

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1145 of 2013

1.M/s.Talent Knit Wear
by its Managing Partner,
Vasudevan,
No.25/8C, Elementary School Street,
Kumarananthapuram, Tiruppur.

2.Vasudevan,
Managing Partner,
M/s.Talent Knit Wear,
4//87, Subbarayagoundenpudur,
Ambarampalayam Post, Pollachi.

3.Ponnusamy,
Partner, M/s.Talent Knit Wear,
5/252, Vallalar Street,
Pichampalayampudur,
Thirunagar, Tiruppur.

.. Petitioners/Appellants

Vs

1.Subramaniam

2.State rep. by
Public Prosecutor,
Tiruppur.

.. Respondents

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. praying to set aside the order passed in Crl.A.No.30 of 2012 on the file of the Principal Sessions Court, Tiruppur, dated 12.08.2013 confirming the judgment in C.C.No.91 of 2004 on the file of the Judicial Magistrate, Palladam, dated 07.11.2012.

For Petitioners : Mr.D.Muthuselvam

For R1 : Mr.Malarvannan,
Legal Aid counsel

For R2 : Ms.P.Kritika kamal,
Government Advocate (Crl.Side)

O R D E R

For the sake of convenience, the parties will be referred to by their name. It is the case of Subramaniam (complainant) that he is running a mechanic workshop at Tirupur and that, Vasudevan (A2) and Ponnusamy (A3), the partners of M/s.Talent Knit Wear (A1) were his friends; on 09.01.2002, they borrowed Rs.1,00,000/- as hand loan for their urgent business needs, agreeing to repay the amount with interest at 24% p.a. within three months; however, they did not return the amount and when Subramaniam (complainant) started demanding repayment; on 29.10.2003, Vasudevan (A2) and Ponnusamy (A3) issued the impugned post-dated cheque dated 28.11.2003 (Ex.P1), drawn on Bharat Overseas Bank Limited, Tiruppur, for Rs.1,30,000/- in favour of the complainant; the impugned cheque was issued on the account maintained by M/s.Talent Knit Wear (A1), signed by Vasudevan (A2) and Ponnusamy (A3) in the capacity as partners; when the complainant wanted to present the impugned cheque on 28.11.2003, Vasudevan (A2) and Ponnusamy (A3) requested him to present it in the third week of December, 2003; the impugned cheque was presented for collection of 23.12.2003 through City Union bank, Palladam branch; however, on 24.12.2003, the impugned cheque was returned unpaid with the endorsement "account closed"; the complainant issued statutory notice dated 27.12.2003 to M/s.Talent Knit Wear (A1), Vasudevan (A2) and Ponnusamy (A3); the notice sent to M/s.Talent Knit Wear (A1) returned unserved; however, Vasudevan (A2) and Ponnusamy (A3) received the notice and sent a reply notice dated 21.01.2004 (Ex.P10), repudiating the debt. Hence, the complainant initiated prosecution in C.C.No.91 of 2004 before the learned Judicial Magistrate No.I, Palladam, under Section 138 of the Negotiable Instruments Act against M/s.Talent Knit Wear (A1), Vasudevan (A2) and Ponnusamy (A3). On summons, the accused appeared and they were questioned under Section 251 Cr.P.C. Since they denied the accusation, trial began with the examination of complainant as PW1. On behalf of the complainant, Ex.P1 to Ex.P10 were marked. The accused were questioned under Section 313 Cr.P.C and they denied the incriminating circumstances appearing against them. On behalf of the accused, one Balusamy (DW1), Manager of Bharat Overseas Bank, Tiruppur Branch was examined as DW1 and Ex.D1, Ex.D2 and Ex.D3 were marked. Vasudevan (A2) examined himself as DW2 and marked Ex.D4 and Ex.D5. After considering the evidence on record and hearing either side, the trial court, by judgment dated 07.11.2012, convicted A1 to A3 and sentenced A2 and A3 to undergo six months Rigorous Imprisonment and pay fine of Rs.1,000/- each, in default to undergo two weeks Rigorous Imprisonment. No separate sentence of fine has been imposed on M/s.Talent Knit Wear (A1). Challenging the conviction and sentence, A1 to A3 preferred Crl.A.No.30 of 2012 before the Court of Session, Tiruppur, and the same was dismissed on 12.08.2013, aggrieved by which, this revision petition has been filed.

2.Though notice was sent to the respondent/complainant, he had not entered appearance. Hence, this Court appointed Mr.Malarvannan (Enrolment No.1347/1996), an Advocate of more than ten years standing at the Bar on the criminal side to represent the case of the respondent/ complainant.

3.Heard Mr.Muthuselvam, learned counsel for the appellants/ accused and Mr.Malarvannan, learned counsel for the respondent/complainant.

4.Mr.Muthuselvam, learned counsel for the appellant/accused made the following submissions:

a)Vasudevan (A2) and Ponnusamy (A3) had retired from the partnership of A1 firm, as early as 01.08.2001 and this fact was informed to the complainant in the reply notice dated 21.01.2004 (Ex.P10). The Original Partnership Deed dated 09.09.1998 and the Retirement Deed dated 01.08.2001 were marked as Ex.D4 and Ex.D5;

b)Even in the evidence of Balusamy (DW1), the Manager of Bharat Overseas Bank, he has stated that the Bank was informed by M/s.Talent Knit Wear (A1) about the resignation and reconstitution of the partnership, vide letter dated 09.08.2001 (Ex.D1);

c)In accordance with the law laid down by the Supreme Court in Rangappa Vs Sri Mohan [2010 (4) CTC 118], the accused have discharged the burden under Section 139 of the Negotiable Instruments Act, by adducing positive evidence to the effect that Vasudevan (A2) and Ponnusamy (A3) had retired from the partnership of A1 firm on 01.08.2001 and therefore, their conviction and sentence by the trial Court and the first appellate Court deserves to be set aside.

5.Per contra, Mr.Malarvannan, learned counsel for the complainant, refuted the contentions.

6.This Court gave its anxious consideration to the rival submissions.

7.While exercising revision powers under Section 397 Cr.P.C, this Court should refrain from re-appreciating the evidence, unless it is shown that the appreciation of evidence by the trial Court and the appellate Court have been perverse. As contended by Mr.Muthuselvam, learned counsel for the appellant, it would suffice, if the accused discharges the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability. In this case, the accused have not denied the signatures in the impugned cheque (Ex.P1). In the reply notice dated 21.01.2004 (Ex.P10), Vasudevan (A2) and Ponnusamy (A3) took the defence that they were partners in M/s.Talent Knit Wear (A1) in the year 2000 and in that capacity, they had borrowed Rs.30,000/- on 29.04.2000 from

M/s.A.S. Finance run by the complainant; at that time, the complainant had taken the impugned cheque as security; the loan of Rs.30,000/- was repaid with interest on 10.04.2001, for which, they have separate receipts; when they requested the complainant to return the impugned cheque, he pleaded that he had misplaced it and has thereafter, initiated the present prosecution, by alleging that a sum of Rs.1,00,000/- was taken as hand loan on 09.01.2002, towards which, the impugned cheque was issued.

8.Mr.Muthuselvam, learned counsel further contended that the bank was informed as early as 09.08.2001, about the retirement of A2 and A3 from A1 firm, as could be seen from the evidence of the Branch manager, Mr.Balusamy (DW1) and Ex.D1. Though at the first blush, this submission of his, did sound appealing, yet on a close scrutiny of evidence on record, the fallacy in it surfaced. On a perusal of the Deed of Partnership dated 09.09.1998 (Ex.D4), it is seen that the following five persons were shown as partners in M/s.Talent Knit Wear (A1), namely, 1.Eswaramoorthy, 2.Sakthi Ganesh, 3.Rangaraj 4.Ponnusamy (A3) and 5.Vasudevan (A2). However, in the Partnership Retirement Deed dated 01.08.2001 (Ex.D5), the name of the following persons have been shown as retiring partners, namely, 1.Sakthi Ganesh, 2.Ponnusamy (A3), 3.Vasudevan (A2) and 4.G.Manian leaving Eswaramoorthy to run the partnership firm thereafter, whereas, in the Partnership Deed (Ex.D4), the name of one Rangaraj is there and the name of Manian is not there. Similarly, in the Retirement Deed (Ex.D5), the name of Manian is there and the name of the Rangaraj is not there. There is absolutely no explanation. These deeds were not registered documents. Of course, these deeds are not compulsorily registrable. But it was the accused, who produced these documents in his examination as DW1, but has not explained this discrepancy. In the cross-examination by the complainant, it was specially asked to the accused (DW2), as to whether the customers and creditors of M/s.Talent Knit Wear (A1) were informed about the reconstitution, either individually or by public notice in any newspaper, for which, the accused replied in the negative. In the cross-examination, he was further asked, as to whether he surrendered all the cheques, when the current account No.11520 maintained with the Bharat Overseas Bank, of which, the impugned cheque was issued, was closed, he stated that he surrendered all the cheques, except the impugned cheque. He was further asked in the cross-examination, as to whether he had sent any notice to the complainant about closure of the bank account and demanded the return of the cheque, for which, he has replied in the negative. In the reply notice dated 21.01.2004 (Ex.P10), the accused had taken a defence that Rs.30,000/- was borrowed from M/s.A.S. Finance, that was run by the complainant and that, the amount was returned in installments, for which, they have receipts. The accused has not chosen to file a single receipt in support of this

assertion. The accused has also not produced any material to show that the complainant was running M/s.A.S. Finance.

9.On the contrary, it is the specific case of the complainant that he is having a machine workshop in Tiruppur road, and that, Vasudevan (A2) and Ponnusamy (A3) were known to him personally and so he gave them the hand loan of Rs.1,00,000/- on 09.01.2002. Thus, there is no material on record to show that the complainant was running a finance company as alleged by the accused, nor has any material been produced to show that the accused had taken the loan of Rs.30,000/- from the complainant on 29.04.2000 and had returned the same on 10.04.2001. The discrepancies referred to in the Partnership Deed (Ex.D4) and the Retirement Deed (Ex.D5), coupled with the answers given by the accused in the cross-examination, had weighed with the trial Court and the appellate Court, to reject the theory of retirement from the partnership as projected by the accused.

10.This Court does not find any infirmity in the appreciation of evidence by the trial Court and the appellate Court, warranting interference.

11.In the result, this revision petition is dismissed. The bail bonds are cancelled and the appellants, namely, Vasudevan (A2) and Ponnusamy (A3) are directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order, failing which, the trial Court is directed to issue warrant for securing them.

Registry is directed to send the trial Court records to the Judicial Magistrate, Palladam, immediately.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.Principal Sessions Judge, Tiruppur.
 - 2.Judicial Magistrate, Palladam.
 - 3.The Public Prosecutor, High Court, Madras.
 - 4.The Chief Judicial Magistrate Tiruppur(for information)
 - 5.The Public Prosecutor, Tiruppur.
 6. The Section Officer, Criminal Section, High Court, Madras.
- + 1 cc to M/s. S. Gunalan, Advocate Sr.78731
+ 1 cc to M/s. C.R. Malarvannan, Advocate Sr.78861

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