

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 20.06.2018]

[Pronounced on : 03.08.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.676 of 2013

D.Shree Balaji ... Petitioner/Accused

.. Vs ..

S.P.K.Mohamed Batcha,
Proprietor, Soofia Leather Industries,
No.1 Tannaery Street, B.P.Agraharam,
Erode-5 Rep. by his
Power Agent M.Hussain Ali
S/o. S.P.K. Mohamed Batcha Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., against the order dated 04.01.2013 passed by the learned 2nd Additional Sessions Judge, Erode, in C.A.No.55 of 2012, confirming the conviction imposed in judgment dated 28.01.2012 made in C.C.No.241 of 2010 on the file of the learned Judicial Magistrate No.I, Erode, sentencing the accused to undergo simple imprisonment for one year and to pay compensation of Rs.5000/- and in default to undergo one month simple imprisonment.

For Petitioner : Mr.R.Thirumoorthy
For Respondent : Mr.M.Guruprasad

सत्यमेव जयते

ORDER

This Criminal Revision Case is filed against the order dated 04.01.2013 passed by the learned 2nd Additional Sessions Judge, Erode, in C.A.No.55 of 2012, confirming the conviction imposed by the learned Judicial Magistrate No.I, Erode, in C.C.No.241 of 2010, dated 28.01.2012.

2. The case of the respondent herein/complainant is that on 28.03.2009, the revision petitioner herein/accused has purchased hides of cows from the complainant's industries for a sum of Rs.1,64,268/- on loan basis under Invoice No.25 and towards the said loan amount, the accused has given a cheque dated 28.05.2009, for a sum of Rs.1,64,268/-. When the said cheque was presented by the complainant in the bank, the same was returned with an endorsement "Exceed Arrangement".

Therefore, the complainant had sent a statutory notice to the accused, who after receiving the notice, sent a reply with false statements and he had not paid the cheque amount. Therefore, the respondent herein had filed a private complaint against the petitioner/accused for an offence under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate No.I, Erode.

3. The learned Judicial Magistrate No.I, Erode, has taken cognizance of the offence in C.C.No.241 of 2010 after following the procedure.

4. Before the trial Court, on the side of the complainant, one witness was examined as P.W.1 and Exs.P.1 to P.7 were marked. The accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances and he denied his complicity. The accused had examined one witness as D.W.1 and on his side, no document was marked.

5. The trial Court, after considering the oral and documentary evidence adduced on both sides, convicted the revision petitioner herein/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one month and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month. As against the said conviction and sentence passed by the trial Court, the accused had preferred an appeal in CrI.A.No.55 of 2012 and the learned II Additional District and Sessions Judge, Erode, had dismissed the said criminal appeal by confirming the judgment passed by the learned Judicial Magistrate No.I, Erode. Aggrieved against the same, the accused has preferred this Criminal Revision case before this Court.

6. Learned counsel appearing for the revision petitioner/accused would submit that since the petition has been instituted by the Power of Attorney, the alleged transaction between the Proprietor and the accused is not known to the Power of Attorney and the trial Court ought to have seen that the cheque was returned on the ground of exceeding arrangement and hence, the trial Court ought not to have convicted the revision petitioner herein.

7. Per contra, the learned counsel appearing for the respondent would submit that in the reply notice-Ex.P.7, the revision petitioner has admitted his liability under the cheque and only sought for three months time to repay the cheque amount and as such, the concurrent findings given by both the Courts below do not warrant any interference by this Court.

8. After hearing both the parties and after perusing the documents Exs.P.1 to P.7 and also the evidence of D.W.1-Govindaraj, Manager of Bharath State Bank, this Court finds

that the revision petitioner has admitted the issuance of cheque and also admitted his signature in the cheque and further, the cheque in question was bounced on the ground of exceeding arrangement as could be seen from Ex.P.4 and as contended by the learned counsel appearing for the respondent/complainant, under Ex.P.7, the petitioner herein has admitted his liability in the sense that there is a pre-existing legally enforceable debt and as such, he has no defence to raise. Both the Courts below have concurrently held that in view of the document Ex.P.7-Reply Notice, wherein, the revision petitioner herein/accused has admitted his liability, issuance of cheque and signature in the cheque and accordingly, this Court holds that there is no irregularity or illegality in the order passed by the trial Court in convicting the revision petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act and as confirmed by the Lower Appellate Court.

9. In this view of the matter, the Criminal Revision Case is liable to be dismissed and accordingly, the same is dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Second Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate No.I, Erode.
3. The Section Officer
Crl.Section, Record, High Court, Madras(2 copies)

+1cc to Mr.M.Guruprasad, Advocate SR.NO.538797

BR(CO)
sm:14.8.2018

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Order
in
Crl.R.C.No.676 of 2013