IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.12.2016
CORAM
THE HONOURABLE MR. JUSTICE C.T.SELVAM
Crl.R.C.No.960 of 2016
and
Crl.M.P.Nos.7594 and 7596 of 2016

1.Ahimsa (Trust)
represented by its Managing Director
Mr.R.Kanagaraj

2.R.Kanagaraj … Petitioners

Vs.

N.Thiruchelvam … Respondent

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. against the judgment of learned IV Additional District and Sessions Judge, Chennai, passed in C.A.No.5 of 2013 on 30.06.2016 confirming the judgment of learned Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai, passed in C.C.No.1701 of 2012 on 05.12.2012.

For Petitioners : Mr.J.Thilagaraj

For Respondent : Mr.Manoj Sreevatsan

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O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioners for offence u/s.138 of the Negotiable Instruments Act and sentencing them to 1 year S.I. and to pay a sum of Rs.1,60,000/- as compensation to respondent/complainant within 1 month i/d 3 months S.I.

2. Respondent/complainant moved a prosecution informing that a cheque bearing No.021833 dated 10.02.2012 in a sum of Rs.1,60,000/- drawn on Canara Bank, Anna Nagar West Extn, Chennai, stood issued to him by petitioners towards repayment of loan and rental arrears, which upon presentation was returned unpaid for the reason “insufficient funds”. Respondent/complainant caused statutory notice and following the

procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

3. Before the trial Court, the respondent examined himself and marked nine exhibits. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of materials before it, trial Court, under judgment dated 05.12.2012, convicted petitioners and sentenced them to 1 year S.I. and to pay a sum of Rs.1,60,000/- as compensation to the respondent/ complainant within 1 month i/d 3 months S.I. There against, petitioners preferred C.A.No.5 of 2013 on the file of learned IV Additional Sessions Judge, City Civil Court, Chennai, which came to be dismissed under judgment dated 30.06.2016. Hence, this revision.

5. Heard learned counsel for petitioners and learned counsel for respondent.

6. This Court repeatedly is coming across cases where parties brazenly admit to cheques obtained through the interaction of police forming the basis of their actions initiated u/s.138 of the Negotiable Instruments Act. In the present case though usually it is the plea of the accused that the cheque had been coerced of him through using the police, in the instant case, the shoe is on the other foot.

7. Paragraph Nos.4 and 5 of the complaint read as follows:

> "4. The complainant states that in order to evade the repayment of the loan amount to him, the accused using influence had lodged a false complaint before the Inspector of Police, J.J.Nagar Police Station, as if the complainant is disturbing him by demanding the loan amount and was wrongfully holding machineries for the same. It is pertinent to state that the accused are a tenant in the complainant's father-in-law's property at Dindigul, and the machineries are kept in the said rented premises by the accused as a tenant. But the accused in order to evade the payment of rental dues to the complainant's father-in-law had dragged the said issue in the above said false complaint lodged against the complainant. However, the complainant promptly attended the police enquiry and appraised the facts to the police officials and they too had found that the accused are a defaulter both in the repayment of the loan to the complainant as well as the rental arrears to the complainant's father-in-law. The accused too admitted during the enquiry that he is liable to pay the amount to him, but however using the police officials had offered that the accused would pay only a sum Rs.1,60,000/- (Rupees One

lakh sixty thousand only) to him and had also forcibly made by the complainant to agree for the same. The complainant also in order to arrive at compromise and to receive atleast this amount of Rs.1,60,000/- (Rupees One lakh sixty thousand only) had agreed for the settlement. The accused had also informed that the accused would repay the said sum of Rs.1,60,000/- admitted by him to the complainant by 15.12.2011.

5.The complainant states that he was eagerly expecting that the accused would pay the said amount by 15.12.2011, but the accused again by giving one reason or other delayed payment. Finally under the pretext of repaying his admitted liability, the accused through the police officials who conducted the enquiry had informed the complainant to present his cheque bearing No.021833 dated 10.02.2012 drawn on Canara Bank, Anna Nagar West Extension branch for a sum of Rs.1,60,000/- (Rupees One lakh sixty thousand only) with a promise that the accused would honour the same. Accordingly the complainant had presented the said cheque issued by the accused for collection with his bankers, namely Indian Bank, Park Town branch on 17.02.2012."

8. Communications dated 05.11.2011 of either party read as follows:

"Second petitioner/accused:

Today, 05.11.2011, police enquired the accused on the complaint given by me. A compromise has been entered into and the terms of compromise are as follows:

I have to issue a cheque dated 15.12.2011 in a sum of Rs.1,60,000/- favouring Mr.Thiruselvam and to receive (i)the bio-diesel machineries belonging to Ahimsa Trust (ii) two cheques and (iii) 2.5 tonnes 'katta manaku vidhai' before 07.11.2011. Upon receiving the same, I agreed to settle the issue and to withdraw the complaint. Hence, no further action is necessary on the complaint.

Respondent/complainant:

Based on the complaint given by Mr.Kanagaraj, Managing Director of Ahimsa Trust, against me, police have enquired both of us. It was decided to settle the issue as agreed between parties. Upon Mr.Kanagaraj agreeing to pay a sum of Rs.1,75,000/- towards the dues, I also agreed to return the two cheques, bio-diesel machineries and 'Katta manaku vidhai' belonging to him."

9. The basic requirement for supporting an action u/s.138 of the Negotiable Instruments Act is that the cheque giving rise to such action had been issued towards discharge of debt or other liability. This Court is of the view that once a case reflects the intervention of a police agency, Courts should not enter upon consideration of whether the cheque stands issued towards discharge of a debt or other liability. It is to be remembered that Section 138 of the Negotiable Instruments Act makes a criminal offence of what basically is a civil liability. It would only be proper, in cases of such nature/as the present case, that parties are required to prove their debt before a civil forum. This Court would hasten to add that the view above expressed would be applicable only in admitted cases of police intervention.

The Criminal Revision Case is allowed. The judgment of learned IV Additional District and Sessions Judge, Chennai, passed in C.A.No.5 of 2013 on 30.06.2016 confirming the judgment of learned Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai, passed in C.C.No.1701 of 2012 on 05.12.2012, is set aside. Petitioners shall stand acquitted of all charges. Bail bonds, if any, executed by second petitioner shall stand cancelled. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The IV Additional District and Sessions Judge,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court I,
Egmore, Chennai.

+4 ccs to Mr.J.Thilagaraj Advocate sr 74689, 70295
+1 cc to M/s.Manoj Sree vatsan Advocate sr 74533

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