IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1006 of 2013

M.Ponkaliappan ..Petitioner/Appellant/Accused

Vs.

Annur Cauvery Spintex (P) Ltd.,
Represented by Mr.Swaminathan,
40, S.G.Pudur, Ellapalayam Post,
Pogalur (via) Coimbatore. .. Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 19.10.2012 passed in C.C.No.9 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 29.01.2013 passed in C.A.No.309 of 2012 on the file of the I Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.M.Vijayakumar

For Respondent : Mr.B.Gopalakrishnan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 19.10.2012 passed in C.C.No.9 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 29.01.2013 passed in C.A.No.309 of 2012 on the file of the I Additional District and Sessions Court, Coimbatore.

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

3. It is the case of the complainant that the accused is the Proprietor of Sri Amman Textiles and that he had purchased carded cotton yarn from 16.09.2008 to 06.12.2008 for a total sum of Rs.2,33,222/-, towards which, the accused gave the following three cheques:

S.No.	Cheque dated	Amount (in Rs.)	Drawn on	Marked as
1	13.12.2008	90,720/-	IndusInd Bank, Coimbatore	Ex-P2
2	18.12.2008	30,000/-	IndusInd Bank, Coimbatore	Ex-P3
3	29.12.2008	1,12,500/-	IndusInd Bank, Coimbatore	Ex-P4

The complainant presented the first cheque on 13.12.2008 and it was returned unpaid on 16.12.2008. The complainant presented the second cheque on 18.12.2008 and the same was returned unpaid on 19.12.2008. When the complainant informed the accused about this, the accused requested him to re-present the two cheques along with the third cheque. Therefore, the complainant presented all the three cheques (Exs-P2, P3 & P4) on 29.12.2008, but, all the three cheques were dishonoured on the ground "Funds insufficient". The complainant sent a letter (Ex-D2) dated 27.05.2009 to the accused, informing him that all the three cheques have been dishonoured. At the request of the accused, the complainant once again re-presented all the three cheques (Exs-P2, P3 & P4) on 11.06.2009, and this time also, all the three cheques were returned unpaid with the endorsement "Funds Insufficient" vide bank's return memos (Exs-P5, P6 and P7) dated 12.06.2009. Therefore, the complainant issued a statutory demand notice (Ex-P8) dated 29.06.2009, which was received by the accused on 30.06.2009 vide postal acknowledgement card (Ex-P9). The accused issued a reply notice (Ex-D1) dated 07.07.2009 stating that he had issued the cheques (Ex-P2 & P3) for the purchase made by him and he is ready and willing to make the payment qua those two cheques and in order to show his bona fides, he is enclosing a photocopy of the demand draft for a sum of Rs.1,20,720/- (Rs.90,720/- + Rs.30,000/-); the cheque for Rs.1,12,500/- was given while placing orders for the supply of yarn, but the complainant did not supply the required yarn. In the reply notice (Ex-D1), the accused has further stated that he would make payment of Rs.1,20,720/-, on condition that the complainant should withdraw the claim of Rs.1,12,500/-. The complainant did not concede to the demand of the accused but initiated a prosecution in C.C.No.48 of 2011 before the Judicial Magistrate No.V, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused. On transfer of the case to the file of the Judicial Magistrate (Fast Track Court No.II), Coimbatore, it was re-numbered as C.C.No.9 of 2011.

4. Before the trial Court, the complainant examined himself as PW1 and marked seventeen exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the allegations and did not offer any explanation as to the circumstances, under which, the cheques (Exs-P2, P3 & P4) executed by him came into the hands of the complainant. On behalf of the accused, Ramanan - DW1, Manager of IndusInd Bank, Uma Maheswari - DW2, Manager of State Bank of India and Duraisamy - DW3, Manager of Dhanalaxmi Bank, were examined and six exhibits were marked. These witnesses were examined in order to show that the accused had taken a demand draft for Rs.1,20,720/-.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.10.2012 in C.C.No.9 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.4,000/-, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.309 of 2012 filed by the accused was dismissed by the I Additional District and Sessions Court, Coimbatore, on 29.01.2013.

8. Aggrieved by the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

9. Heard Mr.M.Vijayakumar, learned counsel for the accused and Mr.B.Gopalakrishnan, learned counsel for the complainant.

10. Before adverting to the rival submissions, it is necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.[1]]. Very recently, in Bir Singh vs. Mukesh Kumar[2], the Supreme Court has held as under:

> "17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [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

1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. .... " (emphasis supplied)

11. In the instant case, the complainant, in his evidence, has spoken to about the supply of yarn to the accused, the issuance of the three cheques (Exs-P2, P3 & P4) by the accused, their repeated presentation and dishonour, the issuance of the statutory demand notice (Ex-P8) and the failure of the accused to comply with the demand.

12. The learned counsel for the accused took this Court through the cross-examination of the complainant and submitted that the complainant admitted that the three cheques were given by an agent by name Selvamani, which clearly shows that the complainant had not supplied the yarn directly to the accused, but through Selvamani.

13. This Court read the evidence of the complainant in toto. The complainant, in his evidence, has stated that the three impugned cheques (Exs-P2, P3 & P4) were handed over to him by Selvamani. This does not mean that the yarn was supplied to Selvamani or that it was not supplied directly to the accused. The complainant has marked the relevant invoices and bills to show the supply of yarn to the accused on three occasions.

14. The learned counsel for the accused submitted that those invoices and bills were concocted by the complainant. This Court without adequate basis cannot give a finding that the bills and invoices were fabricated by the complainant. Even if we keep those invoices and bills aside for a moment, it is seen that after all the three cheques (Exs-P2, P3 & P4) were dishonoured on 28.04.2009, the complainant sent a letter (Ex-D2) dated 27.05.2009, informing the accused about the dishonour and requesting him to settle the amount. The letter dated 27.05.2009 was marked as Ex-D2 by the accused himself in the cross-examination of the complainant. This clearly shows that the accused was aware that the complainant is demanding a sum of Rs.1,12,500/- also.

15. If the accused had really not purchased any yarn for Rs.1,12,500/-, then, he would have given instructions to his bank to "Stop Payment" on the cheque dated 29.12.2008. Only after sending the letter (Ex-D2) dated 27.05.2009, the complainant presented all the three cheques (Exs-P2, P3 & P4) for the second time on 11.06.2009. Therefore, the defence of the accused that the complainant had not supplied any yarn for the cheque dated 29.12.2008 for Rs.1,12,500/- does not cut ice with this Court.

16. The learned counsel for the accused submitted that the accused sent a photocopy of the demand draft for Rs.1,20,720/-, which should have been accepted by the complainant.

17. Pertinent it is to state here that the accused had sent only a photocopy of the demand draft and not the demand draft itself. In the reply notice (Ex-D1), the accused has stipulated a condition that he will pay the sum of Rs.1,20,720/-, only if the complainant gives up his claim for the sum of Rs.1,12,500/-. Therefore, it was not an unconditional payment made by the accused, but a conditional one. The accused could have deposited the sum of Rs.1,20,720/- before the trial Court during the first hearing or subsequently, which he did not.

18. In such perspective of the matter, the findings of the trial Court that all the three cheques (Exs-P2, P3 & P4) were issued by the accused towards the discharge of a 'legally enforceable debt', cannot be said to be perverse or incorrect, warranting interference in this criminal revision.

In the result, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, ibid., even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid., the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1006 of 2013. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd
To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.

2. Do Thro The Chief Judicial Magistrate, Coimbatore

3. The I Additional District
and Sessions Judge,
Coimbatore.

4. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return the original records to the Courts below concerned

+1 CC to Mr.D. Muthuselvam,Advocate sr 5646.

Crl.R.C.No.1006 of 2013

EV(CO)
SP(26/02/2020)