IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.173 of 2015
and
M.P.Nos.1 and 2 of 2015

T.Vimalanandhan ...Petitioner/Accused

Versus

M/s.Sun Yarn Processors
A Partnership Firm
rep. through its
Manager-cum-Power of Attorney Holder
M.Punniyacody
S/o.Late Murugayyan
D.No.5, Bye-pass Road
Komarapalayam. ...Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 28.02.2014 in C.A.No.38 of 2013 on the file of the learned Principal Sessions Judge, Namakkal, confirming the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode, in S.T.C.No. 389 of 2012, dated 09.05.2013.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.R.Marudhachalamurthy

O R D E R

The petitioner/accused was convicted by the learned Judicial Magistrate, Fast Track Court, Tiruchengode, in S.T.C. No. 389 of 2012, dated 09.05.2013, for an offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a sum of Rs.1,40,000/- as compensation. Challenging the same, the petitioner filed Criminal Appeal No. 38 of 2013 before the learned Principal Sessions Judge, Namakkal, which was dismissed on 28.02.2014, confirming the conviction and sentence imposed by the Trial Court. As against the same, the petitioner has filed the present Criminal Revision Case.

2. The case of the respondent/complainant is that the complainant is a registered Partnership Firm. The complainant is represented through its Manager-cum- Power of Attorney Holder. The complainant is doing the job work of bleaching and dyeing of yarn on wages. The accused is one of the customer of the complainant. The accused had dealings with the complainant in sending yarn to get it bleached and dyed. The accused has agreed to settle the bill amount within seven days from the date of bill, failing which, the accused has agreed to pay the bill amount with interest at the rate of 24% per annum. As per the order placed by the accused, the complainant bleached and dyed the yarn supplied by the accused and returned the same to the accused with the bill for wages for the work done by the complainant. As per the account, a sum of Rs.6,63,368/- is due and payable by the accused to the complainant, together will interest at the rate of 24% per annum. For the bill amount payable by the accused to the complainant, the petitioner/accused signed and tendered a cheque dated 23.10.2009. Since, the accused has not made arrangement to honour the cheque dated 23.10.2009, the accused struck out the date 23.10.2009 by putting his signature and asked the complainant to wait till the accused could make arrangement to honour the cheque. The complainant waited for two years and thereafter, the accused told the complainant to present the cheque in the first week of May, 2012, by filling up the date and accordingly, the complainant filled up the date as 04.05.2012 and presented the cheque for collection on 04.05.2012 and the cheque returned with an endorsement "exceeds arrangement". The complainant issued a lawyer's notice on 10.05.2012 and the accused has received the lawyer's notice on 12.05.2011. Since, the accused neither sent a reply nor came forward to settle the amount, the complaint was given by the complainant. The complaint was taken on the file of the learned Judicial Magistrate, Fast Track Court, Tiruchengode and it was assigned S.T.C.No.389 of 2012. The Trial Court has found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a sum of Rs.1,40,000/- as compensation. Aggrieved against the same, the petitioner/accused filed Criminal Appeal No. 38 of 2013 before the learned Principal Sessions Judge, Namakkal, which was dismissed on 28.02.2014, confirming the conviction and sentence imposed by the Trial Court. Hence, the Criminal Revision Case.

3. Mr.J.Franklin, learned counsel appearing for the petitioner would submit that originally the cheque dated 23.10.2009 was issued for a commercial transaction and even as admitted by the complainant, the date of the cheque was cancelled on the same day, but, thereafter, the complainant has filled up the date of the cheque as 04.05.2012 and has presented the same for collection and the same

returned dishonoured, therefore, according to the petitioner/accused, when the original date of the cheque viz., 23.10.2009 has been cancelled by the petitioner/accused, who gave the cheque, the subsequent filling up of the cheque and presentation of the same and thereafter, filing a complaint for dishonour, will not give any legal right to the complainant. Secondly, learned counsel for the petitioner would contend that the petitioner has not authorised the complainant to fill up the date and present it on a later date, because, according to him, the date of cheque was cancelled by the party, who gave the cheque even in 2009 itself and therefore, the very transaction between them came to an end even in 2009 itself and when there is no other transaction between them thereafter, there is no liability on the part of the petitioner/accused to pay any amount to the complainant and in view of the same also, the cheque presented and dishonoured has no legal basis and therefore, both Courts below came to the wrong conclusion.

4. Mr.R.Marudhachalamurthy, learned counsel appearing for the respondent would contend that as rightly pointed out by both Courts below, first of all, the petitioner did not even issue a reply notice to the statutory notice issued on 10.05.2012. He would further add that the complainant do admit that the cheque was originally issued on 23.10.2009, thereafter, it is alleged that the petitioner told to the complainant that he will not be able the pay the amount on the said date, therefore, the petitioner himself struck out the signature in the cheque dated 23.10.2009 asking the respondent/complainant to keep the cheque intact till the accused could make arrangement to honour the cheque. The complainant waited for two years. Thereafter, the accused told the complainant to present the cheque in the first week of May, 2012, by filling up the date and on the request of the accused, the complainant filled up the date as 04.05.2012 and presented the cheque for collection on 04.05.2012, but, the cheque returned dishonoured. Thereafter, the complainant issued a lawyer's notice on 10.05.2012 and the accused has received the lawyer's notice on 12.05.2012, but, neither the accused has sent a reply nor came forward to settle the amount and hence, the complaint. Pointing out to the same, the learned counsel appearing for the respondent would submit that if really according to the petitioner the transaction between the petitioner and the complainant came to an end in 2009, what prevented the petitioner/accused from getting the cheque return back and hence, both Courts below rightly convicted the petitioner/accused and hence, he seeks for the dismissal of the revision.

5. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. No doubt, in this case, the transaction between the petitioner/accused and respondent/complainant, the issuance of cheque, the signature in the cheque and the amount due are all

admitted. The only defence is that the cheque was given by the petitioner/accused in 2009, thereafter, it was filled by the respondent/complainant and presented for collection only in 2012. As rightly pointed out by Courts below, when the initial transaction is admitted by the petitioner/accused, the presumption as contemplated under Section 139 has to be raised in favour of the complainant and it is for the accused to rebut the presumption that the cheque was not issued for a legally enforceable debt. But, for rebutting the presumption, neither oral nor documentary evidence has been produced. Even, when the petitioner/accused was questioned under Section 313 of Cr.P.C., it is seen that he has only averred that it is a wrong case and that the amount has been repaid to the complainant even in 2009 and therefore, the transaction between the petitioner/accused and complainant came to an end even in 2009. If really according to the petitioner/accused the transaction between the petitioner and the complainant came to an end in 2009, there is no explanation as to why he allowed the cheque to remain with the complainant. Admittedly, the petitioner has not issued the respondent with any notice seeking to return back the cheque. Further, admittedly, no document has been produced before the Court to show that the petitioner/accused asked for the return of the cheque. When the petitioner/ accused has admitted the transaction between him and the respondent and the petitioner/accused has admitted that he has given the cheque and he has admitted the signature, the presumption under Section 139 comes into operation and it is for the accused to rebut the presumption by producing proper material evidence, when the rebuttal is not let out by the petitioner by producing proper material evidence, in my considered opinion, both Courts below rightly convicted the accused.

7. Further more, it is not the case of the respondent/complainant that the respondent has not filled up the date of the cheque, the respondent has admitted that he has filled up the date alone, because, the original date has been duly cancelled and duly signed by the petitioner for the cancellation. In this regard both Courts below have pointed out that the Bank Manager has been examined as P.W.3 and it is the Bank Manager, who is the proper person to identify insofar as the signature in the cheque is concerned and he has in his evidence categorically stated that the signature put by the person for striking of the date and the signature in the cheque are put by one and the same person and it is in the same handwriting. The Manager was able to identify the same. Then, it becomes an open document. The theory putforward by the respondent/complainant that he was waiting for two years to get instruction from the petitioner to present the cheque, thereafter, on the instruction of the petitioner only, according to the respondent, he has filled up the date and presented the cheque on 04.05.2012, is acceptable and therefore, there is no quarrel regarding the filling up of the date by the respondent.

8. When we analyse the evidence available on record, the petitioner/ accused had categorically admitted the entrustment of the cheque, signing or execution of the cheque in favour of the respondent/complainant. The transaction between the complainant and the accused is not seriously disputed by the accused. The only contention of the petitioner is that the cheque has been signed by him and the date has been struck off by putting his signature. Therefore, it is very clear that the petitioner admits the issuance, entrustment or execution of the cheque in question to the respondent/complainant.

9. Section 20 of the Negotiable Instruments Act deals with the right of the holder in due course, which reads as follows:-

> 20. Inchoate stamped Instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negoiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

10. As per Section 20 of the Negotiable Instruments Act, a holder in due course is authorised or empowered to fill up an instrument so as to make it a negotiable instrument. In this case, the petitioner had admitted the entrustment of the cheque by striking of the date and therefore, the respondent/complainant as a holder in due course, is entitled to fill up the cheque and that cannot be questioned by the petitioner/accused.

11. In the unreported decision of this Court in S. Gopal vs. D. Balachandran Crl.R.C. No. 1658 of 2007 dated 22.01.2008 held that if a drawer of a cheque gives authority to the payee or holder in due course or a stranger, for that matter to fill up the cheque signed by him, such an instrument also is valid in the eye of law. There is no bar for the drawer of a cheque to give authority to a third person to fill up the cheque signed by him for the purpose of negotiating the same. Considering the facts and circumstances of the case, I am of the view that the Court below has arrived at such a conclusion correctly and I do not find any reason to interfere with such a finding rendered by the Court below.

12. When the petitioner/accused admitted his signature in the cheque, the presumption under Sections 118 and 139 of the Negotiable Instruments Act are in favour of the respondent/complainant and it is the duty of the petitioner to rebut these presumptions by proper material evidence, when the rebuttal is not let out by the petitioner, both Courts below have rightly held that the petitioner has not rebutted with regard to the materials submitted by the complainant and rightly convicted the petitioner/accused. Hence, I do not find any reason to interfere with the reasoned judgment passed by the Appellate Court and the judgment of the Appellate Court stands confirmed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

paa

To

1. The Principal Sessions Judge,
   Namakkal.

2. The Judicial Magistrate,
   Fast Track Court,
   Tiruchengode,

1 CC to Mr.J.Franklin, Advocate SR.No. 22817

1 CC to Mr.R.Marudhachalamurthy, Advocate SR.No. 23042

Crl. R.C. No. 173 of 2015

JSV (CO)
PSI (08.06.2015)