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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 13 OF 2015

M/s. Chirag Manufacturing Co. and Ors. … Applicants

Versus

Parasmal R.Kothari and anr. …. Respondents

Mr. Sushil Upadhyay along with Mr. Ashok Saraogi for the applicants.

Mr. Yashpal Thakur i/by PKA Advocates for respondent no. 1.

Smt. A.A. Mane, A.P.P. for the State.

CORAM : M.L. TAHALIYANI, J.
DATED : JUNE 26, 2015

P.C.

Admit. Heard finally.

2. This revision application impugns the order passed by the learned Additional Sessions Judge dismissing Criminal Appeal No.30 of 2012 filed against the judgment and order of the learned Metropolitan Magistrate, 43rd Court, Borivali convicting the applicants for the offence punishable under section 138 of Negotiable Instruments Act.

3. The case before the learned trial court was that the applicant no. 1 M/s. Chirag Manufacturing Co. was partnership firm and applicant nos. 2, 3 and 4 were partners of the said firm. Applicants had issued two cheques of

Rs.2,50,000/- each in discharge of the liability. It was the case of the complainant/respondent no.1 that earlier there was a liability of Rs. 4 lac in which cheques were issued by the applicants. Thereafter by way of full and final settlement two fresh cheques were issued by the applicant in the sum of Rs.2,50,000/-each. The cheques have been admittedly signed by applicant nos. 2 and 3 as proprietor of M/s. Chirag Manufacturing Co. As both the cheques were dishoured for want of sufficient funds, statutory notice was issued by respondent no.1 on the applicants. The statutory notice was replied. The applicant simply denied the allegations. After expiry of the statutory period, the complaint was filed against the applicants.

4. On conclusion of the trial, all the accused have been convicted. Applicant nos. 2 to 4 are sentenced to suffer SI for four months and applicant nos. 1 to 4 are directed to pay an amount of Rs.5,50,000/- to respondent no. 1 by way of compensation. As already stated, the appeal filed by the applicants has already been dismissed.

5. Two issues were raised before the trial court as well as appellate court. The main thrust of the learned counsel for the applicants before this court as well as before the appellate court was that the cheques were never issued by the partnership firm M/s. Chirag Mfg. Co. It was tried to bring to my notice that the cheque bear signatures of applicant nos. 2 and 3 as proprietor of M/s. Chirag Manufacturing Co. The issuance of cheques is not denied by applicant nos. 2 and 3. There is nothing on record, even in the evidence of defence witness (bank officer) to indicate that the cheques were dishonoured for any other reason except insufficient funds. The learned trial Magistrate took a view that it was for the applicants to bring on record that

they were not partners, but proprietors of M/s. Chirag Manufacturing Co. It was also stated by the learned Magistrate in his judgment that respondent no.1 cannot be made to suffer for the fault on the part of the applicants. I have examined the judgment of both the courts below and evidence adduced before the trial Magistrate. It is not proved beyond reasonable doubt that Chirag Manufacturing Co. was partnership firm. The bank officer has also stated that it was proprietary firm. However, at the same time, the applicants have also not probabilized their case that the account was operated by applicant no.2 Dinesh only. From the evaluation of evidence what can be concluded is that there was an account which was being operated by applicant nos. 2 and 3. There was no sufficient evidence to establish that it was a partnership firm. There was no sufficient material to involve applicant no. 4 in the alleged transaction.

6. What is very clear is that the cheque was issued by applicant nos. 2 and 3 and it was dishonoured for want of sufficient funds. Therefore, reasonable inference can be drawn is that the account was being operated by applicant nos. 2 and 3. Even if it is assumed for the sake of arguments that M/s. Chirag Manufacturing Co. was not a partnership or even if it is concluded that it is not proved, the fact remains that the cheques were issued by applicant nos. 2 and 3 in discharge of a liability. It hardly makes any difference whether the cheques were issued in discharge of their own liability or in discharge of liability of M/s. Chirag Manufacturing Co. The liability was legally enforceable which can be seen from the earlier reply given by all the applicants to respondent no. 1. In the circumstances, the applications filed by applicant nos. 1 and 4 will have to be allowed and applications filed by applicant nos. 2 and 3 will have to be dismissed. In the result, it follows that :

(1) Revision application is partly allowed.

(2) The conviction recorded against applicant nod. 1 and 4 is set aside. They are acquitted of the offence punishable under section 138 of the Negotiable Instruments Act.

(3) The application of applicant nos. 2 and 3 is dismissed. They are directed to surrender to undergo imprisonment within the period of eight days from today.

(4) At this stage, Mr. Saraogi, learned counsel for the applicants prays for some time as the applicant nos. 2 and 3 intend to move Hon'ble Supreme Court. The prayer is granted. Applicant nos. 2 and 3 are granted four weeks time subject to payment of Rs.3,50,000/- (in addition to Rs. 2,00,000/- already deposited) in the trial court within a period of five days from the date of this order.

(JUDGE)