

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.R.C.No.220 of 2011

S.B.Shabir Ahmed

.. Petitioner

Vs.

Central Bank of India
Hosur Branch
Rep. By its Senior Manager
Mr.Balaji
19-A, M.G.Road
P.B.No.27
Hosur - 635 109

.. Respondent

Criminal Revision Petition filed under Section 397 r/w. 401 Cr.P.C to set aside the Judgment dated 28.01.2011 of the learned Additional Sessions Judge, Hosur in C.A.No.15 of 2007 against the judgment dated 23.01.2007 of the learned Judicial Magistrate No.II, Hosur in S.T.C.No.660 of 2006.

For Petitioner : Mr.A.Nagarajan
For Respondent : Mr.Rajasekar

O R D E R

This Criminal Revision Petition has been preferred challenging the judgment dated 28.01.2011 passed by the Additional Sessions Judge, Hosur in C.A.No.15 of 2007 confirming the order of conviction and sentence dated 23.01.2007 passed by the Judicial Magistrate No.II, Hosur in S.T.C.No.660 of 2006.

2. For the sake of convenience, the parties will be referred to as the complainant and the accused.

3. The complainant is a nationalized bank with whom the accused had opened a Current Deposit Account on 08.11.2005 and was transacting business via the said account. The accused presented two outstation cheques for Rs.4,15,000/- and Rs.3,85,000/-, which were purchased by the complainant bank at the request of the accused and the amounts were credited into the said account of the accused. However, those two outstation

cheques were dishonoured and therefore, the complainant bank was demanding payment from the accused.

4. The accused deposited a cheque for Rs.1,25,650/- (Rupees One Lakh Twenty Five Thousand Six Hundred and Fifty) drawn on an account in the name of Shabika Surgical Garments and Men's Wear, with State Bank of India into his account with the complainant bank on 02.02.2006. The said cheque was dishonoured. Therefore, the complainant bank initiated a prosecution in S.T.C.No.660 of 2006 in the court of Judicial Magistrate II, Hosur under Section 138 of the Negotiable Instruments Act, 1881 against the accused in which the accused was convicted on 23.01.2007 and sentenced to undergo one year simple imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment. The appeal in C.A.No.15 of 2007 that was preferred by the accused was dismissed by the Additional Sessions Court, Krishnagiri on 28.01.2011. Challenging the concurrent findings of the two courts below, the accused has filed the present revision petition under Section 397 r/w.401 Cr.P.C.

5. Heard the learned counsel for the accused and the learned counsel for the complainant bank.

6. The learned counsel for the accused submitted that the impugned cheque was drawn on the account maintained by Shabika Surgical Garments and Men's Wear, a partnership firm in which the accused was a partner and that the failure of the complainant to array Shabika Surgical Garments and Men's Wear as an accused is fatal in view of the judgment of the Hon'ble Supreme Court in Aneeta Hada Vs. Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661. The learned counsel placed strong reliance on paragraph 59 of the said judgment, which reads as follows:

"59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V.Parekh, which is a three judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Halda is overruled with the qualifier as stated in Para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

7. The learned counsel for the complainant bank refuted the contention and stated that the said judgment will apply only prospectively and will not apply to the case at hand, which was initiated in the year 2006. In the opinion of this Court, in the absence of the Supreme Court stating that the ratio laid down by them is prospective, a ruling, has to be applied in all its fours. A bare perusal of the impugned cheque (Ex.P1) shows that it has been drawn on an account maintained by Shabika Surgical Garments and Men's Wear; the accused has signed as a partner of the said firm; the cheque has not been drawn in the name of the complainant, but in the name of the accused himself; the cheque has been drawn on an account maintained by Shabika Surgical Garments and Men's Wear with State Bank of India Chennai; the said cheque has been deposited by the accused into his Current Deposit account with the complainant bank; the complainant bank has considered itself as a "holder in due course" and has prosecuted the accused. Though Mr.Nagarajan, learned counsel for the accused submitted that the complainant bank cannot claim itself to be a "holder in due course", in respect of the cheque in question and hence on that ground also, the prosecution stands vitiated. This Court is not going into this submission since this revision petition is allowed on the short ground that the firm was not made as an accused as held by the Hon'ble Supreme Court in Aneeta Hada (cited supra).

8. However, Mr.Nagarajan, fairly produced a Demand Draft for Rs.1,25,650/- (Rupees One Lakh Twenty Five Thousand Sixty Hundred and Fifty only) being the cheque amount drawn in favour of Central Bank of India, which was handed over to the learned counsel for the complainant bank across the Bar.

In view of the above, this Criminal Revision is allowed and the judgment dated 28.01.2011 passed by the Additional Sessions Judge, Hosur in C.A.No.15 of 2007 and the conviction and sentence dated 23.01.2007 passed by the Judicial Magistrate No.II, Hosur in S.T.C.No.660 of 2006 are set aside. The accused is acquitted of all charges. Fine, if any, paid shall be refunded to him.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gpa
To

1. The Additional Sessions Judge
Hosur
2. The Judicial Magistrate No.II
Hosur
3. The Public Prosecutor,
High Court, Madras - 600 104.

+1 CC to Mr.K. Rajasekar, Advocate sr 88964
+1 CC to Mr.A.Nagarajan, Advocate sr 89302

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AD(CO)
SP(03/12/2019)



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