

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.306 of 1997
and Crl.R.C.No.147 of 1997

Crl.A.No.306 of 1997

M/s. Anchor Marine Service (Leather Division)
A Partnership firm,
Rep. by its Partner,
Mrs.Omana Manavalan by her Power Agent
Mr.T.N.Srinivasan ... Appellant

Vs.

Mr.Prakash H.Mehtani
Managing Director
M/s. Tejoomals Industries Ltd.,
No.601, Raheja Chambers,
212, Nariman Point,
Bombay - 21. ... Respondent

Prayer:- Criminal Appeal filed against the acquittal and sentence passed by the learned VII Metropolitan Magistrate Court, George Town, Madras by his order dated 30.04.1996 in C.C.No.5585 of 1994.

For Appellant : Mr.Bijesh Thomas
for Mr.K.F.Manavalan

For Respondent : Mr.C.D.Johnson, Legal Aid counsel

Crl.R.C.No.147 of 1997

S.Suryanarayanan .. Petitioner

Vs.

1. M/s. Anchor Marine Service (Leather Division)
A Partnership Firm, rep,. by its
Partner Mrs.Omana Manavalan
Rep. by her Power Agent
T.N.Srinivasan
6, Century Plaza, 560-562, Mount Road,
Madras - 600 018.

2. M/s. Tejoomals Industries Ltd.,
Regd. Office at No.601,
Raheja Chambers, 212, Nariman Point,
Bombay - 400 021, Rep by its
Director Mr.Prakash H.Mehtani

3. Prakash H.Mehtani .. Respondents

Prayer:- Criminal Revision filed under Section 401 of the Code of Criminal Procedure against the Judgment passed by the learned IV Additional Sessions Judge, City Civil Court, Madras, dated 10.03.1997 made in C.A.No.62 of 1996, confirming the Judgment of conviction and sentence, dated 30.04.1996 of the learned VII Metropolitan Magistrate, George Town, Madras - 600 001 in C.C.No.5585 of 1994.

For Petitioner : Mr.M.Kempraj

For Respondents : Mr.Bijesh Thomas
for Mr.K.F.Manavalan for R1
Mr.C.D.Johnson,
Legal Aid counsel for R2 and R3

COMMON JUDGMENT

This Criminal Revision has been filed by the third accused as revision petitioner challenging the conviction and sentence passed against him in Crl.A.No.62 of 1996 on the file of the IV Additional Sessions Judge, Chennai, dated 10.03.1997.

2. Criminal Appeal in Crl.A.No.306 of 1997 has been filed by the complainant as appellant challenging the acquittal of the second accused Prakash H.Mehtani in the Judgment passed by the learned VII Metropolitan Magistrate in C.C.No.5585 of 1994, dated 30.04.1996.

3. In the cheque bounce case filed against the company, Director and the Regional Manager, the trial Court convicted the company and the Regional Manager, namely A1 and A3 and sentenced the first accused company to pay a fine of Rs.25,000/- and in default directed A3 to undergo 3 months SI. For third accused, awarded imprisonment of RI for 3 months and to pay a fine of Rs.15,000/-, in default to undergo one month S.I. The trial Court acquitted the second accused, the Director of the Company.

4. Against the acquittal of the second accused, Criminal Appeal has been filed before this Court. Against the conviction and sentence passed against A1 and A3 by the trial Court, appeal in C.A.No.62 of 1996 has been preferred before the IV Additional Sessions Judge, Chennai and the first appellate Court also

confirmed the conviction and sentence of A1 and A3. Hence, A3 has preferred Criminal Revision before this Court against his conviction and sentence.

5. The case of the prosecution is that on behalf of the first accused company, cheques for Rs.5,00,000/- and Rs.4,92,393/-, dated 05.06.1994 were issued to the complainant. The cheques were presented on 15.11.1994 before the Bank and the same were returned on 17.11.1994 as there was no sufficient fund in the account of the first accused. On the same date, notice was issued. Then within the prescribed period complaint was also lodged before the trial Court.

6. After questioning the accused, three witnesses were examined and 26 Exhibits marked on the side of the complainant. With respect to incriminating evidence, accused were questioned under Section 313 (1) (b) of Cr.P.C and they denied their complicity with the offence. The trial Court after analysing the evidence convicted A1 and A3 and acquitted A2 as aforesaid.

7. The only point that arises in this criminal revision as well as in criminal appeal is whether filing of the case on successive cause of action is permissible. The complainant having filed a complaint and after quashing of the same by this Court, he re-presented the same cheque and created fresh cause of action and on that cause of action the present case has been filed.

8. The learned counsel appearing for the revision petitioner brought to the notice of this Court, the Judgment of the Hon'ble Supreme Court in Uniplas India Ltd., v. State (Govt. of NCT of Delhi), reported in 2001 (3) CTC 309, wherein it has been held that if dishonour of cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque.

9. The learned counsel appearing for the first respondent in Criminal Revision argued that so long as cheque is valid and so long as it is dishonoured upon presentation to bank, holders right to prosecute drawer for default committed by drawer remains valid and exercisable by relying the Judgment of the Hon'ble Supreme Court in MSR Leathers v. S.Palaniappan, reported in (2013) 1 SCC 177. The Three Judges Bench of the Hon'ble Supreme Court overruling the decision in Sadanandan Bhadran's case [(1998) 6 SCC 514] has held as follows :

"33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the

entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time."

10. The ruling cited by the learned counsel appearing for the petitioner in Criminal Revision is based on Sadhanandan Bhadran's case and the same has been over ruled by the Hon'ble Supreme Court in MSR Leathers case (cited supra). Therefore, the subsequent re-presentation of the cheque to the Bank and filing of a case on such fresh cause of action is maintainable.

11. In this case on hand, the previous complaint filed by the complainant for dishonour of cheque without adding company as a party was quashed by this Court. After quashing of that complaint, the complainant re-presented the cheque again second time to the Bank and the same was also dishonoured. On such dishonour, the complainant issued notice and preferred the present complaint. The contention of the learned counsel appearing for the petitioner in the criminal revision is that the second cause of action for the dishonour of the same cheque is not maintainable. The earlier complaint was quashed on the technical ground that company was not added as a party. The cause of action in this case is entirely different from the cause of action of the earlier complaint. This cause of action is based on successive default in payment of the cheque on second presentation of the cheque within the time. Therefore, the contention of the learned counsel appearing for the revision petitioner as to the cause of action is not sustainable.

12. Following the above ruling of the Hon'ble Supreme Court in MSR Leather's case (cited supra), this Court holds that the conviction to the revision petitioner / accused for the default of the second dishonour of the cheque is sustainable.

13. Considering the date of offence and the amount involved, the sentence alone is modified and accordingly, the Revision Petitioner is directed to undergo Simple Imprisonment for

one month. There is no modification with respect to the fine amount imposed by the trial Court.

14. The trial Court has rightly acquitted A2 on the ground that he is impleaded only because he is the Director of the company. There is no evidence that he was incharge of and was responsible to the company for the conduct of the business at the time of committing the offence. Hence, no interference is required in the criminal appeal.

15. In the result, the Criminal Appeal is dismissed confirming the order, dated 30.04.1996 made in C.C.No.5585 of 1994 on the file of the VII Metropolitan Magistrate Court, George Town, Madras.

The Criminal Revision Petition is partly allowed confirming the conviction, dated 10.03.1997 made in C.A.No.62 of 1996 on the file of the IV Additional Sessions Judge, City Civil Court, Madras. However, the sentence alone is modified, whereas the Revision Petitioner is directed to undergo Simple Imprisonment for one month. There is no modification with respect to the fine amount imposed by the trial Court. The trial Court is directed to secure the the revision petitioner to undergo the period of sentence by issuing NBW.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The IV Additional Sessions Judge
City Civil Court, Madras.
2. The VII Metropolitan Magistrate
George Town, Madras - 600 001
3. The Public Prosecutor
High Court of Madras.

Cr1.A.No.306 of 1997
and
Cr1.R.C.No.147 of 1997

ks(co)

pnk 8/12/2017

<https://hcservices.ecourts.gov.in/hcservices/>