M/S.India Steel & Alloys vs M/S.Venkatesa Industrial Suppliers on 24 April, 2015

Author: R.S.Ramanathan

Bench: R.S.Ramanathan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2014

Date of decision: 24.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Criminal Appeal Nos.387 to 396 of 2006
and
M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1 and 1 of 2014

M/s.India Steel & Alloys,
proprietor, Deepak R.Dave,
rep.by his power agent, Kumar,
No.198, Thammbuchetty Street,
Chennai 600 001. ... Appellant in all the above Appeals

vs.

1.M/s.Venkatesa Industrial Suppliers,
rep. by its proprietor,
T.Ananda Kumar,
No.657, Tiruchi Road,
Coimbatore 641 005.

2.T.Ananda Kumar ... Respondents in all the

PRAYER : Criminal Appeal No.387 of 2006 filed under section 378 of Cr.P.C., praying to

Criminal Appeal No.388 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.389 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.390 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.391 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.392 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.393 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.394 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.395 of 2006 filed under section 378 of Cr.P.C., praying to set aside

Criminal Appeal No.396 of 2006 filed under section 378 of Cr.P.C., praying to set aside

For Appellant : Mr.S.Ashok Kumar,
Senior Counsel,
for Mr.S.Ananthanarayanan

For respondents : Mr.N.R.Elango, Senior Counsel,
for Mr.V.R.Balasubramanian

COMMON JUDGMENT

Though individual cases were filed and individual appeals were filed against the conviction by the trial Court, having regard to the fact that common evidence was recorded in all the cases, this common judgment is delivered in all these cases.

2. The complainant in various cases before the trial Court is the appellant. The complainant filed cases under section 138 of the Negotiable Instruments Act stating that the respondents were having dealings with the complainant/appellant in purchasing steel from the appellant and they were running accounts and after adjusting periodical payments made by the respondent/accused, it was found that some of Rs.1,01,78,713 was due and payable by the accused. A Memorandum of Understanding was also came to be executed between the parties wherein the respondent/accused accepted and admitted their liability and issued 10 post dated cheques towards discharge of their liability. The cheques were presented for payment on due dates and they were dishonoured with an endorsement funds insufficient and therefore, statutory notice was given and there was no reply from the respondent/accused and thereafter, the complaints were filed.

3. During trial, the complainant/appellant examined his power agent as PW.1 and marked Special Power of Attorney as Ex.P.1, Cheque as Ex.P.2, Return Memo Ex.P.3, Debit Advice as Ex.P.4 and Acknowledgments by A.1 and A.2 as Exs.P.6 and P.7. The respondent/accused examined the second respondent as DW.1 and also examined one more witness.

4. The defence of the respondent/accused before the trial Court was that the cheques were given as security and there was no legally enforceable liability and though they had dealings with the complainant/appellant they subsequently, stopped dealings with the appellant as the quality of the steel supplied by the appellant were below standard and during beginning of the transaction, the cheques were obtained as security and signed blank cheques were given and later the cheques were

filled by the complainant/appellant to suit their convenience and therefore, there is no legally enforceable liability. It is also stated that they were not liable to pay any amount to the complainant/appellant. The respondent/accused also filed an Application under section 91 Cr.P.C. directing the complainant/appellant to produce the income tax returns, accounts etc., and though the same was allowed by the learned trial Judge, the complainant/appellant did not produce those documents and therefore, adverse inference has to be taken against the appellant for not having produced the document and that would also show that there was no legally enforceable liability. The respondent also took up the plea that the complaint filed by the power of attorney was not maintainable as the power agent was neither a payee nor a holder in due course and the complainant/appellant is a proprietary concern and it has no locus-standi, as it is not a juridical person and no document was produced by the appellant to substantiate their claim except the cheques. Though Memorandum of Understanding of Understanding was mentioned in the notice as well as in the complaint which was the basis for the issuance of cheques and the liability, the Memorandum of Understanding was not produced.

5. The trial Court considered all these aspects and after referring to various judgments of the Hon'ble Supreme Court and our High Court held that the business transaction between the appellant and the respondent was admitted and the cheques were issued by the respondent in connection with the business transaction. According to the respondent, the cheques were issued as security and blank cheques were issued, Memorandum of Understanding of Understanding was not produced, no reply to the statutory notice was given by the respondent and the appellant has not produced any document to prove the liability payable by the respondent. The trial Court also considered the fact of non-production of document despite the order passed in the petition filed under section 91 Cr.P.C. and held that the appellant proved their case and therefore, convicted the respondent under section 138 of the N.I.Act and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- and negatived the claim of the appellant for compensation.

6. The respondent filed Appeals before the learned Additional District Sessions Judge, Fast Track Court No.II, Chennai and the learned appellate Judge, held that the presumption under section 139 of the N.I.Act is only a rebuttal presumption and the appellant has not produced any document to prove the liability payable by the respondent, and therefore, the appellant failed to establish the subsisting liability, and therefore, the judgment of the trial Court is liable to be set aside. Aggrieved by the same, this Appeal is filed by the complainant/appellant.

7. Mr.S.Ashok Kumar, learned Senior Counsel appearing for the appellant submitted that the lower appellate Court without properly appreciating the well considered judgment of the learned trial Judge erred in allowing the Appeals without giving any reason or without any finding whether the respondent has rebutted the presumption by making out a probable defence. He submitted that the transaction between the appellant and the respondent was admitted and it is the case of the respondent that they have paid the entire amount and the cheques were given as security at the initial stage of the transaction and the business transaction between the parties also got strained due to poor quality of steel supplied by the appellant and therefore, they stopped purchasing goods from the appellant and even thereafter, no attempt was made by the respondent to get the cheques from

the appellant and even after the receipt of statutory notice issued by the appellant, the respondent did not send any reply nor demanded the return of the cheques and these facts would prove that the respondent failed to rebut the presumption in the manner known to law and if the respondent failed to rebut the presumption, the Court has to draw presumption in favour of the appellant and ought to have convicted the respondent and therefore, the judgment of the lower appellate Court is liable to be set aside. He further submitted that having regard to the judgment reported in 2014-1-L.W.(Crl.) 154 in the matter of A.C.Narayanan Versus State of Maharashtra and another, a power agent is entitled to file a complaint on behalf of the principal and he can also depose and prove the contents of the complaint and if the power agent was not a party to the transaction, he cannot depose regarding the contents of the complaint and in this case, the power agent who filed the complaint was the Manager and he also admitted that he was aware of the transaction between the parties and he also admitted that he was incharge of the business of the complainant and therefore, the power agent is a competent person to speak about the transaction and even though the Memorandum of Understanding of Understanding was not filed due to inadvertence, the appellant has filed Application to receive additional evidence of the Memorandum of Understanding of Understanding between the parties and the same may be allowed in the interest of justice. He also relied upon the judgement reported in 2001 8 SCC 458 in the matter of K.N. Beena vs Muniyappan and Another, wherein the Hon'ble Supreme Court held that the accused has to prove during trial by leading cogent evidence that there was no debt or liability and when the accused failed to discharge the burden of proof that the cheque was not issued for debt or liability, the conviction awarded by the Judicial Magistrate has to be sustained. He therefore submitted that in this case also the respondent failed to prove that there was no debt or liability and having admitted the business transaction and paid amount and claimed discharge, the respondent is also liable to prove the same. Having failed to do so, the presumption under section 139 of the N.I.Act has to be drawn in favour of the appellant.

8. On the other hand, Mr.N.R.Elango, learned Senior Counsel appearing for the respondent submitted that the main basis for the prosecution is that there was dealing between the parties and the accounts were reconciled and the Memorandum of Understanding of Understanding was executed between the parties wherein the amount was arrived at and towards the discharge of that amount, 10 cheques were given on various dates. Admittedly, the Memorandum of Understanding of Understanding was not filed and therefore, when the complainant/appellant failed to prove the basis of their case, the lower appellate Court rightly held that there was no subsisting liability and when the appellant did not adduce evidence regarding the legally enforceable liability and the cheques issued towards the discharge of the liability, there is no need for the respondent/appellant to rebut the presumption and only after the appellant proved the existence of legally enforceable liability, the respondent has to rebut the presumption. He also submitted that admittedly, the respondent filed section 91 Cr.P.C. Application for production of certain documents, namely, income tax returns, statement of accounts, bills etc., though the petition was ordered, the appellant did not produce the same and therefore, the lower appellate Court rightly drawn adverse inference against the appellant and failure of the appellant to produce the document despite the order passed by the lower appellate Court would lead to the conclusion that the appellant has not proved that the respondent owed them the amount claimed by them and therefore, when there was no legally enforceable liability, the appellant is not entitled to claim any amount. He also relied upon the judgments reported in (2008) 4 Supreme Court Cases 54 in the matter of Krishna Janardhan Bhat

Versus Dattatraya G. Hegde, and (2014) 2 Supreme Court Cases 236 in the matter of John K.Abraham Versus Simon C.Abraham and another in support of his contention.

9. The points for consideration in these Appeals are -

(i) whether the respondent/accused rebutted the presumption in the manner known to law.

(ii) whether the adverse inference has to be drawn against the appellant for not producing document as ordered in the petition filed by the respondent under section 91 Cr.P.C.,.

10. Point (i):- As stated supra, the complainant specifically mentioned in the statutory notice that there was business transaction between the appellant and the respondent and they were having running the account and the accounts were reconciled and the Memorandum of Understanding of Understanding was arrived at on 14.1.2000 and the amount of Rs.1,01,78,713 was arrived at to be payable by the respondent and towards that amount, the respondent/accused issued 10 cheques of different dates and when the cheques were presented, they were not honoured. Admittedly the Memorandum of Understanding of Understanding was not produced before the Court. The appellant also did not produce the income tax return or any other document to prove that the respondent owe them the said amount of Rs.1,01,78,713/-. On the other hand, the defence was that the cheques were issued as security and blank cheques with signature were given by the respondent and dates, payee's name, the amount were filled up by the appellant and the appellant also failed to produce the document despite the order passed by the Court. According to me, when the accused admitted the issuance of cheque and contended that blank cheques were issued and also contended that the cheques were issued as security and also contended that the amount payable by them towards the purchase of steel from the complainant/appellant were also paid, then, in my opinion, the respondent has to prove by cogent evidence the circumstances under which the cheques were issued as security and also the manner in which the amounts were paid towards the purchases made by them from the appellant. According to me, when the respondent took up the defence that the cheques were issued as security and admitting the transaction between the appellant and him, the respondent took the plea that they repaid the entire amounts, there is no need for the appellant to prove that the cheques were issued for consideration by the respondent. No doubt, in this case, the Memorandum of Understanding of Understanding though mentioned in the notice and also in the complaint and in evidence, was not produced, having regard to the law laid down by the Hon'ble Supreme Court, failure to produce the Memorandum of Understanding of Understanding will not go against the appellant having regard to the defence taken by the respondent.

11. The law relating to burden of proof under sections 118 and 139 of the N.I.Act has been discussed by the Hon'ble Supreme court in the following cases :-

(i) In Bharat Barrel and Drum Manufacturing Company v. Amin Chand Payrelal [AIR 1999 SUPREME COURT 1008], it has been held as follows:-

2. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard.

(ii) In Hiten P.Dalal Versus Bratindranath Banerjee [2001 Supreme Court Cases (Cri) 960], it has been held as follows:-

> 0. ....The presumption which arises under Section 138 provides more specifically that where any cheque drawn by a person on an account for payment of any amount of money for the discharge in whole or in part of any debt or other liability, is returned by the drawee bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque, such persons shall be deemed to have committed an offence and shall be punished with imprisonment for a term which may extend to twice the amount of the cheque, or with both. The nature of the presumption under Section 138 is subject to the three conditions specified relating to presentation, giving of the notice and the non payment after receipt of notice by the drawer of the cheque. All three conditions have not been denied in this case.
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> 21. The appellant's submission that the cheques were not drawn for the 'discharge in whole or in part of any debt or other liability' is answered by the third presumption available to the Bank under Section 139 of the Negotiable Instruments Act. This section provides that "it shall be presumed, unless the contrary is proved, that the

holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability". The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque was not received by the Bank towards the discharge of any liability.

22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC 61, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.

(iii) In the judgment reported in 2001 Supreme Court Cases (Cri) 960, the Hon'ble Supreme Court relied upon the judgment reported in AIR 1958 Supreme Court 61 in the matter of State of Madras V. A. Vaidyanatha Iyer. In the aforesaid judgment, the Hon'ble Supreme Court, while interpreting the words, shall presume and may presume as found in the Evidence Act, held that the presumption of law cannot be successfully rebutted by merely raising probability however reasonable when the actual fact is the reverse of the fact which is presumed. Something more than raising a reasonable probability is required for rebutting the presumption of law. This was approved by the Constitution Bench in the judgment reported in AIR 1964 SC 575 in the matter of Dhanvantrai Balwantrai Desai vs. State of Maharashtra, wherein it is held as follows:-

13. "...the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S.114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted."

12. In the judgment reported in 2001 Supreme Court Cases (Cri) 960 supra, the Hon'ble Supreme Court relied upon the judgment reported in AIR 1958 Supreme Court 61 in the matter of State of Madras V. A. Vaidyanatha Iyer, held that the presumption of law is distinguished from presumption of fact and the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the evidence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the prudent man. It is also held in that case that to disprove the presumption, the defence has to bring on record such facts and circumstances upon consideration on it, the court may either believe that consideration did not exist or its existence was not probable or its non-existence was so probable that the prudent man would in the circumstances of the case act upon the plea that it does not exist. Therefore, the rebuttal presumption is only in respect of non-existence of consideration or the consideration did not exist and the non-existence of consideration was so probable that having regard to the particular case, the prudent man would come to the conclusion that it does not exist.

13. In the judgment reported in (2013) 3 SCC 86 supra, the Hon'ble Supreme Court also relied upon the judgment reported in (2006) 6 SCC 39 in the matter of M.S.Narayana Menon Vs. State of Kerala wherein the Supreme Court held that the presumption under Section 118 and 139 of the N.I.Act is rebuttal and the standard for such rebuttal is preponderance of probability and not the proof prove beyond reasonable doubt and insofar as the accused is concerned, mere preponderance of probability is sufficient to discharge the presumption.

14. Under Sections 118 and 139 of the N.I.Act, a presumption can be drawn when the instrument was issued that it was towards consideration. Therefore, when the issuance of cheque is admitted, the presumption can be drawn in favour of the payee that the drawer issued a cheque for valid consideration and thereafter, the drawer has to rebut the presumption by proving that there was no consideration for issuance of cheque and while proving that there was no consideration for the issuance of cheque the drawer has to make out a probable defence and in such circumstances, the probabilities will be taken into consideration. Once the accused made out a probable case by leading cogent evidence, once again the burden shifts on to the payee. However, the position will be different when the drawer admits the liability to the payee, admits issuance of cheques and also pleads that the loan amount has been discharged or cheques were issued as security.

15. According to me, when the drawer takes up the plea that the amount due under the cheques was discharged, he has to prove the same as a fact and he cannot rely upon probabilities. He has to plead

and prove that the amount was discharged and for that purpose, he cannot rely upon the probabilities as he is not rebutting the presumption regarding consideration but giving evidence towards the discharge. Similarly, when the accused takes up a defence that the cheque was given by as security, he has to prove the circumstances or the reason for giving the cheque as security and in both the cases, the accused has to prove the same and he cannot rely upon probabilities.

16. Bearing these principles of law in mind, if you see the facts of this case, in my opinion, the lower appellate Court failed to consider these aspects in a proper perspective and erred in allowing the Appeals. As a mater of fact, reading of the lower appellate Court's judgment would reveal that the arguments of the learned counsel for the appellant and the respondent were reproduced and without any discussion, the lower appellate Court in one paragraph held that there was no existing liability and therefore, the respondent is not liable to pay any amount and allowed the Appeals.

17. According to me, having regard to the facts of this case, the respondent failed to rebut the presumption. As stated supra, the issuance of cheques was admitted and therefore the appellant is entitled to draw presumption under sections 118 and 139 of the N.I.Act. The case of the respondent is that the cheques were given as security. It is also stated that they only signed the cheques and they did not fill up other things in the cheques including date. In the statutory notice also, it was mentioned that the defence of the respondent was that they only signed the Cheques and the dates and payee's name and the amounts were filled up by the appellant. The Cheques which are the subject matter of C.C.Nos.3144 of 2002, 3118 of 2002 and 3116 of 2002 on the file of the trial Court; corresponding to Crl.A.Nos.459 of 2004, 455 of 2004 and 453 of 2004 on the file of the lower appellate Court and corresponding to Crl.A.Nos.395 of 2006, 391 of 2006 and 389 of 2006, respectively, are scrutinised by me. On verification of the aforesaid three cheques, I found that the dates were originally written as 5.3.2000, 5.1.2000 and 5.2.2000 respectively and later, altered to 5.3.2001, 5.1.2001 and 5.2.2001. The alteration of dates was also counter signed by the respondent. Therefore, the case of the respondent that they signed in all the cheques and the cheques were otherwise blank and they did not fill up the date, name of the payee and the amounts cannot be accepted. Further, having admitted the transaction between them and having regard to the evidence that they used to pay the amount immediately after the purchase, there was no necessity for giving 10 cheques as security. Further, when the respondent pleaded that the cheques were issued as security, then it pre-supposes the transaction between the parties and the money to be paid by the accused and if there had been no transaction and no money was due, there was no necessity for the respondent to give security of 10 cheques. I have also gone through all the cheques and I do not find any difference in ink in signature and the other writings in the cheques and it appears to be filled up by the same person. Therefore, the fact that in all the three cheques referred to above, dates were altered and attested by the respondent and no explanation was given by the respondent for not demanding the return of the cheques would lead to the conclusion that the cheques were issued towards legally enforceable liability. If they did not owe any amount to the appellants, after the notice served on them calling upon them to pay the amount due under the cheques, the Respondent would have demanded the return of the cheques and the failure on the part of the respondents would lead to the conclusion that the respondent issued those cheques towards legally enforceable liability and they failed to rebut the presumption and only after the respondent rebutted the presumption, burden shifts on to the appellant to prove its case. In other words, when the

respondent failed to rebut the presumption, the Court has to draw presumption in favour of the appellant and ought to have held that there was legally enforceable liability and the cheques were issued only towards that legally enforceable liability.

18. Therefore, I hold that the respondent/accused failed to rebut the presumption and therefore, the burden never shifted to the complainant and having admitted the issuance of cheques, the Court ought to have drawn presumption in favour of the appellant towards passing of consideration for the issuance of cheques and therefore, Point No.(i) is answered in favour of the appellant.

19. Point No.(ii) :- It is the specific case of the learned Senior Counsel for the respondent that the appellant mentioned about the Memorandum of Understanding in the notice and also in the complaint and in evidence, reference was made about the Memorandum of Understanding and it is the specific case of the appellant that as per the Memorandum of Understanding, the cheques were issued and that vital document was not produced before the Courts and therefore, an adverse inference has to be drawn against the appellant to the effect that there was no consideration for issuance of cheques. I am unable to accept the contention of the learned Senior Counsel appearing for the respondent. Of course, it is true that the Memorandum of Understanding was mentioned in the notice as well as in the complaint and it was also spoken to during evidence and the said Memorandum of Understanding was also not filed during trial or during First Appeal. In these Criminal Appeals before this Court, an Application was filed by the appellant in all the Appeals seeking for permission to produce the said Memorandum of Understanding entered between the parties. According to me, having regard to the finding given to Point No.(i), the failure on the part of the appellant to produce the Memorandum of Understanding will not help the case of the respondent and even assuming that adverse inference can be drawn against the appellant that will not have any bearing to the result of these Appeals having regard to the finding given in Point No.(i). Further, the respondent has not taken any defence regarding the Memorandum of Understanding to the effect that as per Memorandum of Understanding, no such amount claimed under these cheques were due and payable by him or there was no Memorandum of Understanding. If the respondent admitted the Memorandum of Understanding, then without asserting that under Memorandum of Understanding as claimed by the appellant, no such amount as claimed by the appellant was due, they cannot seek drawing of adverse inference for the non-production of the Memorandum of Understanding. However, as the cheques were admittedly issued and the respondent failed to rebut the presumption in the manner known to law as detailed above, the non-production of Memorandum of Understanding will not have any bearing. Point No.(ii) is answered accordingly.

20. In the result, the Judgments rendered in Criminal Appeal Nos.209 of 2005, 452 of 2004, 453 of 2004, 454 of 2004, 455 of 2004, 456 of 2004, 457 of 2004, 458 of 2004, 459 of 2004, 208 of 2005, dated 22.03.2006 by the Additional District and Sessions Judge, Chennai, Fast Track Court No.II, Chennai, are set aside and the judgments of conviction and sentence imposed by the trial Court are sustained. The present Criminal Appeals are allowed. The connected Miscellaneous Petitions are dismissed.

24.04.2015 Index : yes / no Internet: yes / no asvm To

1.The Additional District and Sessions Judge, Fast Track Court No.II, Chennai.

2.The XIII Metropolitan Magistrate, Egmore, Chennai.

R.S.RAMANATHAN, J (asvm) Judgment in Crl.A.Nos.387 to 396 of 2006 and M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1 and 1 of 2014 24.04.2015