



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2016

CORAM:

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THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC (MD) Nos.400 to 408 of 2016
and Crl.M.P. (MD) Nos.4858 to 4866 of 2016

1.M/s.VTX Industries Limited,
Represented by its Managing Director,
Mr.A.L.Ramachandra,
No.10/400, Palghat Road,
Kuniamuthur,
Coimbatore -641 008.

2.A.L.Ramachandra

... Petitioners / Accused
in all the petitions

-vs-

M/s.Thiagarajar Mills Private Limited,
Kappalur,
Madurai - 625 008.
Represented by its General Manager,
(Finance) Mr.P.Sampathkumar.

... Respondent / Complainant
in all the petitions

COMMON PRAYER: Criminal Revision Petitions are filed, under Section 397 r/w 401 Cr.P.C., to call for the records passed in Crl.M.P.Nos.433 to 441 of 2016 in C.A.Nos.30 to 38 of 2016 on the file of the learned Principal District and Sessions Judge, at Madurai dated 07.06.2016 and set aside the same by allowing the criminal revisions.

For Petitioners : Mr.B.Kumar
Senior Counsel for M/s.G.Anbu Saravanan
in all cases
For Respondent : Mr.M.Ajmalkhan
Senior Counsel in all cases

COMMON ORDER

Some queer questions arises in these revisions.

2.These revisions arose out of grant of appeal bails by the learned Principal Sessions Judge, Madurai in Crl.M.P.Nos.433 to 441 of 2016 in C.A.Nos.30 to 38 of 2016.

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3.Incidentally, there arises a clash between criminal law,



company law and certain basic principles of general penal law of India.

4.As these petitions presents very same complex questions we have tagged them together and we shall dispose of them together.

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5.The details of the revisions are as under:

Case No.	Conviction	Sentence
S.T.C.No.1774 of 2012	u/s 138 N.I. Act	1 years S.I. + Rs.60,00,000/- as compensation u/s 357(3) Cr.P.C.
S.T.C.No.1775 of 2012	-do-	-do-
S.T.C.Nos.1776 of 2012	-do-	-do-
S.T.C.Nos.1867 of 2012	-do-	1 years S.I. + Rs.50,00,000/- as compensation u/s 357(3) Cr.P.C.
S.T.C.Nos.1868 of 2012	-do-	-do-
S.T.C.Nos.1805 of 2012	-do-	1 years S.I. + Rs.1,29,00,000/- as compensation u/s 357(3) Cr.P.C.
S.T.C.Nos.1806 of 2012	-do-	1 years S.I. + Rs.58,00,000/- as compensation u/s 357(3) Cr.P.C.
S.T.C.Nos.1807 of 2012	-do-	1 years S.I. + Rs.50,00,000/- as compensation u/s 357(3) Cr.P.C.
S.T.C.Nos.1866 of 2012	-do-	-do-

6.The accused have been prosecuted before the learned Judicial Magistrate No.I, FTC Level, Madurai under Section 138 of N.I. Act. The Company/A1 as well as its Managing Director/A2 were convicted. Besides sentence of imprisonment, cheque amount has been ordered as compensation under 357(3) Cr.P.C. No fine amount has been imposed. No default clause for non-payment of compensation has been prescribed.

7.The matter was carried further to the Principal Sessions Judge, Madurai in C.A.Nos.30 to 38 of 2016.

8.Pending consideration of the Criminal Appeals, in CrI.M.P.Nos.433 to 441 of 2016, they have sought for appeal bail from the Principal Sessions Judge, Madurai.

9.The learned Appellate Judge while granting suspension of sentence of imprisonment also ordered as under:

"11.In the result, the petition will be allowed only on condition that the petitioner is directed to deposit 1/4th amount of the impugned



cheque amount in this case before the trial Court without prejudice to the contention of both sides in the appeal on or before 23.06.2016 and file the proof of the same before this court failing which this petition stands dismissed. Call on 24.06.2016 for compliance of the said order by the petitioner herein."

10. Now, the impugned orders shows that if the $\frac{1}{4}$ of the cheque amount is not deposited by 23.06.2016 the appeal bail petitions itself will stand dismissed. In other words, the suspension of sentence ordered itself will go away. Though the appellant was happy that suspension of sentence of imprisonment was ordered, he was very much unhappy as to the direction to deposit $\frac{1}{4}$ th of the cheque amount. That is how he is before us.

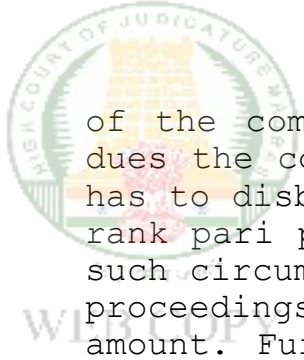
11. The learned senior counsel for the revision petitioner/appellant/ accused would submit that admittedly the trial Court did not impose any fine. It had issued directions under Section 357(3) Cr.P.C. to pay the cheque amount as compensation. In the event of non-deposit of the said amount no default sentence has been prescribed. In such circumstances, in appeal bail petitions, indirectly that amount cannot be collected. Further, legally speaking as per Section 441 Cr.P.C., for collecting such compensation amount respondent has to recourse to the procedure prescribed under the Code of Criminal Procedure and pursue it with the assistance of the Revenue Authorities.

12. The learned Senior Counsel for the revision petitioners emphasized that under the Code of Criminal Procedure default sentence for non-payment of compensation amount is impermissible.

13. In this connection, the learned Senior Counsel for the petitioners referred to the procedure prescribed under the Code of Criminal Procedure for collecting the compensation and fine amount. He also cited **DILIP S. DAHANUKAR VS. KOTAL MAHINDRA CO. LTD., [2007 (6) S.C.C. 528]**, wherein the Hon'ble Supreme Court has referred to this issue and held that for collection of compensation amount the procedure provided under Cr.P.C. namely, having assistance of the revenue authority has to be pursued.

14. The learned Senior Counsel further submitted that the order of the learned Principal Sessions Judge, Madurai that in the event of non depositing of the prescribed amount, the appeal bail order will go away is against principles of law. It is giving bail by one hand and taking it away by another hand more particularly by prescribing some conditions which are impossible to perform.

15. The learned Senior Counsel for the revision petitioners also contented that liquidation proceedings has been initiated as against the accused company in the Company Court and a Provisional liquidator has been appointed and he has taken charge of the affairs



of the company and he will have the authority to collect all the dues the company is entitled to and after collecting the amounts he has to disburse the amount to the creditors on prorata basis as they rank pari pasu. Now, we have the case of company in liquidation. In such circumstances, dehors the Company Court dealing with winding up proceedings, the revision petitioner cannot be asked to pay the amount. Further, it is an impossible condition to perform when the entire company assets have been seized by the Provisional Liquidator.

16.The learned Senior Counsel for the petitioners would also submit that the creditor, namely, M/s.Thiagarajar Mills (P) Ltd., the complainant herein also should stand in que along with other creditors and get its share out of the distribution to be made by the Provisional liquidator on prorata basis.

17.On the other hand, the learned Senior Counsel appearing for the complainant/company/respondent would submit that the revision petitioner/ accused practically playing hide and seek. In the trial Court, he became an absentee accused, when the case was posted for delivery of judgement he was not there. In his absence, judgment was delivered. And to secure his presence, non-bailable warrant has been issued.

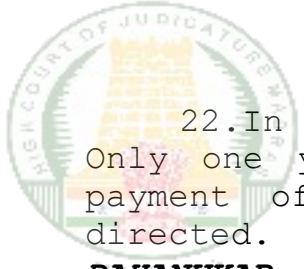
18.The learned counsel for the respondent would further submit that the appellate Court while granting appeal bail is entitled to direct the appellant to deposit certain amount in a cheque bouncing case. The respondent has supplied huge quantities of yarn to the revision petitioners. Even in **DILIP S. DAHANUKAR** (supra) the Hon'ble Supreme Court clearly mentioned that while granting appeal bail the Court has the power to impose conditions, but the condition should be reasonable and should not be harsh. Therefore, the appellate Judge was right in directing the accused to deposit a portion of the cheque amount.

19.The learned Senior Counsel for the respondent would further submit that a person who has been convicted by a criminal Court cannot take umbrage under the Company Court proceedings. The use of the words 'other proceedings' in the Companies Act refers only to civil proceedings. It does not include criminal proceedings. Therefore, this matter arising out of a criminal proceedings will not be covered under the proceedings pending before the Company Court. Consequently, the Provisional Liquidator has nothing to do with the payment directed by the appellate Judge.

20.I have anxiously considered the rival submissions, perused the impugned orders, materials on record and the decision cited.

21.In **DILIP S. DAHANUKAR** (Supra) the Hon'ble Apex Court has held that while suspending the sentence of imprisonment the Court can also impose reasonable conditions.

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22. In the present case, the trial Court has imposed no fine. Only one year sentence of imprisonment has been given. Instead, payment of compensation under Section 357(3) Cr.P.C. has been directed. It is independent of the fine amount. As per **DILIP S. DAHANUKAR** (supra) and as well as Section 441 Cr.P.C. such compensation can be collected as per the procedure provided in the Code of Criminal Procedure.

23. Now, in this case, no default sentence in the event of non deposit of the cheque amount has been prescribed. Whether a criminal Court has got power to prescribe default sentence for non-payment of compensation is an eminently arguable point. It can await for an appropriate occasion and case.

24. The transaction involved in the present cheque bouncing cases arose out of supply of yarn by the complainant company to the accused company. Liabilities were sought to be enforced out of such transaction as legally recoverable sum since the cheques for payment were bounced. Now, the amounts are with reference to the business transaction done by the accused Company. If we forget for a moment that it is a cheque bouncing case, for the very same transaction just like any other creditors, who seek to enforce their liability before the Company Court the complainant/ company has to go before the Provisional Liquidator and seek disbursement from the amounts realised. Even subsequent to the appointment of Provisional Liquidator, if a decree for money is passed in favour of the complainant company against the accused company such decree holder shall also stand along with other creditors for claiming the decretal amount from and out of the assets realised by the Provisional Liquidator.

25. The learned Senior Counsel appearing for the respondent is correct in his submission that the criminal Courts have power under Section 389(1) Cr.P.C. to prescribe, impose reasonable conditions. This is what held in **DILIP S. DAHANUKAR** (supra).

26. If the trial Court has prescribed default clause for such payment there is chance for the accused to seek stay of operation of the order passed under Section 357(3) Cr.P.C. But in this case the trial Court has not prescribed any default clause for non-deposit of compensation amount. That is why the learned Senior Counsel for the petitioners has stated that they are not seeking stay of operation of the direction to pay the amount because, there is no need for it.

27. The learned appellate Judge in his order mentioning that in the event of non deposit of the amount directed on or before 23.06.2016, the appeal bail will go away is not correct. It is against law. Once bail granted, it cannot not be taken away automatically, whether it may be bail before judgment or after judgment. It can be cancelled only in a manner known to law, that too after hearing the accused and it shall be by a specific order.



28. In view of the foregoing, it is ordered as under:

(1) The revision petitions are allowed.

(2) The direction to deposit 1/4th of the cheque amount is deleted. (3) Consequently, the direction that in the event of non-depositing of the amount in the trial Court on or before 23.06.2016, the appeal bail petition will be dismissed is also deleted.

(4) Sentence of imprisonment imposed by the learned Judicial Magistrate No.1, (FTC - Level), Madurai in S.T..C.Nos.1774 to 1776, 1805 to 1807 and 1866 to 1868 of 2012 alone is suspended.

(5) There shall be two sureties, they and the 2nd petitioner shall execute a bond for Rs.25,000/- (Rupees Twentyfive thousand only) each to the satisfaction of the learned Judicial Magistrate No.1, (FTC - Level), Madurai.

(6) The 2nd petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. until further orders.

(7) It is open to the revision petitioners to request the said Court to accept the same sureties for all the appeal bail petitions.

(8) It is open to the complainant to collect its money in a manner known to law.

(9) Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To:

1. The Principal Sessions Judge,
Madurai.

2. The Judicial Magistrate No.I,
FTC - Level, Madurai.

+ 2 CC TO M/S.G.ANBUSARAVANAN, ADVOCATE IN SR No. 32144
+ 1 CC TO M/S.AJMAL ASSOCIATES, ADVOCATE IN SR No. 31648

SJ

TE/AAL-MPA/ : 06/07/2016 : 6P/6C

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