

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Cr1.R.C.No.1426 of 2011

M/s. India Leathers,
Rep. by its Proprietor,
Mr. T.Devadoss,
Ranipet,
Vellore District. Petitioner

Vs

M/s. Zaina Leathers,
Rep. by its Proprietor,
Mr.Sikkendar Assam,
Ambur,
Vellore District. Respondent

Prayer:- Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C., to set aside the judgment dated 12.08.2011 passed by the Additional District & Sessions Court cum Fast Track Court, Vellore in C.A.No.161 of 2008 convicting and reducing the sentence to 6 months R.I from 2 years R.I and ordering him to pay Rs.10,000/- fine and in default to undergo S.I for 3 months confirming in C.C.No.237 of 2007 on 30.10.2008 judgment passed by the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore for three months for the offence under Section 138 of the Negotiable Instruments Act.

For Petitioner : M/s.Kothai
For Respondent : M.Muruganantham for
M/s.V.Raghavachari.

ORDER

Aggrieved over the conviction and sentence to undergo six months rigorous imprisonment for the offence under Section 138 of the Negotiable Instruments Act and to pay a fine of Rs.10,000/- in default, to undergo three months simple imprisonment, the present revision is filed by the petitioner/accused.

2.The brief facts clearly stated in this revision is as follows:

The accused borrowed hide to the value of Rs.4,04,774/- from the complainant on 16.07.2005 and issued two cheques viz., Ex.P1 and P2 dated 07.03.2007 and 30.03.2007 for a sum of Rs.2,00,000/- & Rs.2,04,774/- respectively. When the above cheques were presented for encashment through State Bank of India, Walajahpet Branch on 14.07.2007, both the cheques were dishonoured for insufficient funds. The dishonoured memos are Ex.P3 and P4. Immediately after dishonour of cheques, the complainant issued a legal notice, Ex.P5 dated 14.07.2007. The same was received by the accused under Ex.P7, acknowledgment. The accused has also issued reply, Ex.P8. To prove the dishonoured cheques, P.W.2, the Assistant Manager of the State Bank of India, Walajahpet was also examined.

3.The accused examined as DW1. Ex.D1 marked. It is the main case of the accused that he used to purchase the hide from the complainant. During such business transaction, he used to give blank cheques for security. Exs.P1 and P2 were given in such business transaction as security and there is no consideration whatsoever. The Trial Court after analyzing the entire evidence and materials, found the accused guilty under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to two years imprisonment with a fine of Rs.10,000/-, as against which, the appeal was tried. The Appellate Court confirming the conviction modified the sentence to six years simple imprisonment and a fine of Rs.10,000/- with default sentence, as against which, the present Criminal Revision Petition is filed.

4.The learned counsel appearing for the revision petitioner submitted that the blank cheques were issued only as security during the business transaction. Thereafter, the cheques were not returned. Hence, there is no consideration whatsoever in the cheques. It is the contention of the learned counsel that the judgment of the Appellate Court is not based on the proper appreciation of the evidence.

5.The learned counsel for the respondent submitted that the revision petitioner has not brought out any materials to dislodge the legal presumption attached to the Exs.P1 & P2, Cheques. Hence, prayed for dismissal of the Criminal Revision.

6. This Court perused the materials placed on record and evidence. The issuance of Ex.P1 and P2 on the account maintained by the accused is not disputed seriously, except stating that he has given two blank cheques in a business transaction. The accused, in fact admitted the issuance of the

cheques in a business transaction and he has not even denied the purchase of the hide from the complainant for once. It is established that the cheques were issued in a business transaction for a specific sum and the same were also dishonoured for insufficient funds and the dishonoured cheques were also proved. It is for the accused to bring out the circumstances which are probable to dislodge the statutory presumption attached to cheques under Section 139 of the Negotiable Instruments Act.

7. Of course, there need not be any direct evidence to dislodge the legal presumption. In such circumstances, even by way of admission from the complainant can be taken advantage of by the accused to show that the cheques were not supported by any consideration.

8. On perusal of the entire materials, except stating that the cheques were given in blank as security in a business transaction, the purchase of hide for a value of Rs.4,04,774/- is not even denied seriously. Therefore, the contention of the revision petitioner that he paid the amount and allowed the complainant to keep the cheques and the complainant has delayed in returning the cheques on the ground of misplacement cannot be sustained. It is well settled that once the issuance of the cheques is established for valuable consideration, the statutory presumption available under Sections 118 & 139 of the Negotiable Instruments Act come into operation in favour of the complainant. Then, it is for the accused to bring out some probabilities to dislodge the legal presumption. As long as no materials whatsoever are brought on record to dislodge the legal presumption, the Court has no other option except to presume that the cheques were supported by valid consideration and the offence committed in view of the dishonour of cheques.

9. On perusal of the entire materials, this Court does not find any materials or circumstances to dislodge the legal presumption. So, this Court is of the view that the judgment of the lower Appellate Court does not require interference, as it does not suffer with any infirmity or illegality. Hence, the Criminal Revision Petition stands dismissed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Sessions Judge,
Vellore.
- 2.. The Additional District & Sessions Court
cum Fast Track Court,
Vellore
3. The Chief Judicial Magistrate,
Vellore.
4. The Additional District Munsif
cum Judicial Magistrate,
Ambur, Vellore

+1cc to M/S.S.Muthukrishnan, Advocate Sr. 41406

+1cc to M/S.V.Raghavachari, Advocate Sr. 41622

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NRI (CO)
VR(11/07/2017)



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