

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2016

DELIVERED ON : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.R.C.Nos.1225 and 1226 of 2016

and

CrI.M.P.Nos.11067, 11068, 11070 and 11071 of 2016

Hemalatha Kalyanaraman

Proprietrix Kalyan Leathers,

No.52, Vada Agaram First Street,

Choolaimedu,

Chennai - 600 094.

.... Petitioner in both revisions

vs.

M/s.Meruri Tanners,

No.21, Palaniappan Street,

Periyar Nagar, Nagalkeni,

Chennai - 600 044.

represented by its Partner

M.Muralidharan

.... Respondent in both revisions

Criminal Revision Cases filed under Section 397 r/w 401 Cr.P.C. against the judgment of learned XVI Additional Sessions Judge, City Civil Court, Chennai, passed in C.A.Nos.36 and 37 of 2014 on 15.07.2016 confirming the judgment of learned Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai, passed in C.C.Nos.8904 and 8903 of 2004 on 24.01.2014.

Appearance (in both revisions)

For Petitioner

in both petitions : Mr.A.John Britto

For Respondents

in both petitions : Mr.M.Ayyadurai

C O M M O N O R D E R

As both cases have arisen out of business transactions and as admitted by respondent to the tune of Rs.70 lakhs between 26.12.2002 and 13.11.2003 and similar considerations arise in both, this Court proceeds to dispose of both revision by a common order.

2. These revisions arise against concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 1 year S.I. and to pay compensation of Rs.15,00,000/- to the complainant within 3 months i/d 3 months S.I. in C.C.No.8903 of 2004 and 1 year S. I. and to pay compensation of Rs.9,50,000/- to the complainant within 3 months i/d 3 months S.I. in C.C.No.8904 of 2004.

3. Respondent moved prosecution informing that he had supplied finished goods (leather) worth Rs.9,50,000/- and Rs.15,00,000/- to petitioner on credit basis and cheques bearing Nos.370983 dated 28.08.2003 for Rs.8,00,000/-, 373967 dated 25.11.2003 for Rs.7,00,000/-, 373972 dated 30.11.2003 for Rs.5,00,000/- and 373973 dated 01.12.2003 for Rs.4,50,000/- drawn on Syndicate Bank, Anna Salai Branch, Chennai, stood issued to him by petitioner towards repayment of borrowing, 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, complaints had been filed.

4. Details of witnesses examined and exhibits marked before the trial Court are as follows:

C.C.No.8903 of 2004				C.C.No.8904 of 2004			
No. of witnesses examined		No. of exhibits marked		No. of witnesses examined		No. of exhibits marked	
Complainant	Accused	Complainant	Accused	Complainant	Accused	Complainant	Accused
1	1	9	1	1	1	9	2

5. On appreciation of materials before it, trial Court, under judgments dated 24.01.2014, convicted petitioner and sentenced him to 1 year S.I. and to pay compensation of Rs.15,00,000/- to the complainant within 3 months i/d 3 months S.I. in C.C.No.8903 of 2004 and 1 year S. I. and to pay compensation of Rs.9,50,000/- to the complainant within 3 months i/d 3 months S.I. in C.C.No.8904 of 2004. There against, petitioner preferred C.A.Nos.36 and 37 of 2014 on the file of learned XVI Additional City Civil Judge, Chennai. Appellate Court, under judgments dated 15.07.2016, dismissed the appeals. There against, the present revisions have been filed.

6. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials on record.

7. Learned counsel for petitioner has contended that cheques and supporting documents related to one case have been marked in the other and vice versa. Towards setting right such error, the case numbers have suitably been altered. This submission is made on visible alterations of case numbers. This Court sees such alterations as nothing more than a mistake and is unable to accept the contention that the same were made post trial. Learned counsel for petitioner relied on judgment of the Andhra Pradesh High Court in Amit Desai and another v. Shine Enterprises and another [2000 (2) MWN (Cr.) DCC 82] towards contending that filing of case u/s.138 of the Negotiable Instruments Act must be seen as one for enforcing a civil liability and as such the bar u/s.69 of the Partnership Act against an unregistered firm filing a suit for recovery of dues in a sum of above Rs.100/- would apply. This Court is of the view that the decision relied on is erroneous. There is no bar to one filing a suit for recovery of dues under a cheque as also in preferring an action u/s.138 of the Negotiable Instruments Act. Section 138 of the Negotiable Instruments Act statutorily renders dishonour of cheque an offence subject to compliance with conditions imposed therein. That one convicted of such offence may be required to recompense the complainant is incidental and does not render the issue civil. The further contention of learned counsel for petitioner that the Partnership Deed bears a date prior to the date of purchase of stamp paper on which it is prepared is not of much consequence.

8. Conviction by Courts below is based on Section 139 of the Negotiable Instruments Act. This Court is of the view that onus wrongly has been placed on the petitioner/accused resulting in findings of conviction. This Court's reasons are as follows:

- (i) though transactions to the tune of Rs.70 lakhs is admitted, both reply notice (Ex.P7 in C.C.Nos.8903 and 8904 of 2004) do not make mention of the actual dues owed by petitioner. This by itself might not amount to much but would weigh with this Court in considering the totality of the circumstances.
- (ii) In reply to the statutory notice dated 04.02.2004, petitioner has caused a reply wherein petitioner has contended that 5500 of sheep nappa skins have been returned to the respondent. She has called for the value thereof to be taken into account and further information on the amount claimed. There has been no rejoinder caused by respondent. Ex.P2 in both cases are Statements of Account marked by respondent. Though invoice numbers have been provided in the Statement of Accounts, the particular invoices had not been marked before the trial Court. It is seen that payment to the tune of Rs.43,07,000/- is acknowledged but dates of receipt thereof are not informed. The Statements of Account marked as Ex.P2 in both cases can only be seen as self-serving statements. Though the trial Court has accepted the Statement of Accounts, there

is a specific finding of the appellate Court that the same cannot be accepted. Even so, the appellate Court makes an error of informing a finding of conviction on the basis thereof. In C.C.No.8904 of 2004, respondent/ complainant has admitted in cross that he has received back 576 skins. The Account Statements do not inform of any adjustment there towards. It is the contention of petitioner that in his reply notice it had been informed that about 5500 pieces of sheep nappa skins were defected. As stated supra, no rejoinder has been caused by respondent. A series of transactions between the parties is admitted. In the circumstances, the defence contention of a genuine dispute regards the dues has failed to receive consideration. The burden cast on the accused u/s.139 of the Negotiable Instruments Act is light. This Court is of the view that petitioner has discharged the same. Therefore, it is for the respondent/complainant to prove the debt. This, in our considered opinion and for the reasons above informed, respondent/complainant has failed to do.

For the aforesaid reasons, the Criminal Revision Cases shall stand allowed. The judgment of learned XVI Additional Sessions Judge, City Civil Court, Chennai, passed in C.A.Nos.36 and 37 of 2014 on 15.07.2016 confirming the judgment of learned Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai, passed in C.C.Nos.8904 and 8903 of 2004 on 24.01.2014, shall stand set aside. Petitioner is acquitted of all charges. Bail bonds, if any, executed by him shall stand cancelled. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The XVI Additional Sessions Judge,
City Civil Court,
Chennai.
 2. The Metropolitan Magistrate,
Fast Track Court I,
Egmore, Chennai.
- +2 Ccs to Mr.M,. Ayyadurai, sr 25620 & 25621

Cr1.R.C.Nos.1225 and 1226 of 2016

PA (CO)
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