

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

Coram

THE HONOURABLE MR. JUSTICE RMT. TEEKA RAMAN

CRL. R.C.No.285 of 2008

M/s.T.V.M.Chitfunds (P) Ltd.,
rep. by its Director T.V.Mylsamy,
18, Thirumalaisamy Street,
Lakshmi Nagar,
Kavundampalayam,
Coimbatore-30. Petitioner/Complainant

Vs.

1. M/s.Veerappa Building Materials (P) Ltd.,
Rep. by its Managing Director C.Krishnamurthi,
2. C.Krishnamurthi,
Managing Director,
M/s.Veerappa Building Materials (P) Ltd.,

all having office at 1034, Mettur Road,
Erode-2.

.... Respondent/Accused Nos.1 to 2

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure, praying to call for the records and enhance the conviction and sentence passed by the Learned Judicial Magistrate No.1, Coimbatore in C.C.No.832 of 2004 dated 13.12.2007 and allow the Criminal Revision by awarding the compensation as per Section 357(3) of Cr.P.C.

For Petitioner : Mr.S.N.Thangaraj
for Mr.N.Damodharan

For Respondent : No appearance

ORDER

This Criminal Revision case has been filed against the order passed by the learned Judicial Magistrate No.1, Coimbatore in C.C.No.832 of 2004 dated 13.12.2007 .

2. The learned counsel for the petitioner has submitted that the first respondent is a Private Limited Company; the second respondent is the Managing Director and the third respondent is one of the Directors and the second respondent, on behalf of the first respondent-Company, borrowed Rs.35,00,000/- (Rupees Thirty Five Lakhs only) on 08.01.2003, agreeing to repay the principal amount along with interest at the rate of 18% and executed a Promissory Note. Thereupon, towards the part payment of the principal amount, they have issued 9 cheques each for a sum of Rs.78,750/- and the cheques were presented on 06.05.2004 and the same were returned as 'insufficient funds' on 07.05.2004.

3. Accordingly, the statutory notice was sent on 17.05.2004 and the same was received by A1 and A2 on 19.05.2004 and A3 is the one of the Directors of the Private Company received on 20.05.2004 and these documents have been placed before the Court to apprise the fact that for legally enforceable debt, the cheques have been issued and the same had been returned for 'insufficient funds'.

4. As against A3, since one of the Directors have filed Exs.D1 and D2 stating that on the date of issuance of cheques, he was no longer a Director of the Company. The trial Court has accepted the plea of the third accused and exonerated him from the charge and convicted A1 and A2 and sentenced each of them to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. Aggrieved by the said judgment of the trial Court, the Revision Petitioner/complainant has filed this Criminal Revision for enhancement of the conviction and sentence.

5. The learned counsel for the respondents is absent. Though sufficient time has been granted, he is not present today.

6. The learned counsel for the petitioner reiterated what is stated above and also relied upon the decision of the Supreme Court reported in (2011) 14 Supreme Court Cases 600 (Anil Sachar and another vs.Shree Nath Spinners Private Limited and Others) and (2014) 16 SCC 32 (S.R.Sunil and Company Vs.D.Srinivasavaradan).

7. In both the above cited decisions, the Apex Court has taken the view that lenient punishment for the offence under Section 138 of the Negotiable Instruments Act and awarding a meagre amount as a fine, are deprecated and fine amount should be by way of compensation.

8. Taking into consideration the facts and circumstances of the case and also the law laid down by the Apex Court in the above referred decisions, taking into account that the conviction has already been laid by the trial Court which was not challenged by the respondents herein, I am confining myself to the quantum of the sentence on appreciation of the evidence and also the records before me, and hence, I am of the considered view that the sentence awarded by the trial Court is lenient and not in commensurate with the alleged offence that is proved beyond reasonable doubt.

9. Accordingly, while confirming the conviction imposed against A1 and A2, the sentence of fine imposed by the trial Court is hereby modified to that of payment of the cheque amount of Rs.7,08,750/- (Rupees seven lakhs eight thousand seven hundred and fifty only) as compensation, to be paid to the revision petitioner/complainant by the respondent No. 2, and in default in payment of the said compensation, A2 shall undergo three months simple imprisonment. This Criminal Revision is disposed of accordingly.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1, Coimbatore

2.do Thro The Chief Judicial Magistrate,
Coimbatore.

+lcc to Mr.N.Damodharan, Advocate sr.no.56711

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nr 11/09/2018