

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.989 of 2010

Atul Sha

Proprietor M/s. Sree Mahalakshmi

Spinners,

D.No.9, Captain Palanisamy Layout,

R.S.Puram, Coimbatore - 641 002.

... Petitioner/Appellant/
Accused

Vs.

V.Kumaresan

... Respondent/Respondent
Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, against the judgment passed in C.A.No.58 of 2010 by the IV Fast Track Court, Additional District and Sessions Judge, Bhavani, dated 24.08.2010 confirming the judgment made in C.C.No.15 of 2008 by the the learned Principal District Munsif-Cum-Judicial Magistrate, Bhavani, dated 22.02.2010.

For Petitioner : Mr.B.Nedunchezhiyan

For Respondent : Mr.R.Marudhachalamurthy

ORDER

This Criminal Revision Case is directed against the judgment passed in C.A.No.58 of 2010 by the learned Additional District and Sessions Judge, Bhavani, IV Fast Track Court, dated 24.08.2010 confirming the judgment passed in C.C.No.15 of 2008 by the the learned Principal District Munsif-Cum-Judicial Magistrate, Bhavani, dated 22.02.2010.

2. The brief facts of the case are as follows:-

The revision petitioner is an accused in C.C.No.15 of 2008 on the file of the learned Principal District Munsif-Cum-Judicial Magistrate, Bhavani. The revision petitioner/accused has purchased yarn on credit basis and for discharging the above credit, he issued a cheque dated 15.12.2006 for a sum of Rs.1,10,000/- and another cheque dated 26.12.2006 for a sum of Rs.1,26,000/- drawn on Central Bank of India, Coimbatore, and he requested the respondent/complainant not to present the cheque till February 2007. When the cheque was presented for collection on 05.05.2007, it was returned

with an endorsement "insufficient funds" in the account of the revision petitioner/accused and the respondent/complainant had issued a legal notice claiming amount from the revision petitioner/accused. The revision petitioner/accused received the said notice, but he has given a false reply. Hence, immediately, the respondent/complainant, according to procedure, filed the complaint before the learned Principal District Munsif-Cum-Judicial Magistrate, Bhavani, and the learned Magistrate, after analysing the evidence and documents produced on either side, found the revision petitioner/accused guilty under Section 138 r/w. 142 of the Negotiable Instruments Act and imposed a punishment of one year simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment. As against the said judgment passed by the trial Court, the revision petitioner had preferred an appeal before the learned Additional District and Sessions Judge, IV Fast Track Court, Bhavani, and the appeal was numbered as C.A.No.58 of 2010 and the Appellate Court, after considering the entire evidence and also the judgment of the trial Court, confirmed the conviction and sentence passed by the trial Court and dismissed the appeal. Against which, the present criminal revision case is preferred by the revision petitioner/accused.

3. The learned counsel for the revision petitioner would mainly contend that in this case, the complainant has not proved the transaction between the parties and the cheque was issued for proper consideration. The cheque was given by the revision petitioner/accused as security, but it was misused by the respondent/complainant and he filed a false complaint. The trial Court and the First Appellate Court, without appreciating the facts and circumstances of the case, passed judgments which are liable to be set aside. The reasons given by the learned trial Judge are not convincing and not sustainable and there is no documentary proof produced on the side of the complainant to effect payment to the revision petitioner. For the reasons stated above, the judgments of the trial Court and the Appellate Court have to be set aside and the criminal revision case has to be allowed.

4. The learned counsel for the respondent would contend that the Courts below, after appreciating the evidence and documents adduced on either side, given a proper verdict and therefore, there is no illegality or infirmity in the orders passed by both the Courts below hence, he prayed that the orders of the Courts below have to be confirmed and the Criminal Revision Case has to be dismissed.

5. In this case, admittedly, the revision petitioner/accused and the respondent/complainant are doing yarn business. It is also admitted on the side of the revision petitioner that the signatures found in the above two cheques are of the revision petitioner and the cheques were issued by the revision petitioner to the complainant. In this

case, on the side of the complainant, the documents Exs.P.11 to P.13 were produced to prove the transaction between the complainant and the accused. On a reading of the above documents, it is very clear that there was a credit transaction between the respondent/complainant and the revision petitioner/accused. Hence, the argument of the learned counsel for the revision petitioner that the cheque was issued for the discharge of the debts is believable and the complainant also proved the consideration for the above two cheques. To contra the evidence and documents produced on the side of the respondent/complainant, there is no document or oral evidence adduced on the side of the revision petitioner/accused. Hence, the argument of the learned counsel for the revision petitioner that the cheque was not issued for the legally recovered debt is liable to be rejected. Hence, the reason stated on the side of the revision petitioner that the cheque was not issued for proper consideration or any other purpose is not proved on the side of the revision petitioner. The Courts below, by invoking the legal presumption under Section 118 of the Negotiable Instruments Act, properly concluded that the cheque was issued for proper consideration and since the cheque was dishonoured as insufficient funds in the account of the revision petitioner, found the accused guilty under Section 138 r/w. 142 of the Negotiable Instruments Act.

6. In view of the above, this Court is of the considered view that there is no infirmity or illegality in the order passed by both the Courts below which do not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Additional District and Sessions Judge,
IV Fast Track Court, Bhavani.
2. The Principal District Munsif-Cum-Judicial Magistrate,
Bhavani.
3. The Chief Judicial Magistrate, Erode, (for information)

+ 1 cc to M/s. R. Marudachalamurthy, Advocate SR.56162

Cr1.R.C.No.989 of 2010

PSK(CO)

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