

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.No.965 of 2016

1.K.S.V.Cotton Mills (P) Ltd.
represented by its
Managing Director,
S.Kathirvel

2.S.Kathirvel,
Managing Director,
M/s.K.S.V.Cotton Mills (P) Ltd.,
Gujiliyamparai,
Vedachandur,
Dindukkal District. ... Petitioners

Vs.

K.Ganesan
S/o.Kuttiya Gounder ... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned Principal Sessions Judge, Namakkal, passed in C.A.No.44 of 2015 on 02.07.2016 confirming judgment of learned Judicial Magistrate, Tiruchengode, passed in S.T.C.No.315 of 2012 on 30.10.2015.

For Petitioners : Mr.I.C.Vasudevan
For Respondents : Mr.S.Viswanathan

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 6 months S.I. and fine of Rs.5,000/- each i/d 1 month S.I. Second petitioner/A2 was directed to undergo imprisonment and pay fine on behalf of A1.

2. Respondent/de facto complainant preferred a complaint informing that the petitioner/A1, who is in-charge of day-to-day affairs of first accused company received a sum of Rs.2,50,000/-

from the complainant as advance payment for supply of yarn. On their failure to supply yarn, the accused issued a cheque bearing No.408783 dated 30.11.2009 drawn on Corporation Bank, Coimbatore Branch, towards repayment and requested to present the cheque in the month of April 2010. Respondent presented the cheque on 26.04.2010, which was returned unpaid for the reason 'payment stopped by drawer'. Respondent caused statutory notice, followed the procedure envisaged under section 138 of the Negotiable Instruments Act and preferred the complaint. The case was tried in S.T.C.No.315 of 2012 on the file of learned Judicial Magistrate, Tiruchengode.

3. Before the trial Court, respondent examined one witness and marked six exhibits. On behalf of the defence, three witnesses were examined and two exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 30.10.2015, convicted petitioners for offence u/s.138 of the Negotiable Instruments Act and sentenced them to 6 months S.I. and fine of Rs.5,000/- each i/d 1 month S.I. Second petitioner/A2 was directed to undergo imprisonment and pay fine on behalf of A1. The appeal preferred by petitioners/accused in C.A.No.44 of 2015 on the file of learned Principal Sessions Judge, Namakkal, came to be dismissed under judgment dated 02.07.2016. Hence, this revision.

4. Heard learned counsel for petitioners and learned counsel for respondents.

5. Appellate Court, on a thorough consideration of the facts attending the case, the application of presumption u/s.139 of the Negotiable Instruments Act in favour of the holder, the admitted position that the cheque bore the signature of the accused and the authority for the holder thereof to duly fill up the same in respect of sums due in keeping with Section 20 of the Negotiable Instruments Act, has upheld the finding of conviction of trial Court. This Court finds no reason to interfere with the finding of conviction. However, considering the attendant facts and circumstances the sentence imposed against petitioners/accused may be altered to one of fine in a sum of Rs.3,00,000/-

6. It is admitted by learned counsel on either side that a sum of Rs.1,25,000/- stands deposited to the credit of S.T.C.No.315 of 2012 on the file of learned Judicial Magistrate, Tiruchengode. Petitioners are now required to effect payment of a further sum of Rs.1,75,000/- to the credit of S.T.C.No.315 of 2012 within a period of four weeks from today i/d second petitioner/A2 shall be required to undergo sentence of 1 year S.I. The total sum of Rs.3,00,000/- paid to the credit of S.T.C.No.315 of 2012 as fine may be paid over as compensation

to respondent on his moving an appropriate application before the trial Court.

The Criminal Revision Case is disposed of with the above direction.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate,
Tiruchengode.

+1cc to Mr.I.C. Vasudevan, Advocate, S.R.No.74771

+1cc to Mr.Dass & Viswa Associates, Advocate, S.R.No.74852

sk(CO)
md(20/01/2017)

Cr1.R.C.No.965 of 2016

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