IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2019

PRONOUNCED ON : 24.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.Nos.1011 & 1088 of 2012
and M.P.Nos.1 & 2 of 2012

T.T. Limited,
No.305/1A, Thevampalayam,
Palangarai Village,
Avinashi - 641 654,
Tiruppur District.
Represented by
Mr.K.Rajendran,
S/o.Mr.P.Kannan,
HRD Manager. .. Petitioner/Complainant in Crl.R.C.No.1011 of 2012

K.A.Sujatha,
W/o.Mr.Karthikeyan,
Proprietrix,
Bannari Amman Hosiery Yarns,
12/1, M.S.Nagar, 3rd Street,
Kongu Main Road,
Tirupur. ..Petitioner/Accused in Crl.R.C.No.1088 of 2012

Vs.

K.A.Sujatha,
W/o.Mr.Karthikeyan,
Proprietrix,
Bannari Amman Hosiery Yarns,
12/1, M.S.Nagar, 3rd Street,
Kongu Main Road,
Tirupur. .. Respondent/Accused in Crl.R.C.No.1011 of 2012

T.T. Limited,
No.305/1A, Thevampalayam,
Palangarai Village,
Avinashi - 641 654,
Tiruppur District.
Represented by
Mr.K.Rajendran,
S/o.Mr.P.Kannan,
HRD Manager. .. Respondent/Complainant in Crl.R.C.No.1088 of 2012

Prayer in Crl.R.C.No.1011 of 2012: Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 14.06.2012 passed in C.A.No.184 of 2011 on the file of the V Additional District Court, (Fast Track Court No.III), Coimbatore and enhance the sentence imposed by the Appellate Court.

Prayer in Crl.R.C.No.1088 of 2012: Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 14.06.2012 passed in C.A.No.184 of 2011 on the file of the V Additional District Court, (Fast Track Court No.III), Coimbatore, modifying the judgment and order dated 20.07.2011 passed in C.C.No.222 of 2008 on the file of the Judicial Magistrate Court No.VIII, Coimbatore.

For Petitioner in Crl.R.C.No.1011 of 2012 and Respondent in Crl.R.C.No.1088 of 2012 : Mr.G.Hari for M/s.Ram & Ram

For Respondent in Crl.R.C.No.1011 of 2012 and Petitioner in Crl.R.C.No.1088 of 2012 : Mr.R.Rajarajan

COMMON ORDER

The petition in Crl.R.C.No.1011 of 2012 has been filed seeking to set aside the judgment and order dated 14.06.2012 passed in C.A.No.184 of 2011 on the file of the V Additional District Court, (Fast Track Court No.III), Coimbatore and enhance the sentence imposed by the Appellate Court.

2. The petition in Crl.R.C.No.1088 of 2012 has been filed seeking to set aside the judgment and order dated 14.06.2012 passed in C.A.No.184 of 2011 on the file of the V Additional

District Court, (Fast Track Court No.III), Coimbatore, modifying the judgment and order dated 20.07.2011 passed in C.C.No.222 of 2008 on the file of the Judicial Magistrate Court No.VIII, Coimbatore.

3. In view of commonality of issues, these two revisions are considered and decided by this common order.

4. . For the sake of convenience, T.T. Limited and K.A.Sujatha will be referred to as complainant and accused, respectively.

5. The facts of the case in brief are as follows:

5.1 The complainant initiated a prosecution in C.C.No.222 of 2008 before the Judicial Magistrate Court No.VIII, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused, in which, the Trial Court, by judgment and order dated 20.07.2011, convicted the accused and sentenced him to undergo two years simple imprisonment and pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

5.2 Thereagainst, the accused filed an appeal in C.A.No.184 of 2011 before the V Additional District Court (Fast Track Court No.III), Coimbatore and by judgment and order dated 14.06.2012, the conviction imposed on the accused by the Trial Court was confirmed, but, the substantive sentence was reduced from two years simple imprisonment to six months simple imprisonment. However, the sentence of fine imposed by the Trial Court was maintained.

5.3 Challenging the concurrent findings of fact by the Courts below, the accused has filed Crl.R.C.No.1088 of 2012 and challenging the reduction of sentence, the complainant has filed Crl.R.C.No.1011 of 2012.

6. Heard Mr.G.Hari, learned counsel for the accused and Mr.R.Rajarajan, learned counsel for the complainant.

7. It is trite that while dealing with a revision petition, this Court should not re-appreciate the evidence like a second Appellate Court. In this context, it may be profitable to refer to the very recent judgment of the Supreme Court in Bir Singh Vs. Mukesh Kumar[1], wherein, the following question of law was formulated :

1 (2019) 4 SCC 197

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

8. The answer of the Supreme Court to the aforesaid question of law is as under :

> "19. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> 20. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

9. Be it noted that this Court is not completely denuded of its power to re-appreciate the evidence in view of Section 401 (1) Cr.P.C. and in a given case, where, the record, on the face of it, discloses illegality or perversity, this Court can interfere with the concurrent findings of the Courts below.

10. The learned counsel for the accused submitted that the complainant has not pleaded and proved the "legally enforceable debt", which is the foundation of a prosecution under Section 138 of the NI Act.

11. Refuting the submission made by the learned counsel for the accused, the learned counsel for the complainant contended that when the accused has admitted the issuance of the cheques, the burden under Section 139 of the NI Act comes into play and it is for the accused to discharge the said burden.

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

13. In Krishna Janardhan Bhat Vs. Dattatraya G.Hegde[2], the Supreme Court held that the complainant should prove the debt like any other fact. However, a two Judge Bench of the Supreme Court, in Rangappa Vs. Sri Mohan[3], overruled the said proposition and has held that it is not necessary for the complainant to prove the debt. Rangappa (supra), exempts the complainant from proving the debt like any other fact, but, it does not exempt the complainant from pleading that there was a "legally enforceable debt", for which, the impugned cheque was issued by the accused. In other words, the complainant must aver about the debt and its quantification and only then, the burden under Section 139 of the NI Act would shift to the accused. Supposing, the complainant does not aver about the debt, the Court would be at an handicap to know whether the cheque was issued for a time-barred debt or not.

14. At this juncture, it may be useful to extract the relevant averments from the complaint in this case, which read as under:

> "1. The complainant is a Public Limited Company having its registered office at New Delhi and a branch in the abovesaid address. The accused used to purchase yarn from the complainant on credit basis and for the amount due to the complainant in the said transaction, the accused issued the following five cheques in favour of the complainant drawn on Bank of Maharashtra, Tirupur branch.

S.No	Cheque No.	Amount	Date
1.	381551	Rs.5,31,955.00	24.06.2003
2.	381552	Rs.85,050.00	24.06.2003
3.	377000	Rs.45,722.00	25.06.2003
4.	381554	Rs.1,22,653.00	27.06.2003
5.	383648	Rs.1,00,000.00	03.09.2003

> 2. The complainant presented the abovesaid cheques for collection through their bank Induslnd Bank Ltd., Coimbatore-37 and they were returned unpaid for the reason 'Funds Insufficient' on 22.12.2003."

15. This Court perused the statutory demand notice (Ex-P8), the sworn statement of the complainant, the evidence of Mahendrakumar Nagatha (PW1) and the evidence of Sahul Hameed

2 (2008) 4 SCC 54
3 (2010) 11 SCC 441

(PW2) and found that, nowhere, the complainant has averred about the debt. The complaint speaks about the five cheques, but, the prosecution in C.C.No.222 of 2008 was only for three cheques.

16. On behalf of the complainant, Mahendrakumar Nagatha was examined as PW1. As stated above, he has not spoken to about the debt in his examination-in-chief and has merely stated as follows:

> "2. I humbly submit that the accused used to purchase Yarn from our company on credit basis. Towards the amount due to our company the accused issued 5 cheques drawn on Bank of Maharastra, Tiruppur, in favour of the complainant. The above case has been filed for 3 cheques detailed hereunder:
>
> a. Cheque dated 24.06.2003 for Rs.5,31,955/-
> b. Cheque dated 24.06.2003 for Rs.85,050/-
> c. Cheque dated 25.06.2003 for Rs.45,722/-"

From the above evidence, it is seen that the two cheques are dated 24.06.2003 and one cheque is dated 25.06.2003.

17. In the cross-examination, the accused has taken the plea that she was having a running account with the complainant and for the supplies of yarn, the complainant had obtained the impugned cheques as security. It is the further case of the accused that they had settled all the liabilities with V.D.Ranga, the authorised agent of the complainant, who had filed the present complaint, who, was not examined as a witness and instead, Mahendrakumar Nagatha and Sahul Hameed were examined as PW1 and PW2, respectively.

18. In the cross-examination of Mahendrakumar Nagatha (PW1), the accused has specifically questioned as to whether there is any invoice or delivery order for having supplied yarn covered by the cheques, for which, Mahendrakumar Nagatha (PW1) has stated in the affirmative, but, did not choose to produce the same even though his affirmation was challenged by the accused.

19. Similarly, in the cross-examination of Sahul Hameed (PW2), the accused has questioned him (PW2) about the existence of any invoice or delivery order to show that yarn was supplied to the accused. The complainant could have easily produced the invoice or delivery order at least through Sahul Hameed (PW2) though they had failed to aver about the existence of a "legally enforceable debt" in the statutory notice, complaint and chief-examination. It has been specifically suggested to Mahendrakumar

Nagatha (PW1) and Sahul Hameed (PW2) that the impugned cheques were not issued towards any "legally enforceable debt".

20. The accused got into the witness box, examined herself as DW2 and stated that she had a running transaction with the complainant and therefore, the complainant obtained the impugned cheques as security from her and even after she had settled the claim with the complainant, the cheques were misused.

21. The computerized statement of account (Ex-D4) would show the amounts that were settled in the Court. Of course, the statement of account can be treated only as an admission and such an admission cannot be used in the defence of the maker's case.

22. The learned counsel for the complainant attempted to use the computerized statement of account (Ex-D4) in his favour by showing that there is a reference to the debt therein.

23. In the opinion of this Court, the account statement (Ex-D4) shows the transactions the accused has had with the complainant and against those transactions, it is stated that "Payment settled by Court" at three places. The complainant having failed to plead the minimum facts, cannot try to bolster his case via Ex-D4. In fact, there is a clear cut admission in the cross-examination of Mahendrakumar Nagatha (PW1) that, during the pendency of this case, he has received a sum of Rs.1,44,772/-. It is the specific case of the accused that both prosecutions were amicably settled with the erstwhile representative and he withdrew the earlier prosecution case, but the present case was not withdrawn, as, by then, the complainant had changed his representative.

24. Both the Courts below have failed to note the fact that the complainant has not pleaded anywhere the actual debt, for which, the impugned cheques were said to have been issued by the accused. In the absence of even minimum evidence or even an averment about the quantum of "legally enforceable debt" and viewed from the assertion of the defence that there was no legally enforceable debt, the conviction of the accused, merely on the issuance of the impugned cheques, is not legally correct.

25. In view of the foregoing discussion, the judgment and order dated 14.06.2012 passed in C.A.No.184 of 2011 on the file of the V Additional District Court, (Fast Track Court No.III), Coimbatore and the judgment and order dated 20.07.2011 passed in C.C.No.222 of 2008 on the file of the Judicial Magistrate Court No.VIII, Coimbatore, are set aside and the accused is acquitted

of the charge.

As a sequitur, Crl.R.C.No.1088 of 2012 preferred by the accused is allowed and Crl.R.C.No.1011 of 2012 preferred by the complainant is dismissed. The bail bond executed by the accused shall stand cancelled. Fine amount, if any, paid by the accused shall be refunded. Connected, Crl.M.Ps. are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

nsd
To

1. The V Additional District Judge,
(Fast Track Court No.III),
Coimbatore.

2. The Judicial Magistrate No.VIII,
Coimbatore.

3.Do-Thro The Chief Judicial Magistrate
Coimbatore

4. The Deputy Registrar,
Criminal Section,
Madras High Court,
Chennai - 104.

+2 ccs to Mr.Ram & Ram Advocate sr82836,81654

Crl.R.C.Nos.1011 & 1088 of 2012

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