

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.1285 of 2010

1. Manapully Chits (P) Ltd.,
rep. by Managing Director,
V.Ramesh Kumar

2. V.Ramesh Kumar
Managing Director,
Manapully Chits (P) Ltd.,
Century Towers 2nd Floor,
No.38, Sathy Road,
Coimbatore.

... Petitioners/Appellants/
Accused

Versus

K.Kumar

... Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.113 of 2010 on the file of the learned Additional District & Sessions Judge, Fast Track Court No.II, Coimbatore, and set aside the order dated 27.09.2010 confirming the conviction and the sentence passed in C.C.No.28 of 2009 on the file of the learned Judicial Magistrate-II, Coimbatore, dated 11.05.2010.

For Petitioners : Mr.H.Rajasekar
For Respondent : Mr.N.Damodaran

ORDER

The first petitioner is the company and the second petitioner is its Managing Director and both of them have been arrayed as accused and the respondent is the complainant.

2. The revision has been filed by the petitioners against the Judgment dated 27.09.2010 passed in Crl.A. No. 113 of 2010 on the file of the Additional District & Sessions Judge, Fast Track Court No.II, Coimbatore, confirming the Judgment dated 11.05.2010 passed in C.C.No.28 of 2009 on the file of the learned Judicial Magistrate-II, Coimbatore.

3. The case of the complainant is that he joined as a investor in the first accused company, which is running a chit and taken the bid for Rs.1,00,000/-. Hence, the company is due to him for the said sum. To discharge the above said debt, the second accused being the Managing Director of the Chit company issued a cheque dated 29.09.2007, for Rs.95,000/-. When the said cheque was presented for collection, the same was returned with an endorsement "insufficient funds". Therefore, a statutory notice was issued to the accused on 05.05.2008. Since no payment was made even thereafter, the complainant has filed the present complaint for the offences punishable under Section 138 of the Negotiable Instrument Act and the same was taken cognizance in C.C. No. 26 of 2009 on the file of the learned Judicial Magistrate-II, Coimbatore. Ultimately, after trial, the trial court convicted both the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced the second accused to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- on both the accused and in default the second accused to undergo Simple imprisonment for a period of three months. Aggrieved by the same, both the accused has filed Crl.A. No.113 of 2010 before the learned Additional District & Sessions Judge, Fast Track Court No.II, Coimbatore and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, both the petitioners have preferred the present Criminal Revision Case.

4. The learned counsel appearing for the petitioners/accused did not argue on merits but confined his argument only on the question of sentence imposed on the second petitioner by the courts below. The learned counsel for the petitioners submits that the alleged cheque was obtained by threatening the second accused for the bid amount and Ex.D1 is the receipt for issuance of the amount. Both the courts below have not properly adduced the evidence and came to the conclusion without taking into consideration Ex.D1, Receipt.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioners have not chosen to sent any reply notice for the statutory notice issued on 05.03.2008. This aspect has been duly considered by both the courts below. Hence, there is no error of infirmity in the order passed by both the Courts below and prays for dismissal of the revision.

6. After some elaborate arguments, the learned counsel for the petitioners agreed to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. Learned counsel for the respondent has no serious objection for the submission made by the learned counsel for the petitioners.

7. I have perused the materials available on record.

8. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of three months.

9. On a careful analysis of the entire records, it is clear that there was a financial transactions between the accused and the complainant. Only to settle the amount, the cheque in question was issued and when the same was presented, it was returned with an endorsement "insufficient funds". There is no dispute with regard to the issuance of cheque in question. Though it is the submission of the learned counsel for the petitioner that the cheque in question has been issued to some other financier as security, he has not chosen to examine the said financier. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 139 of the Negotiable Instruments Act.

10. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence and also the fact that the petitioner is willing to settle the amount in question, I am of the view that instead of sending the petitioner to jail, in the interest of justice, he may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentenced is modified to that of payment of compensation to the tune of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only). The petitioner is directed to pay the amount of Rs.1,75,000/- to the complainant within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to pay the said amount/or deposit in Court within the above stipulated period, he shall undergo the period of sentence as imposed by the Courts below and this order will not enure to the benefit of the accused.

11. With the above direction and modification, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar

//True copy//
सत्यमेव जयते

Sub Assistant Registrar

To

1. The Additional District & Sessions Judge,
Fast Track Court No.II, Coimbatore.

2. The Judicial Magistrate-II, Coimbatore.

+ 1cc to Mr.H.Rajasekar, Advocate (SR.33736)