



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHANCr1.R.C. (MD) No.740 of 2013

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S.Sureshkumar

.. Petitioner/Appellant/
Sole Accused

Vs.

T.G.K.Spinning Mills through its,
Managing Partner,
G.Rathakrishnan,
50A, Venkatesh Nagar 3rd Street,
Kovilpatti - 2,
Thoothukudi District.

.. Respondent/Complainant

Prayer : This Criminal Revision petition is filed under Section 397 r/w 401 of Cr.P.C., to call for the entire records relating to the Judgment of the learned II Additional Sessions Judge, Thoothukudi, passed in C.A.No.35 of 2013 dated 10.07.2013, confirming the conviction and sentence passed by the Fast Track Court, Judicial Magistrate (Magisterial Level), Kovilpatti, in C.C.No.93 of 2012 dated 06.04.2013 and set aside the same by allowing the present Criminal Revision petition and acquit the petitioner/accused.

For Petitioner : Mr.S.Ramasamy
For Respondent : Mr.S.Ramakrishnan

ORDER

The Revision petitioner was the sole accused in C.C.No.93 of 2012 on the file of the learned Judicial Magistrate (Magisterial Level), Fast Track Court, Kovilpatti. It was a complaint instituted by the respondent herein for the offence under Section 138 of the Negotiable Instruments Act. The learned trial Magistrate by Judgment dated 06.04.2013 found the petitioner guilty of the said offence and sentenced him to undergo one year Rigorous Imprisonment. He was also directed to pay a sum of Rs.6,30,000/- as compensation. The default sentence of 3 months Simple Imprisonment was also imposed. The same was under challenge in C.A.No.35 of 2013 before the learned II Additional Sessions Judge, Thoothukudi. The first appellate Court by Judgment dated 10.07.2013 confirmed the Judgment of the trial Court. The same are under challenge in this Criminal Revision petition.

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2. Heard the learned counsel on either side.



3. The petitioner's counsel would contend that the very filing of the complaint was unauthorised because the person who filed had not obtained authorisation from the other partners. When this lacuna was pointed out, it was sought to be overcome by furnishing the authorisation later in point of time.

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4. I am of the view that there is no substance in this objection. It is not as if, some stranger filed the complaint. The Managing Partner of the firm had filed the complaint. Therefore, the filing of the complaint cannot be said to be unauthorised.

5. The petitioner's counsel would further contend that in this case two witnesses were examined on the side of the complainant. But the testimony of both the witnesses was not recorded by one and the same judicial officer. Since the case under Section 138 of the Negotiable Act is to be tried in a summary manner, the very same Magistrate who recorded the evidence of the prosecution witness will have to pronounce the Judgment.

6. This contention would have carried weight, if the testimony of P.W.1 was recorded in a summary manner. In fact the testimony recorded in full. Therefore, the decision of the Hon'ble Apex Court reported in (2014) 13 SCC 619 (Mehsana Nagrik Sahkari Bank Limited V. Shreeji Cab Co.) would come to play. The Hon'ble Apex Court in the aforesaid decision held as follows:-

"5. Mr. Huzefa Ahmadi, learned Senior counsel appearing for the appellant Bank pointed out that the law laid down by this Court in the above authority is that when a proceeding is conducted as a summary trial, and when one Magistrate has partly heard the case and is succeeded by another Magistrate, that second Magistrate has to rehear the whole case afresh and he cannot start from the stage the first Magistrate left it. There was no question of the High Court asking the entire matter to be looked into by another Magistrate de novo, in the present case because, in fact, the evidence had not been recorded in a summary manner, but it was recorded in full. Mr. Sanjanwala, learned counsel appearing for the respondents, on the other hand, submits that the law laid down in Nitinbhai Saevatilal Shah V. Manubhai Manjibhai Panchal ((2011) 9 SCC 628 : (2011) 4 SCC (Civ) 805: (2011) 3 SCC (Cri) 788) be followed.

6. We have perused the notes of evidence which are produced on record. They clearly show that the evidence in this case was recorded in full and not in a summary manner. That being so, we cannot but accept the submission of Mr. Ahmadi.

7. In the facts and circumstances of the case, we allow this appeal, set aside the order (Shreeji Cab Co. V. Mehana Nagrik Sahkari Bank



Ltd., Special Criminal Application No.1567 of 2011, order dated 15.03.2012(Guj) passed by the High Court and direct the Additional Chief Judicial Magistrate, Mehsana, to proceed hereafter from the stage where it is pending now. . . . "

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7. Therefore, I find no merit in the contention raised by the petitioner's counsel. It is seen that the cheque was for a sum of Rs.4 Lakhs. The signature attributed to the accused in Ex.P.3 cheque is not in dispute. The dishonour of the cheque is also not under question. When the complainant issued Ex.P.6 legal notice and the same was also received by the accused as evident from Ex.P.7 Acknowledgement card, there was no response from the accused. He did not bother to issue any reply notice. Of course he also did not enter into the witness box. The complainant had also marked Ex.P.2 copies of invoice. Thus, the complainant had clearly established the existence of a legally enforceable liability. Hence, presumption under Section 139 of the Negotiable Instruments Act was raised in favour of the cheque holder. The accused did not rebut the presumption in the manner known to law. Even the cross examination of P.W.1 had not elicited any fruitful point in favour of the accused. The Courts below have concurrently found the Revision petitioner guilty of the offence in question.

8. In exercise of revisional jurisdiction, I find no ground to interfere with the conviction passed by the Courts below. However, I am of the view that some leniency is warranted. The cheque is for a sum of Rs.4 Lakhs, but the Court below directed the accused to pay Rs.6,30,000/- towards compensation. Since, the Court below sentenced the petitioner to undergo for 1 year Rigorous Imprisonment, I am of the view that some indulgence can be shown in this regard. Therefore, the imprisonment of sentence imposed on the petitioner is reduced from 1 year Rigorous Imprisonment to 6 months Rigorous Imprisonment. The learned trial Magistrate is directed to secure the accused to undergo the remaining period of sentence. The bail bond if any executed shall stand cancelled.

9. The Judgment of the Court below is accordingly modified. The Criminal Revision stands partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-)

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The II Additional Sessions Judge,
Thoothukudi.



2. The Judicial Magistrate (Magisterial Level),
Fast Track Court, Kovilpatti.

3. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai (2 copies).

+1 CC to M/s.S.RAMASAMY, Advocate (SR-68593[F] dated 13/06/2019)

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ES/17.07.2019/4P/6C