

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 06.07.2018
Orders Pronounced on: 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.RC.No.974 of 2017

and

Crl.MP.Nos.9112, 13767 & 13678 of 2017

M/s Devadass Reddy Property,
Developers & Builders Pvt., Ltd.,
Rep.by R.Devadass Reddy,
Old No.185, New No.435, T.H.Road,
Kaladipet, Chennai - 600 019.

... Petitioner

Versus

M/s Deepti Integrated Logistics Pvt., Ltd.,
Rep.by Srinivasa rao,
No.626/501, Ground Floor,
JVL Plaza, Teynampet,
Chennai - 600 018.

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C, to call for the records and set aside the judgment dated 27.06.2017 made in Crl.A.No.153 of 2016 on the file of Learned XV Additional Sessions Judge, Chennai by confirming the judgment and conviction passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai in C.C.No.8607 of 2007, dated 28.04.2016.

For Petitioner : Mr.G.Ravikumar
For Respondent : Mr.V.Karthik, Senior Counsel,
for Mr.Anirudh Krishnan

O R D E R

This Criminal revision case has filed by the petitioner seeking to set aside the judgment dated 27.06.2017 passed by the Learned XV Additional Sessions Judge, Chennai, in Crl.A.No.153 of 2016 confirming the judgment of conviction and sentence

passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai in C.C.No.8607 of 2007, dated 28.04.2016.

2. The convicted first accused company is the revision petitioner herein. The respondent-M/s.Deepti Integrated Logistics Pvt., Ltd., is the complainant on the file of the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai in C.C.No.8607 of 2007. After trial, the trial court found both the first accused company as well as it's director, the second accused guilty of the offence under Section 138 of The Negotiable Instruments Act and convicted the first accused to pay the cheque amount as compensation and the second accused was sentenced to undergo simple imprisonment for a period of six months. Aggrieved by the same, the accused filed an appeal in CrI.A.No.153 of 2016 on the file of Learned XV Additional Sessions Judge, Chennai and the same was dismissed. As against the aforesaid orders of the courts below, the present Criminal Revision Case is filed.

3. The learned counsel appearing for the revision petitioner would submit that M/s.Deepti Integrated Logistics Pvt., Ltd., represented by Srinivasa Rao filed the private complaint on 12.11.2007 before the Learned XVII Metropolitan Magistrate, Saidapet, Chennai - 600 015 against the revision petitioner herein for an offence under Section 138 of the Negotiable Instruments Act. The case was numbered as C.C.No.8607 of 2007 and subsequently, trial was concluded on 28.04.2016 before the learned Metropolitan Magistrate, Fast Tract Court, Chennai.

4. The learned counsel for the revision petitioner / Accused would contend that the trial Court passed the Judgment of conviction on 28.04.2016 on which date, the complainant company was not at all existing and it was amalgamated with the company called M/s Emgee Infrastructure Holdings (India) Private Limited as per the orders of the Honourable High Court of Judicature, Andhra Pradesh passed on 24.12.2010. Thus, as on the date of Judgment on 28.04.2016, the complainant company was not existing at all. The Appellate Court also, without regard to the above, has confirmed the Judgment of conviction passed by the trial court. By reason of the amalgamation of the complainant company with M/s. Emgee Infrastructure Holdings (India) Private Limited, the complainant company, which was non-existing at that time, is not entitled to initiate criminal proceedings against the accused company and as such, the judgment of conviction passed by both the courts below cannot be sustained.

5. Per contra Mr.V.Karthik, learned Senior counsel appearing on behalf of the respondent herein would contend that

they have filed CrI.MP.No.13768 of 2017, to amend the cause title in the revision petition in CrI.RC.No.974 of 2017 on the ground that the original private complainant before the Judicial Magistrate by name M/s.Deepti Integrated Logistics Pvt., Ltd., has subsequently amalgamated with the company called Emgee Infrastructure Holdings (India) Private Limited and therefore, the amendment is necessary.

6. A counter affidavit has been filed by the accused company opposing the amendment of the cause title on the ground that after the judgment of conviction passed by the trial court, which was affirmed by the Appellate Court, the amendment is not warranted. Such a petition ought to have been filed before the trial court and at this stage, the amendment as sought for has to be rejected.

7. After hearing both parties at length and after taking note of various grounds raised in the memorandum of appeal, this Court finds:

(i) During the trial proceedings the complainant M/s.Deepti Integrated Logistics Pvt., Ltd., examined one witness and marked Exhibits P1 to P13 on their side. The accused have examined two defense witnesses and marked exhibits D1 to D20 to dislodge the presumption arose under Section 139 of Negotiable Instruments Act. The representative (PW1) of complainant M/s.Deepti Integrated Logistics Pvt., Ltd., filed a proof affidavit before the trial court on 23.03.2008 and thereafter the cross examination of PW1 commenced on 03.08.2010 and concluded on 11.06.2012 in the trial court and the examination of 1st defense witness (DW1) commenced on 06.07.2012 and concluded on 27.07.2012.

(ii) The examination of 2nd defense witness (DW2) commenced on 30.12.2015 and concluded on the same date. Thereafter, the trial court heard the arguments of complainant and the accused and pronounced judgment on 28.04.2016 and found the accused 1 and 2 guilty of the offence complained of.

(iii) During the course of entire trial proceedings, the complainant company M/s.Deepti Integrated Logistics Pvt., Ltd., was represented by its representative Srinivasa Roa from 12.11.2007 to 28.04.2016 till the pronouncement of judgment by the trial court.

(iv) Aggrieved by the conviction and sentence passed by the trial court, the accused company preferred an appeal on 24.05.2016 before the learned Principle Session Judge in C.A.No.153 of 2016 and the same was made over to Learned XV Additional Sessions Judge. The appellate Judge, after hearing both sides, dismissed the appeal on 27.06.2017.

(v) Aggrieved by the conviction and sentence of both the courts below, the accused company filed the present Criminal Revision Petition on 18.07.2017 before this Court and the same was numbered as Crl.RC.No.974 of 2017 along with stay application in Crl.MP.No.9112 of 2017. This Court granted stay and the Revision was pending. During the pendency of the Criminal Revision Case, on 05.10.2017, M/s.Emgee Infrastructure Holdings (India) Pvt., Ltd., has filed a petition to amend the cause title of M/s.Deepti Integrated Logistics Pvt., Ltd., as reflected in the judgment of the trial court as well as appellate court on the ground that by the Order dated 24.12.2010 passed in Company Application No.1466 of 2010 in Company Petition No. 80 of 2010, on the file of the Honourable High Court of Andhra Pradesh at Hyderabad, As per the order dated 24.12.2010, the accused company herein namely Deepti Integrated Logistics Private Limited was ordered to be amalgamated with the company called Emgee Infrastructure Holdings (India) Private Limited.

8. It appears that as per the order dated 24.12.2010 passed in Company Application No. 1466 of 2010 in Company Petition No. 80 of 2010, on the file of the Honourable High Court of Andhra Pradesh at Hyderabad the complainant company herein namely Deepti Integrated Logistics Private Limited has been amalgamated with the company called Emgee Infrastructure Holdings (India) Private Limited. At the time when the order dated 24.12.2010 was passed, the complaint filed by the complainant company was pending trial. Therefore, at the stage of Criminal Revision Case before this Court, such an amendment cannot be permitted.

9. The complainant company has filed C.C.No.8607 of 2007 for alleged offence under Section 138 of Negotiable Instruments Act. In connection with the dishonour of cheque said to have been issued by M/s.Devadass Reddy Property Developers & Builders Pvt., Ltd., namely the accused company and which was returned on the ground of insufficient funds. At this juncture, it remains to be stated that the trial in the above said C.C.No.8607 of 2007 had commenced on 23.03.2008. While the defence examined the defence witness was on 06.07.2012. However, much prior to the examination of defence witness, by virtue of the order dated 24.12.2010 passed in Company Application No. 1466 of 2010 in Company Petition No. 80 of 2010, on the file of the Honourable High Court of Andhra Pradesh at Hyderabad the complainant company got amalgamated with the company called Emgee Infrastructure Holdings (India) Private Limited. Therefore, even during the course of the trial in the Criminal Case, the complainant company was non-exist in the eye of law and it has no right to continue as the accused company.

10. Furthermore, it is seen that the complainant was instituted as against a two accused namely M/s.Devadass Reddy Property Developers & Builders Pvt., Ltd. represented by Mr. R. Devadass Reddy and its Managing Director as second accused. In other words, the complaint was instituted as against the company and Managing Director as accused. However, the trial Magistrate, without any application of mind, has passed the Judgment dated 28.04.2016 passed in C.C. No. 8607 of 2017 by which conviction was passed as against one accused. There is no mention about the second accused in the cause title of the Judgment. This only expose an non-application of mind on the part of the trial Magistrate. Further, the Judgment of conviction and sentence passed by the trial Magistrate was also confirmed by the Appellate Court without properly appreciating the array of parties in the complaint. Thus, both the trial Magistrate as well as the Appellate Judge has overlooked the array of parties in the complaint while passing the respective Judgment.

11. Both the learned counsels for the petitioner as well as respondent also pointed out that during the course of trial, the fact that the complaint was instituted as against two accused was not brought to the notice of the Appellate Court.

12. On a perusal of the order dated 28.04.2016 passed in C.C.No.8607 of 2007 it is seen that the trial Judge proceeded as if there is only one accused in the case. However, in the operative portion the Judicial Magistrate has chosen to convict the accused 1 and 2 for the offence under Section 138 of Negotiable Instruments Act and awarded varied sentence to both the accused. The appellate Judge has also overlooked this fact which could be evident from paragraph No.2 of the judgment which makes reference as if the "first accused company represented by its Director Mr. R. Devadass Reddy, the second accused herein....." It remains to be stated that two accused against whom the complaint was filed is the company and the Managing Director and even in the appeal, A1 alone has preferred the Criminal Appeal No.153 of 2016. Both the courts below, without noticing the above aspects, has mechanically passed the Judgment of conviction as if there is only one accused against whom the complaint was filed as could be seen from the cause title of the Judgment. This is nothing short of dereliction of duty in pronouncing Judgment in a judicial proceeding for which necessary action has to be initiated on the administrative side.

13. It appears that both the trial Judge as well as the Appellate Judge has committed an error in pronouncing the Judgment as against one accused whereas there was two accused arrayed in the complaint filed by the complainant.

14. I am saddened to note that even the Additional Session Judge, while dealing with the Criminal Appeal, did not notice the error committed by the trial Judge and he affirmed the Judgment of conviction passed by the trial Judge, as it is. In this connection, it has to be stated under the Code of Criminal Procedure that certain procedures have been prescribed and they have to be followed while imposing sentence of imprisonment by the Metropolitan Magistrate Court or Criminal Court to any person. In the instance case, while the second accused was not shown in the Judgment it is not known as to how the second accused could be imposed with a sentence of six months by the Trial Magistrate. Even prior to the quantum of sentence passed both the Trial Court and the Lower Appellate Court they have proceeded as if there is only one accused. Yet another issue is that, the Appellate Court had treated the appeal as if one year sentence was awarded by the Trial Magistrate, while it is only six months and furthermore, here confirmed the sentence for one year, which is bad in law. In any event, the manner in which the trial Judge as well as the Appellate Judge has pronounced the Judgment of Conviction has to be deprecated.

15. In the result criminal revision No. 974 of 2017 is allowed:

1. The conviction and sentence passed in the Judgment dated 27.06.2017 made in CrI.A.No.153 of 2016 on the file of the learned XV Additional Sessions Judge, Chennai confirming the Judgment dated 28.04.2016 in C.C. No. 8607 of 2007 on the file of the Metropolitan Magistrate, Fast Track Court No.III, Saidapet are set aside. Consequently, connected miscellaneous petitions are closed.
2. The case is remitted back to the file of Metropolitan Magistrate, Fast Track Court No.III, Saidapet for fresh consideration. Liberty is granted to the private complainant to file appropriate application for amending the cause title, if he so advised and such application, if any filed, would be dealt with and disposed of in accordance with law.

3. Registry is directed to send the copy of the order and back papers to the trial Court within a period of four weeks and the trial Court is directed to dispose of the case in C.C.No.8607 of 2007 within a period of 12 weeks from the date of receipt of a copy of this order. However fresh evidence by both sides need not be allowed to let in.

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Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Metropolitan Magistrate,
Fast Track Court-III,
Saidapet, Chennai

2.The XV Additional Sessions Judge,
Chennai.

Copy to

1.The Section Officer,
Criminal Section,
High Court,Madras-104

2.The Section Officer,
B Section,
High Court Madras-104

+1cc to Mr.Anirudh Krishnan, Advocate, S.R.No.71416

+2cc to Mr.G.Ravikumar, Advocate, S.R.No.71525

SV(CO)
GSP(16/10/2018)

Cr1.RC.No.974 of 2017