



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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CRL.R.C.[MD]Nos. 574 of 2018
and Crl. M.P.(MD) No.8153 of 2018

1. M/s. Sri Sai Ram Fire Works,
D.No.16-70738-3,
Near Life Hospital,
Osman pura, Chaderghat,
Hyderabad, Telungana State,
Rep. by its partner Manik Rao.

2. Manik Rao

..Petitioners/Appelants/
Accused 1 & 2

Vs.

M/s.Sri Ram Fire Works,
Sattur Road, Sivakasi,
through its Power agent
K. Raju.

.. Respondent/Respondent/
Complainant

PRAYER : This Criminal Revision case is filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the Judgment, conviction passed against the petitioner in C.A.No.164 of 2013 dated 26.07.2018 by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, confirming the Judgment of the learned Judicial Magistrate, Sivakasi in C.C.No. 677 of 2006 dated 06.11.2013.

For Petitioners

: Mr.P. Ramasamy for
Mr. T. Anantha Sekar

For Respondent

: Mr. R.S. Kasthuri Ratna

ORDER

This Criminal Revision case is filed, to set aside the Judgment, conviction passed against the petitioner in C.A.No.164 of 2013 dated 26.07.2018 by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, confirming the Judgment passed by the learned Judicial Magistrate, Sivakasi in C.C.No. 677 of 2006 dated 06.11.2013.



2. The case of the prosecution is that the respondent's company has supplied crackers to the petitioner and he owes to pay a sum of Rs.7,55,000/- (Rupees Seven Lakhs Fifty Five Thousand Only) to the respondent. On 29.04.2006 the revision petitioner has issued one cheque for a sum of Rs.7,55,000/- (Rupees Seven Lakhs Fifty Five Thousand Only) bearing No.0004023 drawn on Hyderabad District Co-operative Central Bank Limited, Hyath Nagar, Hyderabad Branch to discharge his liability and the said cheque on presentation the same was returned as "Insufficient Funds on 05.05.2006. At the request, the cheque was again represented on 24.10.2006 and the same was again returned as insufficient funds on 04.11.2006. The respondent herein had filed a case in C.C.No.677 of 2006, before the learned Judicial Magistrate, Sivakasi against the petitioner herein under Section 138 of the Negotiable Instruments Act, 1881. After trial, the learned Judicial Magistrate, Sivakasi, convicted the petitioner by Judgment dated 06.11.2013 to undergo 6 months simple imprisonment and to pay a fine of Rs.5000/- and in default to undergo 3 months simple imprisonment and the said Judgment was confirmed by the Judgment dated 26.07.2018, in C.A.No.164 of 2013 by the learned Principal District and Sessions Judge, Virudhunagar to Sriviliputhur. Against the said concurrent findings, the revision petitioner herein has filed the present appeal.

3. The learned counsel for the revision petitioner would submit that he admitted that there is only one business transaction with the complainant. By demand draft dated 05.11.2005 the entire dues were settled to the respondent herein through four Demand drafts bearing Nos.891244 to 891247 and demand draft's dated 15.11.2005 bearing Nos.964600 and 044707 amounting to Rs.3,00,000/- (Rupees Three Lakhs Only) the same were acknowledged by them. He would further submit that the remaining amount has been deposited to the complainant account, the account statement marked as Ex.B.3 & B4 and the alleged cheque was produced to the respondent herein for security purpose.

4. Heard the learned counsel for the respondent also. Perused the materials available on record.

5. Once it is proved that the cheque was issued to discharge the legally enforceable debt then it is for the appellant to rebut the presumption in the manner known to law. After full-fledged trial, the Appellate Court found that the revision petitioner herein has committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and also confirmed the Judgment, dated 06.11.2013 made in C.C.No.677 of 2006 by the learned Judicial Magistrate, Sivakasi. While exercising the revisional jurisdiction the revisional Court cannot exercise the powers of the Appellate Court and the lower appellate Court is as final Court of fact finding rightly appreciated the entire evidence.



6. In this regard, it is pertinent to refer the decision of the Honourable Apex Court in the case of **State of Kerala Vs. Putthumana Illath Jathavedn Namboodri**, reported in **AIR 1999 SC 981** held as follows:

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".... In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already be appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

7. On reading of the entire evidence, this Court does not find any perversity in appreciating the evidences of prosecution and the Judgments of Courts below. This Court finds that there is no merit in the Criminal Revision Case. Therefore, there is no ground and sufficient reason to set aside the order of the Courts below.

8. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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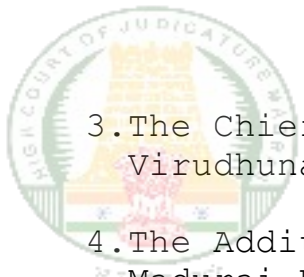
Sub Assistant Registrar (CS)

Ksa

To

1. The Principal District and Sessions Court,
Virudhunagar at Srivilliputhur.

2. The Judicial Magistrate Court,
Sivakasi.



3.The Chief Judicial Magistrate,
Virudhunagar District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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+ 1 CC to Mr.T.Anantha Sekar, Advocate in SR.No.43454/19

+ 2 CC to Mr.R.S.Kasthuri Ratna, Advocate in SR.No.43395/19

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