



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.1259 of 2013

1.M.R.Exports,
Represented by its Partner
M.Rajendran,
No.148, Sivan Theatre Main Road,
Kumarananthapuram,
Tiruppur.

2.M.Rajendran

... Revision Petitioners

Vs.

M/s.Papika Fashions,
Represented by its Proprietor
Karthikeyan,
No.38/24, Bharathiar Street,
Sivan Theatre Road,
Kumarananthapuram,
Tiruppur.

... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 30.08.2013, passed by the Principal Sessions Judge, Tiruppur, in C.A.No.38 of 2013, confirming the conviction and sentence in S.T.C.No.2555 of 2010 on the file of the Judicial Magistrate No.I, Tiruppur, dated 14.05.2013.

For Petitioners : Mr.G.Anantharangan

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 30.08.2013, passed by the Principal Sessions Judge, Tiruppur, in C.A.No.38 of 2013, confirming the conviction and sentence in S.T.C.No.2555 of 2010 on the file of the Judicial Magistrate No.I, Tiruppur, dated 14.05.2013.

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

3.It is the case of the complainant that he is a partner of Papika Fashions and he is into the business of



stitching banians; Rajendran (A2), who is a partner of M.R.Exports, was his customer, and towards stitching banians, a sum of Rs.26,000/- was due from M.R.Exports to Papika Fashions; Rajendran (A2) issued a cheque, dated 29.01.2010, for Rs.26,000/- (Ex.P3) drawn on the Bank of Rajasthan, Tiruppur Branch; the complainant presented the said cheque on 21.03.2010 and the same was returned on the ground "funds insufficient" vide return memo dated 22.03.2010 (Ex.P4); the complainant issued a statutory demand notice dated 16.04.2010 (Ex.P5) to the accused, which was received by the accused vide acknowledgment cards (Exs.P6 and P7); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.2555 of 2010, before the Judicial Magistrate's Court No.I, Tiruppur, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.The complainant examined himself as P.W.1 and marked Exs.P1 to P7. Rajendran (A2) examined himself as D.W.1 and marked Exs.D1 to D3.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 14.05.2013, convicted Rajendran (A2) and sentenced him to simple imprisonment for one year and pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one month. Though M.R.Exports was shown as A1, no separate sentence was imposed on it.

6.The appeal in C.A.No.38 of 2013 that was filed by the accused was dismissed by the Principal Sessions Judge, Tiruppur, on 30.08.2013.

7.Challenging 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.

8.Notice has not been served on the respondent/complainant. The respondent is required to be heard only when the Court proposes to pass an order to his prejudice and not otherwise.

9.Learned counsel for the petitioners/accused submitted that, both the Courts below have failed to properly appreciate the evidence of Rajendran (A2) (D.W.1) and the documents filed by him.

10.Heard the submissions of the learned counsel for the petitioners/accused and carefully perused the records.

11.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 Kuldip 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)

12.Rajendran (A2) has not denied the issuance of the impugned cheque to the complainant. It is his defence that he had settled all the dues with the complainant. The complainant has marked Exs.P1 and P2 to show the orders that were executed by him for the accused and the amounts due thereon. The accused have marked the vouchers (6 Nos.) as Ex.D3 series, purportedly signed by the complainant. Relying on this, the learned counsel for the accused submitted that the accused have established that the dues had been settled. When the complainant was confronted with the vouchers (Ex.D3 series), he has clearly stated that the signatures found therein was not his. Whereas, in the cross-examination, Rajendran (A2) has admitted the issuance of the impugned cheque (Ex.P3). Both the Courts below have rightly not placed any reliance upon Ex.D3 series, as the accused had failed to prove that they were signed by the complainant.

13.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.

14.In fine, this Court does not find any infirmity in the findings of fact arrived at by the two Courts below, warranting interference.

15.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 Rajendran (A2) and commit him 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 or to his legal heirs, as the case may be. 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 Rajendran (A2) is 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.1259 of 2013.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

mkn

Copy to :

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

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BP(CO)
GN(03/03/2020)