

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.7.2015

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

Crl.R.C. No.1063 of 2009 and
M.P.Nos.1 and 2 of 2009

1. V.Shanmuga Sundaram

2. Ratanraj ... Petitioners/Appellants/Accused

Vs.

Mrs. M.Sundari ... Respondent/Respondent/Complainant
Rep by her Power Attorney
R.Ramakrishnan

Petition filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the Judgment dated 20.12.2006 made in C.C.No.6582/2004 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai-15 as confirmed by Judgment dated 28.8.2009 made in C.A.No.19/2007 on the file of the Hon'ble Additional Sessions Judge, Fast Track Court No.II, Chennai-1.

For Petitioner : Mr.K.Kannan

For Respondents: Mr.T.Ashok Kumar

O R D E R

The revision petitioner herein is the accused in C.C.No.6582 of 2004 on the file of the XVIII Metropolitan Magistrate, Saidapet and the respondent herein filed a complaint against the revision petitioners for an offence under Section 138 of Negotiable Instruments Act. The Trial Court convicted the petitioners under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and to pay compensation of Rs.2,68,000/- to the complainant u/s. 357 (3) Cr.P.C within three months and in default to undergo simple imprisonment for three months. The conviction and sentence were confirmed by the learned Additional Sessions Judge, Fast Track Court No.II, Chennai-1 in C.A.No.19/2007. Challenging the said conviction and sentence, the petitioners have preferred this revision.

2. The case of the complainant is that both the accused are partners of M/s.Golden Polymers, dealing in wholesale supply of plastic granules. They had approached the complainant for the purchase of plastic granules and as per their request the complainant had supplied materials vide two invoices. To discharge their liability, the accused had issued two cheques dated 23.2.2004 and 10.3.2004 for a sum of Rs. 80,991/- and 1,79,997/- respectively. On 07.7.2004, the complainant deposited the cheque in M/s.Punjab National Bank, Mount Road Branch, Chennai. But the cheques was dishonoured and returned for the reason that there was no sufficient funds in the account. The complainant issued a legal notice/Ex.P.7 through his counsel to the accused and the accused gave a reply Ex.P.9. The accused had not paid the cheque amount. Therefore, private complaint was filed by complainant against both the accused.

3. On the side of the complainant, P.W.1 was examined and Exs.P1 to P.9 were marked. The accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and they denied their complicity.

4. On the side of the accused, the second accused was examined as D.W.1. No documents were marked.

5. Both the Trial Court and Appellate Court after analysing the oral and documentary evidence, convicted the accused as stated above.

6. The learned counsel appearing for the petitioners/accused would contend that the Trial Court has failed to note that the alleged cheques were issued only as a security by the petitioner to the respondent company. He would further add that pending the appeal, the petitioners have paid Rs.3,75,000/- towards two cheques and settled the matter. But, as of now, he does not have any receipt. However, he would plead that he is not arguing the matter on merits but he is confining his argument only on the question of sentence imposed on the petitioners/accused by the Courts below and therefore, he prayed for showing leniency in reduction of sentence by payment of compensation instead of punishment.

7. The learned counsel for the respondent vehemently argued. He submitted that according to his instructions, he has not received any payment. If the petitioner/accused produce any receipt, he is ready to acknowledge the same. Therefore, he would contend that since the cheques are dated 23.02.2004 and 10.3.2004, the petitioners may be ordered to pay atleast the total amounts as compensation.

8. I have considered the submissions on either side, perused the judgements of both Courts below and the evidence available on record.

9. Taking into consideration that the argument is only in respect of sentence, while confirming the conviction passed by the Appellate Court, the sentence along with compensation is modified to one of payment of double the cheque amount as compensation. The said amount shall be deposited before the Trial Court to the credit of C.C.No.6582 of 2004 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, within a period of four months from today. It is made clear that in the event, the petitioners/accused produce any receipt to show that already Rs.3,75,000/- has been paid to the respondent/complainant, the respondent shall acknowledge the same and shall produce the acknowledgement in to the Trial Court and the Court shall inturn, direct the accused/petitioners to deposit the balance amount. In case of default to pay or deposit the amount, the Judgement passed by the Appellate Court shall be revived.

10. With the above modification in sentence, this Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

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

2.-do- Thro Prl.Sessions Judge, Chennai

3. The XVIII Metropolitan Magistrate,
Saidapet, Chennai-15.

4.-do- Thro Chief Metropolitan Magistrate, Egmore, Chennai -8

1 cc to Mr. K.Kannan, Advocate Sr.No.36963

1 cc to Mr. .T.Ashok Kumar, Advocate Sr.No.37123

Cr1.R.C. No.1063 of 2009

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