

**(2014) 04 DEL CK 0113**

**Delhi High Court**

**Case No:** Crl. A. 1437 and 1447 of 2013

Vijay Power Generators Ltd.

APPELLANT

Vs

Annai Engineering Works and  
Another

RESPONDENT

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**Date of Decision:** April 22, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 57, 85
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2014) 3 BC 216 : (2014) 4 RCR(Civil) 946 : (2014) 4 RCR(Criminal) 870

**Hon'ble Judges:** V.K. Jain, J

**Bench:** Single Bench

**Advocate:** B.K. Pandey, Advocate for the Appellant; R.K. Jain and Ms. Manisha Chauhan,  
Advocate for the Respondent

**Final Decision:** Disposed Off

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**Judgement**

V.K. Jain, J.

These appeals are directed against two separate orders dated 14.5.2013, of the Metropolitan Magistrate whereby two complaints filed by the appellant against the respondent u/s 138 of the Negotiable Instrument Act, 1881, were dismissed on merits.

The case of the complainant/appellant in nutshell is that it is a limited Company engaged in the business of sale and purchase of diesel generator sets, alternators, etc. and the respondent, who is carrying on business under the name and style of Annai Engineering Works purchased some goods from it against bills. The respondent issued four (4) cheques-three (3) cheques dated 6.3.2000, out of which two (2) were for Rs. 2.00 lakh each and one (1) cheque for Rs. 2,71,326/-; and one (1) cheque dated 13.10.2000 for Rs. 4.00 lakh towards payment of the price of the

material supplied to him. The aforesaid cheques when presented for payment to the bank were dishonoured with the remarks "Account already closed"/"Not arranged for". The appellant/complainant served notice upon the respondent requiring him to pay the amount of the aforesaid dishonoured cheques. The respondent having failed to do so the aforesaid complaints were filed.

2. The appellant/complainant examined three (3) witnesses in support of its case whereas the respondent examined himself as DW1.

3. A cheque being a negotiable instrument there is a statutory presumption that the cheques were issued for consideration. The presumption no doubt is rebuttable, but, the onus is upon the drawer of the cheque to prove that the same were without consideration.

4. It is an admitted position that the aforesaid four (4) cheques were issued by the respondent/accused to the complainant/appellant. It is also an admitted position that the aforesaid cheques when presented to the bank were dishonoured, for the reasons referred to hereinabove. The case of the complainant/appellant is that the aforesaid cheques were issued towards payment of the price of the goods sold and delivered to the respondent whereas the case of the respondent, as reflected in his deposition, is that the aforesaid cheques were issued as security for purchase of the generator sets.

5. Ex. CW2/N is the statement of account filed by the complainant/appellant, which shows that on 1.4.1999, there was a debit balance of Rs. 10,66,325.66 in the account of Annai Engineering Works which is the trade name of the respondent. The statement of accounts also shows that a sum of Rs. 17,55,679.66 was due from the respondent to the complainant/appellant as on 31.3.2000. The statement of accounts coupled with the deposition of the witnesses examined by the complainant would show that the complainant/appellant has been supplying goods to the respondent and a sum of Rs. 6,71,326/- was still due to it as on 31.3.2000.

6. The only evidence led by the respondent to discharge the statutory onus placed on him is his own deposition as DW1. In the examination-in-chief deposition the respondent inter alia stated that there was no outstanding liability of the complainant Company towards him and the cheques in question were signed as blank, as security in reference to purchase of generators. He also claimed that he had not received any generator from the complainant Company for which cheques in question had been issued. During cross-examination by the learned counsel for the complainant, DW1 Mr. J. Stanishlaus, Proprietor of Annai Engineering Works stated that he had taken just 1-2 generator sets from the complainant Company. He specifically denied the suggestion that he had purchased seven (7) generator sets from the complainant Company. Thus, the case as set out by DW1 in his deposition is that he had purchased only 1-2 generator sets from the complainant Company. On the other hand, in his statement u/s 313 of Cr.P.C. the respondent expressly

stated that he had handed over cheques in question as blank signed cheques for the purpose of security as he had to purchase seven (7) generator sets and the complainant supplied seven (7) generator sets to him. It is, thus, evident that the respondent/accused made a false statement on oath when he claimed that only 1-2 generator sets were supplied to him. Having admitted the delivery of seven (7) generator sets to him the onus was on the accused/respondent to prove that he had paid for the said generator sets. It has come in the cross-examination of DW1 that he had issued demand drafts of Rs. 7.75 lakh to the complainant/appellant as per Ex. DW1/6. However, a perusal of the letter Ex. DW1/6 would show that it refers to a demand draft of Rs. 3.00 lakh sent on 7.11.1997, and not to one or more demand drafts of Rs. 7.75 lakh. As per the statement of accounts filed by the appellant/complainant Company, it received only two (2) payments from the respondent in the financial year 1999-2000, i.e., between 1.4.1999 to 31.3.2000. Out of them one payment was for Rs. 17,000/- and the other was for Rs. 25,000/-. The cheques for Rs. 6,71,326/- which were deposited with the bank on 7.3.2000 were dishonoured and the amount of the aforesaid cheques was debited in the account of the respondent on 23.3.2000. The respondent/accused did not examine any bank official to prove any payment of Rs. 7.75 lakh to the complainant by way of demand draft. In case any such payment was actually made, after the delivery of the generator sets was received, nothing prevented the respondent/accused from summoning the bank official(s) to prove the aforesaid payment. Moreover, no receipt evidencing payment of Rs. 7.75 lakh has been filed by the respondent/accused. On receipt of notice from the complainant/appellant, admittedly no reply was sent by the respondent/accused, claiming payment of Rs. 7.75 lakh by way of demand draft or alleging that the cheques in question were given as blank cheques, towards security. No notice was sent by the respondent/accused to the complainant/appellant Company at any point of time, asking for the return of the cheques in question on the ground that the payment had already been made by way of demand draft. In fact, in his examination-in-chief DW1 did not even refer to any payment to the appellant/complainant by way of any demand draft and the plea of such payment cropped up only during the cross-examination of the respondent/accused. The respondent did not file his own statement of account, to show that nothing was payable by him to the appellant.

7. For the reasons stated hereinabove, I am of the considered view that the respondent/accused failed to discharge the statutory onus placed on him to prove that the cheques in question were without consideration. On the other hand, the evidence produced by the complainant/appellant clearly proves that a sum of Rs. 6,71,326/- was due to the appellant/complainant Company as on 31.3.2000.

8. It was contended by the learned counsel for the respondent/accused that the complaint has not been filed by a duly authorised person on behalf of the Company. I, however, find no merit in the contention. The complaint was filed in the name of the Company and was signed by Shri G.K. Pachauri, Assistant Manager (Legal). Ex.

CW2/A is the Special Power of Attorney executed by Shri K.K. Sharma, Chairman of the appellant-Company in favour of Mr. Pachauri authorising him inter alia to file complaints on behalf of the Company in any court in any civil, criminal or revenue matter and to sign all the papers including complaints and affidavits on behalf of the Company. The aforesaid power of attorney has been executed before a Notary Public on 31.5.1999 in view of the provisions contained in Section 85 of the Evidence Act, 1872, there is a statutory presumption not only that the aforesaid power of attorney was actually executed by Shri K.K. Sharma but also that Shri K.K. Sharma was competent to execute such a power of attorney on behalf of the appellant/complainant Company. Moreover, the Managing Director of the Company has come in the witness box as CW3 and he has confirmed the power of Attorney given in favour of Mr. Pachauri.

In [Jugraj Singh and Another Vs. Jaswant Singh and Others](#), the Power of Attorney attested by a Public Notary was disputed on the ground that it did not show on its face that the Notary had satisfied himself about the identity of the executant. Supreme Court held that there was a presumption of regularity of official acts and that the Notary must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. In [Rajeshwarhwa Vs. Sushma Govil](#), it was contended before this Court that till it is proved that the person who signed the said power of attorney was duly appointed attorney, the court cannot draw a presumption u/s 57 and 85 of the Evidence Act. Repelling the contention, it was held by this Court that the very purpose of drawing presumption under Sections 57 and 85 of the Evidence Act would be nullified if proof is to be had from the foreign country whether a particular person who had attested the document as a Notary Public of that country is in fact a duly appointed Notary or not. When a seal of the Notary is put on the document, Section 57 of the Evidence Act comes into play and a presumption can be raised regarding the genuineness of the seal of the said Notary, meaning thereby that the said document is presumed to have been attested by a competent Notary of that country. In [Punjab National Bank Vs. Khazan Singh and Others](#), the Power of Attorney in favour of a bank, which had been duly attested, was rejected by the learned District Judge on the ground that the presumption u/s 85 of Evidence Act was available to a particular class of Power of Attorneys described in the section, which was confined to its execution and authenticity alone. The High Court, however, rejected the view taken by the learned District Judge holding that absence of proof of resolution authorizing the executant to execute the Power of Attorney could not be sustained and a presumption in favour of the attorney would arise u/s 85 Act.

9. For the reasons stated hereinabove the impugned orders dated 14.5.2013 are hereby set aside. The respondent/accused is convicted u/s 138 of the Negotiable Instrument Act and is sentenced to undergo imprisonment for three (3) months each in both the complaints. He is also sentenced to pay fine of Rs. 13.00 lakh in CC No. VK-93/2000 and fine of Rs. 7.00 lakh in CC No. VK-82/2000. Out of the fine, if

realised, 90 per cent shall be released to the appellant/complainant as compensation. In default of payment of fine the respondent/accused shall undergo imprisonment for six (6) months in CC No. VK-93/2000 and for three (3) months in CC No. VK82/2000. The respondent/accused is granted four (4) weeks from today to deposit the amount. He is also directed to surrender within a week before the trial court. If he fails to do so, the trial court shall take steps to procure his presence and to commit him to prison to undergo the sentence awarded to him.

The appeals stand disposed of.

The LCR be sent back along with a copy of this order.