

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Cr1. R.C. No.1237 of 2013

1.M/s.Laxmi Snow Sparkle Products (P) Ltd.

Represented by its Managing Director

K.Mani

No.33, Ganesapuram,
Kangeyam Road, Muthur.

2.K.Mani

3.M.Saravanan

... Revision Petitioners

Vs.

M/s.Revathi Rice Mill,

Represented by its Partner,

A.Krishnamoorthy

S.F.No.1146, Vakkanangattu Thottam,

Kandiyan Koil Village,

Pollikalipalayam Via,

Thiruppur Taluk.

... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 12.09.2013, passed by the Principal Sessions Judge, Thiruppur, in C.A.No.41 of 2013, confirming the judgment of conviction and sentence, dated 20.05.2013, passed by the Judicial Magistrate No.I, Thiruppur, in S.T.C.No.470 of 2010.

For Petitioners : Mr.R.Thirumoorthy

For Respondent : Mr.R.Bharath Kumar

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 12.09.2013, passed by the Principal Sessions Judge, Thiruppur, in C.A.No.41 of 2013, confirming the judgment of conviction and sentence, dated 20.05.2013, passed by the Judicial Magistrate No.I, Thiruppur, in S.T.C.No.470 of 2010.

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

3.The complainant is M/s.Revathi Rice Mill, represented by its Partner, Krishnamoorthy. The accused is M/s.Laxmi Snow Sparkle Products (P) Ltd., represented by its Managing Director K.Mani (A2). The complainant was carrying on business in the manufacture, stock and sale of rice and rice related items. The accused used to procure rice for the complainant and supply the same. Towards the purchase of rice, the complainant made an advance payment of Rs.2,73,650/- on 06.08.2010 to the accused. The accused failed to deliver the promised rice. Therefore, the complainant started demanding the refund of the amount. The accused issued a cheque dated 27.10.2020 (Ex.P1) drawn on Lakshmi Vilas Bank, Muthur Branch, from the account of M/s.Laxmi Snow Sparkle Products (P) Ltd. (A1), signed by its Managing Director K.Mani (A2). The complainant presented the cheque and it was returned with the endorsement "Opening balance insufficient" vide return memo (Ex.P2) on 04.11.2010. The complainant issued a statutory demand notice dated 27.11.2010 (Ex.P3), which was received by the three accused vide postal Acknowledgment Cards (Exs.P5, P6 and P7). Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.470 of 2010, before the Judicial Magistrate No.I, Thiruppur, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.Krishnamoorthy, the partner of M/s.Revathi Rice Mill, examined himself as P.W.1 and marked Exs.P1 to P7. The accused examined one Aravindan as D.W.1 and marked the account statement as Ex.D1 in cross-examination.

5.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they did not give any explanation as to the circumstances under which the impugned cheque came into the hands of the complainant.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.05.2013, in S.T.C.No.470 of 2010, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced A2 and A3 to simple imprisonment for one year and pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for one month. The accused were directed to pay the cheque amount of Rs.2,73,650/- as compensation to the complainant.

7.The appeal in C.A.No.41 of 2013 that was filed by the accused was dismissed by the Principal Sessions Judge, Thiruppur, on 12.09.2013.

8.Aggrrieved by the concurrent findings of the two Courts below, the accused have filed the present Criminal Revision Case, before this Court, under Section 397 r/w. 401 Cr.P.C.

9.Heard learned counsel for the revision petitioners/accused and learned counsel for the respondent/complainant.

10.It is trite 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 Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], 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 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.Krishnamoorthy (P.W.1) has spoken about the business transactions the complainant had with the accused, the payment of Rs.2,73,650/- to the accused on 06.08.2010 for supply of rice, the failure of the accused to supply rice, the issuance of the impugned cheque, its presentation and dishonour, the issuance of statutory demand notice, and the failure of the accused to comply with the demand.

12.It can be gleaned from the cross-examination of Krishnamoorthy (P.W.1) that the accused had set up a defence that the impugned cheque was given only as security to the complainant and not towards any legally enforceable debt. Apart from making such suggestion, which, of course, was denied by the witness, the accused did not place any satisfactory material in support of the said defence. In fact, the accused had filed an application in the trial Court, while recalling the warrant issued against them, wherein, they had admitted the liability and had stated that they would settle the debt. Krishnamoorthy (P.W.1) has given evidence on this aspect also and he was also not cross-examined.

13. In Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019), the Supreme Court has held as follows :

"20. The Trial Court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

21. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act"

14. Though the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability, as held by the Supreme Court in Rangappa Vs. Sri Mohan [2010 (4) CTC 118], even that has not been done in this case.

15. Krishnamoorthy (P.W.1) has adduced evidence to show that, K.Mani (A2) was the Managing Director, and Saravanan (A3) was the Director of M/s. Laxmi Snow Sparkle Products (P) Ltd. (A1) and that, both of them were actively involved in the business affairs of the company. The accused had not denied this. In such view of the matter, this Court does not find any infirmity in the findings of the two Courts below, warranting interference.

16. As a result, this Criminal Revision Case is dismissed and the judgments of the two Courts below are confirmed. The trial Court is directed to secure K.Mani (A2) and Saravanan (A3) and commit them to prison to undergo the remaining sentence.

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. It is always open to the parties to file an application before the trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence, even after A2 and A3 are taken into custody. In the event of the matter being compounded under Section 147, *ibid.* before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in Crl.R.C.No.1237 of 2013.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Copy to :

- 1.The Principal Sessions Judge,
Thiruppur.
- 2.The Judicial Magistrate No.I,
Thiruppur.
- 3.-Do- Thro The Chief Judicial Magistrate,
Thiruppur.
- 4.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, forthwith, to the
High Court, Madras. | respective Courts below

+1cc to Mr.R.Thirumoorthy, Advocate Sr.9918
+1cc to Mr.R.Bharathkumar, Advocate Sr.10315

सत्यमेव जयते Crl. R.C. No.1237 of 2013

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srg 10/03/2020

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