.1192 of 2020 is filed.

2.The respondent aggrieved over the judgment of the trial Court in S.T.C.No.28 of 2018 dated 14.11.2019 preferred an appeal before the lower appellate Court in Crl.A.No.83 of 2019 to enhance the sentence to two years and to enhance the compensation to Rs.33,44,000/- *i.e.*, twice the cheque

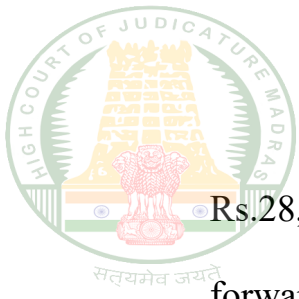


amount. The lower appellate Court by judgment dated 22.09.2020 dismissed the appeal confirming the judgment of the trial Court. Challenging the same, Crl.R.C.No.1258 of 2020 is filed.

WEB COPY

3.For the sake of convenience and clarity, the petitioner and the respondent are referred to as Accused and Complainant as per the judgment of the trial Court in S.T.C.No.28 of 2018.

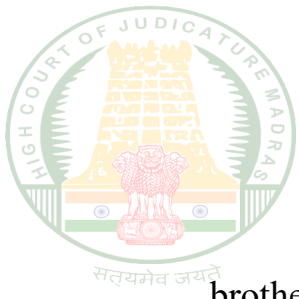
4.Gist of the case is that the complainant and the accused are friends. Out of friendship, the accused requested the complainant to join in her business M/s.Kleenwell Hygiene Pro and M/s.Kleenwell Kleaning Services as Partner. The complainant, her brother entered into partnerships on 22.04.2009 with the accused and her husband. The complainant paid Rs.26,60,000/- on various dates on 24.03.2009, 26.03.2009, 24.04.2009 and 05.05.2009 towards loan and part of partnership share amount. Since the partnership business not materialised, the complainant, her brother and the accused, her husband entered into Dissolution of Partnership Deed on 16.09.2009. At the time of execution of dissolution, the accused agreed to repay the received amount of Rs.26,60,000/- with interest a sum of



CrI.R.C.No.1192 & 1258 of 2020

Rs.28,51,700/- to the complainant. On 16.09.2009, the accused came forward and executed a loan agreement and handed over four post dated cheques [(i)Cheque No.439964 dated 16.12.2009 for Rs.10,60,000/-, (ii)Cheque No.439961 dated 16.12.2009 for Rs.1,19,700/-, (iii)Cheque No.439962 dated 16.03.2010 for Rs.16,00,000/- and (iv)Cheque No.439963 dated 16.03.2010 for Rs.72,000/-]. All four cheques drawn on Punjab National Bank, Commercial Street Branch, Bangalore favouring of the complainant. When the complainant presented two cheques [(i)Cheque No.439962 dated 16.03.2010 for Rs.16,00,000/- and (ii)Cheque No.439963 dated 16.03.2010 for Rs.72,000/-] (Exs.P1 & P2) for encashment in Karur Vysya Bank, Namagiripet, Rasipuram, the cheques returned on 21.04.2010 for the reason “Exceeds Arrangement & Funds Insufficient”. On 19.05.2010, the complainant caused a legal notice (Ex.P6) to the accused and received by her on 20.05.2010. Despite receipt of the notice, the accused neither paid the cheque amount nor sent any reply. Thereafter, following the procedures, the complaint in S.T.C.No.28 of 2018 filed.

WEB COPY



5. During trial, on the side of the complainant, the complainant's

brother and the complainant examined as PW1 & PW2 and Exs.P1 to P25 marked. On the side of the defence, DW1 to DW3 examined and Exs.D1 to D9 marked. On conclusion of trial, the trial Court convicted the accused which was confirmed by the lower appellate Court.

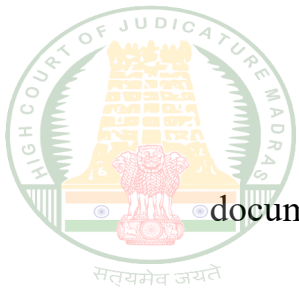
6. Learned counsel for the accused submitted that the Courts below failed to appreciate the case of the accused and failed to consider the answers elicited during cross examination of complainant/PW1, on the contrary, relied on the discrepant testimonies of PW1 & PW2. In this case, the accused by examining herself as DW3 and producing defence exhibits, probablized her defence. The Courts below failed to consider that the complainant initially agreed to join the business with the accused in M/s.Kleenwell Hygiene Pro and M/s.Kleenwell Kleaning Services. Later the complainant withdrew from the business and the accused was doing business as sole Proprietrix. Since the two partnership firms were dissolved, the entire burden shifted to the accused and there is nothing to show any express agreement to exclude the other partners in any kind of loss incurred by the firms. The two partnership ventures were created by the parties viz.,



complainant, her brother and the accused, her husband.

WEB COPY

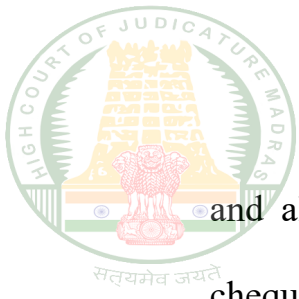
7.Learned counsel further submitted that the Courts below failed to consider the profit and loss account of the partnership firm and also failed to see whether at the time of dissolution there was any liability to the firms. The trial Court failed to consider that the complainant deposited Rs.5,60,000/- on 05.05.2009 to the account of the accused in Punjab National Bank, Indira Nagar Branch, Banagalore, but the letter (Ex.D4) given by the Manager of Punjab National Bank stated that the accused started the account only on 13.07.2009. Likewise the other transactions are also dubious, casting serious doubt on the claim of the complainant. But the trial Court failed to consider these aspects. Further the Courts below failed to look into the documents such as unregistered partnership and loan agreement deed which marked on the side of the complainant. Both the documents not executed in the manner known to law, hence, objections raised by the accused at the time of marking the documents. Relevancy and admissibility of the documents ought to have decided then and there and not at the final stage which is a patent illegal. In the absence of any legal sanctity to the documents, the finding of the Courts below based on these



documents is not sustainable.

WEB COPY

8.Learned counsel further submitted that the loan agreement (Ex.P13) executed at Bangalore on 16.09.2009, but notarised on 10.06.2010 after the power of attorney given to PW1 by PW2 to file the complaint on 19.05.2010. The post notarisation raises doubt on the genuineness of the documents. Thus, the foundational basis on which the complaint initiated becomes highly doubtful. The Courts below failed to consider that the entire transaction was a business investment that commenced as a partnership venture entered between the complainant and her brother on one side and the accused and her husband on other side and Ex.D6 document in this regard is not properly considered. The Courts below failed to consider and appreciate the evidence of defence witnesses is in violation of the decision of the Hon'ble Apex Court in *Dudhnath Pandey v. State of Uttar Pradesh reported in AIR 1981 SC 91*. In the present case, the accused rebutted the presumption which the Courts below failed to consider. The Courts below ought to have seen that the complainant miserably failed to prove the exact quantum of liability accrued. Further the accused rebutted the presumption taking consistent stand by examining herself and others as defence witnesses



and also by producing defence exhibits. Merely for the reason that the cheques (Exs.P1 & P2) and signature not disputed and finding that the statutory presumption under Sections 118 & 139 N.I Act proved the trial Court convicting the accused, is not proper, which is in violation of the decision of the Hon'ble Apex Court and this Court. In view of the above, the revision to be allowed and the judgment of the Courts below to be set aside.

9.Learned counsel for the complainant strongly opposed the accused's submissions and submitted that the complaint prosecuted based on the power of attorney executed by PW2 to her brother PW1. During trial, both examined as PW1 & PW2 and Exs.P1 to P25 marked. The complainant and the accused were school friends and knew each other from young age. The complainant previously worked in USA, had good earnings and later returned to India, at that time, the accused approached the complainant to join her business as Partner and the complainant agreed to join the business viz., M/s.Kleenwell Hygiene Pro and M/s.Kleenwell Kleaning Services. On 22.04.2009, an agreement entered, thereafter, investments made by the complainant on 24.03.2009, 26.03.2009, 24.04.2009 and 05.05.2009 to the



sum of Rs.26,60,00/- . Finding that the business not proceeded as projected, the complainant withdrew from the business and the accused agreed to continue the business as sole Proprietrix. On 16.09.2009, a dissolution of partnership deed entered, at that time, the accused agreed to pay back the invested amount of Rs.26,60,000/- along with interest in total Rs.28,51,700/- and issued four cheques. When the cheques (Exs.P1 & P2) presented in Karur Vysya Bank, Namagiripet, Rasipuram, the same returned for the reason “Exceeds Arrangement & Insufficient Funds”. Thereafter, statutory notice (Ex.P6) under Section 138 of N.I Act issued to the accused on 19.05.2010, but neither the cheque amount paid nor any reply notice sent by the accused. Following the statutory procedures, the complaint filed and prosecuted.

10.He further submitted that the accused took the following grounds in her defence:

(i)In the agreement and dissolution, there is arbitration clause. Without invoking the same, filing case under Section 138 of N.I Act is not sustainable.

(ii)The power of Attorney namely, brother of the complainant is not conversant with the business details, hence, he is not a competent person to



prosecute the complaint.

(iii)The complainant has no source of income and wherewithal to invest such huge amount.

(iv)Except the cheque, there is no other supporting document like promissory note or undertaking by the accused and the dissolution deed is not genuine.

(v)As the cheques (Ex.P1 & P2) issued without any consideration, the same cannot be considered as the cheques (Exs.P1 & P2) issued for legally enforceable debt or liability.

(vi)There is a misjoinder of parties, since the husband of the accused, who was also a partner in the business, not arrayed as a party to the proceedings.

(vii)Since the business agreement and dissolution all took place in Bangalore, the cause of action is in Bangalore and not in Namakkal.

The trial Court categorised all these seven grounds and extracted the relevant portion of evidence and exhibits and answered to all the questions framed and rightly convicted the accused. The lower appellate Court independently considered the accused's contention on its part and framed five questions. Each questions answered again relying upon the documents and evidence independently and rightly dismissed the appeal confirming the trial Court conviction. In view of the above, the judgment of both Courts below are well reasoned and detailed one, which needs no interference. Hence, prayed



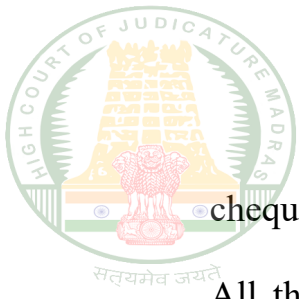
for dismissal.



CrI.R.C.No.1192 & 1258 of 2020

WEB COPY

11.Considering the submissions and perusal of the materials, it is not in dispute that the accused and the complainant are school-day friends and knew each other for quite sometime. The complainant was working in USA, earned sufficient money and returned to India. The accused approached the complainant for joining her in the business in M/s.Kleenwell Hygiene Pro and M/s.Kleenwell Kleaning Services as Partner. On the representation and placing faith, the complainant, her brother entered into a partnership on 22.04.2009 with the accused and her husband. The complainant paid a total sum of Rs.26,60,000/- on various dates towards loan and for partnership share. Since the partnership not materialised, there was no effective implementation of the partnership business as per the partnership deed dated 22.04.2009. Further the complainant and her brother was not informed of any business activities and shared no details, hence, the complainant withdrew from the business by a dissolution deed. The accused as Proprietrix continued the business in the same name. After dissolution of the partnership on 16.09.2009, the accused agreed to repay the received amount of Rs.26,60,000/- with interest to the tune of Rs.28,51,700/- and issued four



cheques, two cheque dated 16.12.2009 and two cheques dated 16.03.2010.

WEB COPY

All the four cheques drawn on Punjab National Bank, Commerical Street Branch, Bangalore favouring the complainant. As regards this case, two cheques (Exs.P1 & P2) bearing Nos.439962 & 439963 for Rs.16,00,000/- & Rs.72,000/- respectively presented in Karur Vysya Bank, Namagiripet, Rasipuram, dishonoured on 21.04.2010, statutory notice issued on 19.05.2010 which was received by the accused on 20.05.2010.

12.The Courts below considered that Exs.P1 & P2 not issued in furtherance to the loan transaction but it was issued pursuant to dissolution of partnership firm and a loan agreement entered on 16.09.2009 which is Ex.P13. On various dates investments made by the complainant is not in dispute. A partnership deed (Ex.P22) executed between the accused, her husband and the complainant, her brother on 22.04.2009. Prior to it, the deed of understanding executed on 23.03.2009 (Ex.P23). Later the deed of dissolution of partnership (Ex.P12) executed on 16.09.2009. On very same day, additional loan agreement (Ex.P13) executed for pre-existing liability, all recorded and thereafter in discharge of liability four cheques issued. The accused/DW3 admitted in her evidence that in her savings account,



Rs.5,00,000/- paid, followingly transferred Rs.9,00,000/- and Rs.1,00,000/-.

WEB COPY

The loan agreement (Ex.P13) is a detailed one wherein the agreement and the reason for repayment recorded. In these documents, one T.R.Varadharajan, Auditor signed as witness. To examine him, a petition filed by the accused was allowed, but fearing exposure in falsity of the accused case, not examined the Auditor.

13.In this case, the accused examined herself as DW3, not disputed the issuance of cheques (Exs.P1 & P2), deed of understanding, deed of partnership, deed of dissolution and deed of loan agreement. Thus, it is proved by the complainant that the cheques (Exs.P1 & P2) issued in discharge of legally enforceable debt and the accused failed to pay the cheque amount, is confirmed. A civil suit filed by the complainant in O.S.No.8675 of 2012, in which, the accused's filed written statement which is marked as Ex.P10. The admitted position of the accused confirmed the receipt of investment amount and the bank statement (Ex.P18) confirms the transfer of funds. Thus, there is no iota of doubt with regard to issuance of cheque in discharge of liability, proved.



14.Considering these aspects the trial Court and lower appellate Court by a well reasoned judgment rightly came to a conclusion that the complainant proved her case beyond all reasonable doubt and accused failed to probablize any defence. For the above reasons, this Court is not inclined to interfere with the judgment of the Courts below.

15.In the result, the judgment dated 14.11.2019 in S.T.C.No.28 of 2018 passed by the learned Judicial Magistrate, Paramathi and the judgment 22.09.2020 in CrI.A.No.80 of 2019 passed by the learned Principal District & Sessions Judge, Namakkal are confirmed. ***Accordingly, CrI.R.C.No.1192 of 2020 stands dismissed.*** The trial Court is directed to secure the accused for sufferance of the sentence. It is made clear that if the accused comes forward for a settlement in future, the same can be entertained even by the trial Court and the case can be compounded.

16.This Court on 08.09.2025 had passed the following the order:

*“3.The learned counsel for the petitioner/accused fairly submitted that in this case the total cheque amount involved in S.T.C.No.27 of 2018 is for two cheques, one is for a sum of Rs.10,60,000/- and another is for Rs.1,19,700/-, in total,*



WEB COPY



Crl.R.C.No.1192 & 1258 of 2020

*Rs.11,79,700/- . With regard to the case in S.T.C.No.28 of 2018, it is again for two cheques, one is for a sum of Rs.16,00,000/- and another is for Rs.72,000/-, in total, Rs.16,72,000/-. At the time of filing an appeal before the Sessions Court, the accused was directed to deposit a sum of Rs.2,35,940/- in S.T.C.No.27 of 2018 and Rs.3,94,400/- in S.T.C.No.28 of 2018. In total, the petitioner/accused had paid Rs.6,30,340/- in both the cases. In the Sessions Court, appeal was dismissed confirming the conviction and sentence of the trial Court, against which, the petitioner/accused preferred a revision before this Court. In the revision, this Court directed the petitioner to deposit 30% of the cheque amount. Hence, the petitioner/accused deposited a sum of Rs.3,53,910/- in S.T.C.No.27 of 2018 and Rs.5,01,600/- in S.T.C.No.28 of 2018, in total, a sum of Rs.8,55,510/- was deposited by the petitioner/accused in both the revisions. In total, the petitioner/accused had deposited 50% of the cheque amount, i.e., Rs.14,85,850/-.”*

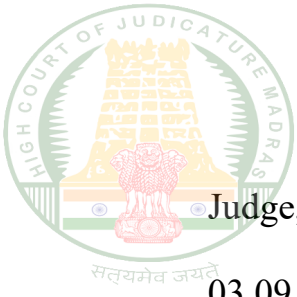
17.Thus, the accused deposited 50% of the cheque amount i.e., Rs.14,85,850/- to the credit of S.T.C.Nos.27 & 28 of 2018 on the file of the Judicial Magistrate, Paramathi. In view of the dismissal of Crl.R.C.No.1191 of 2021 confirming the conviction and sentence of the accused, the trial



Court shall order withdrawal of said amount deposited with accrued interest if any in S.T.C.Nos.27 & 28 of 2018 on the file of the Judicial Magistrate, Paramathi. The complainant to file appropriate petition/memo along with this order copy. The trial Court to pass appropriate orders dispensing with notice to the accused.

18.It is made clear that the payment of this amount of Rs.14,85,850/- and interest if any can be proportionately considered in the corollary civil proceedings.

19.As regards the enhancement of the compensation and sentence imposed by the trial Court is concerned, the trial Court considered the plea of the accused that she has two children, aged about 48 years and sought for leniency in punishment. The lower appellate court, while considering the complainant's appeal in Crl.A. No. 83 of 2019, rightly found that the trial Court, taking into account that the accused was a woman and considering the circumstances, convicted her to one month's simple imprisonment and awarded reasonable compensation. It is to be seen that already the complainant filed a civil suit before the learned XIV Additional City Civil



Crl.R.C.No.1192 & 1258 of 2020

Judge, Bangalore and obtained a decree in O.S.No.8657 of 2012 dated

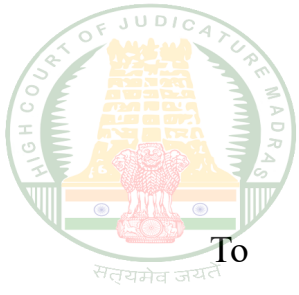
03.09.2019 and directed the accused and her husband jointly and severally to pay a sum of Rs.26,10,000/- with interest at the rate of 18% per annum.

Further, the accused and her husband are liable to pay a sum of Rs.16,42,050/- being the interest from 16.12.2009 to 16.03.2010 on the date of filing of suit for Rs.10,10,000/- and Rs.16,00,000/- respectively. In view of the above, this Court finds that the compensation awarded and the sentence imposed by the trial Court and the same confirmed by the lower appellate Court, are proper and needs no interference.

20.In the result, the judgment dated 14.11.2019 in S.T.C.No.28 of 2018 passed by the learned Judicial Magistrate, Paramathi and the judgment 22.09.2020 in Crl.A.No.83 of 2019 passed by the learned Principal District & Sessions Judge, Namakkal are confirmed. ***Accordingly, Crl.R.C.No.1258 of 2020 stands dismissed.***

27.03.2026

Index : Yes/No  
Speaking Order/Non Speaking Order  
Neutral Citation: Yes/No  
vv2

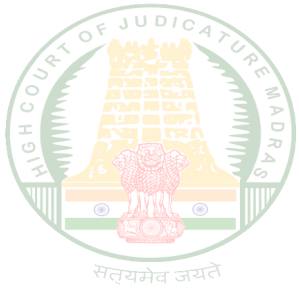


Crl.R.C.No.1192 & 1258 of 2020

To

WEB COPY

- 1.The Principal District and Sessions Judge,  
Namakkal.
- 2.The Judicial Magistrate,  
Paramathi.



WEB COPY



CrI.R.C.No.1192 & 1258 of 2020

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDERS IN  
CrI.R.C.No.1192 & 1258 of 2020

27.03.2026