

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1208 of 2016
and
Crl.M.P.Nos.10862 and 10864 of 2016

1.M/s.C.T.Ramanathan Infrastructure Pvt. Ltd.,
Flat No.413. S.K.Enclave, 2nd Floor,
No.4, Nowraji Road, Chetpet,
Chennai.

2.Adaikkavalan ...Petitioners/Appellants/Accused's
vs.

M/s.Shri Aagarasen Steel Industries Pvt. Ltd.,
represented by the Director,
Bankaj Agarwal,
No.9, Chembudass Street,
Chennai. ...Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C.
against the judgment of learned VI Additional Sessions Judge,
City Civil Court, Chennai, passed in C.A.No.127 of 2015 on
10.08.2016 confirming the judgment of learned Judge, Fast Track
Court IV, George Town, Chennai, passed in C.C.No.378 of 2013 on
29.05.2015.

For Petitioners : Mr.M.Sathish Kumar

For Respondent : Mr.Rajendra Prasaad Tayal

O R D E R

This Court has reserved orders in this matter on
03.11.2016. Today, the matter is listed under the caption 'for
orders'.

2. This revision arises against two concurrent judgments of
Courts below convicting petitioners for offence u/s.138 of the
Negotiable Instruments Act and sentencing the first petitioner
to pay a sum of Rs.10,000/- as compensation to the complainant
and the second petitioner to undergo 2 years S.I. and to pay a
sum of Rs.57,36,976/- to the complainant towards compensation
i/d 6 months S.I.

3. Respondent/complainant moved a prosecution informing that cheques bearing Nos.000163 dated 10.07.2012 for Rs.26,83,246/- and 000164 dated 10.08.2012 for Rs.20,00,000/- drawn on Bank of Baroda, Mount Road Branch, Club House Road, Annasalai, Chennai, stood issued to him by petitioners towards payment for goods purchased on credit basis, which upon presentation were 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.

4. Before the trial Court, the complainant examined one witness and marked twelve exhibits. None were examined on behalf of the defence nor were any exhibits marked.

5. On appreciation of materials before it, the trial Court, under judgment in C.C.No.378 of 2013 dated 29.05.2015, convicted petitioners and sentenced the first petitioner to pay a sum of Rs.10,000/- as compensation to the complainant and the second petitioner to undergo 2 years S.I. and to pay a sum of Rs.57,36,976/- to the complainant toward compensation i/d 6 months S.I. The appeal preferred by petitioners in C.A.No.127 of 2015 on the file of learned VI Additional Session Judge, Chennai, came to be dismissed under judgment dated 10.08.2016. Hence, this revision.

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

7. Courts below have found that once the accused have admitted issuance of cheques and signatures thereon as also Exs.P3 and P4, towards discharge of liability, it could not be contended that there is no legally enforceable debt. The evidence of PW-2, Bank Manager of Bank of Baroda, clearly revealed that the accused have issued cheques with the knowledge that there was not sufficient balance in their account. Further, in the reply notice, the accused have admitted their liability and requested the complainant not to take any legal action. Once the issuance of cheques and signature thereon have been admitted by petitioners, then it is their duty to rebut the presumption against them, which they failed to do. Reasoning as above and for other reasons, the Courts below have rendered a finding of conviction. This Court finds no reason to interfere with the judgments under challenge.

8. Learned counsel for petitioners has impressed upon this Court the intent to settle the dues but the inability to do so owing to all accounts of first petitioner having been frozen pursuant to orders of Debts Recovery Tribunal I, Chennai, in O.A.No.131 of 2013. Learned counsel submits that petitioners/

accused would be in a position to effect payment of Rs.10,00,000/- by 31.01.2017 and given some more time, would honour their liability regards compensation in full.

9. Considering the submissions of learned counsel for petitioners, this Court, while confirming the finding of conviction arrived at by Courts below, modifies the sentence to one of compensation in a total sum of Rs.58,00,000/- payable as follows:

(i) sum of Rs.10,00,000/- (Rupees Ten Lakhs only) shall be paid to the credit of C.C.No.378 of 2013 on the file of Fast Track Court IV, George Town, Chennai, on or before 31.01.2017.

(ii) Balance sum of Rs.48,00,000/- (Rupees Forty Eight Lakhs) shall be paid to the credit of C.C.No.378 of 2013 on the file of Fast Track Court IV, George Town, Chennai, on or before 30.04.2017.

On failure to effect payment of compensation as herein above informed, the second petitioner shall undergo imprisonment for a period of two years. Respondent may, on due application, seek payment out of the sums deposited pursuant to this order.

The Criminal Revision Case shall stand disposed of with the above modification. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1.The VI Additional Judge,
City Civil Court,
Chennai.

2.The Judge,
Fast Track Court IV,
George Town,
Chennai.

+2cc to Mr.Rajendra Prasad, Advocate, S.R.No.556

+1cc to Mr.*, Advocate, S.R.No.538

GJ(CO)

RS(08/02/2017)

Cr1.R.C.No.1208 of 2016