BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.751 of 2016

M.Velmurugan ... Petitioner/Appellant

Vs

1.S.Ramesh

2.R.Asha Devi ... Respondents/Respondents

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in Judgment dated 24.06.2016 passed in Criminal Appeal No.45/2016 on the file of the Additional District and Sessions Judge, Virudhunagar, confirming the Judgment dated 19.10.2015 in C.C.No.216 of 2012 passed by the Judicial Magistrate No.1, Virudhunagar and set aside both Judgments and remit the case back to the trial Court for disposal on merit.

For Petitioner : Mr.C.Dhanaseelan
For Respondents : Mr.N.Dilip Kumar

ORDER

The revision petitioner Thiru.M.Velmurugan is the complainant in C.C.No.216 of 2012 on the file of the Judicial Magistrate No.I, Virudhunagar. He filed private complaint under Section 138 of the Negotiable Instruments Act against the respondents herein. The case ended in acquittal vide Judgment dated 09.10.2015. Questioning the same, the revision petitioner filed Crl.A.No.45 of 2016 before the learned Additional District and Sessions Judge, Virudhunagar. Vide Judgment dated 24.06.2016, the appeal came to be dismissed. Aggrieved by the same, this revision case was filed.

2.The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgments and allow this revision case.

3.Per contra, the learned counsel for the accused submitted that the impugned Judgments do not call for any interference and wanted me to dismiss this revision case.

4.I carefully considered the rival contentions and went through the evidence on record.

5.The case of the complainant is that he was familiar with the accused even prior to the transaction in question. Thiru.S.Ramesh and Mrs.R.Asha Devi are husband and wife. They have been running a partnership firm in the name and style of M/s.Ramesh Kanna Trading Centre at Sivakasi, having their address at 458, P.K.S.A.Arumuga Nadar Road, Sivakasi. According to the complainant, the accused approached him on 10.07.2012 and asked for a hand loan of Rs.6,25,00/- for their business purpose. Ramesh is said to have given a letter dated 10.07.2012 containing the said request. He also executed promissory note. Towards discharge of the said liability, Ex.P6 and Ex.P9 cheques were issued by the accused. A1 had signed in Ex.P6 cheque, while A2 had signed in Ex.P9 cheque. The said cheques were presented for collection and they were returned unpaid for the reason of 'insufficiency of funds'. After issuing Ex.P12 notice and Ex.P13 notice to A1 Ramesh and A2 Asha Devi respectively and after waiting for the mandatory limitation period, the private complaint came to be instituted. Cognizance of the offence was taken and summons were issued to the accused. The accused denied the charge and claimed to be tried. The complainant examined himself as P.W.1 and Bank Managers as P.W.2 and P.W.3. He also marked Ex.P1 to Ex.P17. On the side of the accused, the Inspector of Forensic Science Department, was examined as D.W.1. The sample signatures of the accused were marked as Ex.D1 and Ex.D2 and the signature of the second accused found in the document was marked as Ex.D3. As already narrated, the case ended in acquittal and the acquittal was also confirmed by the Appellate Court. The question that arises for my consideration is as to whether the impugned Judgments of the Courts below deserve to be interfered with.

6. Even before commencing his arguments, the learned counsel for the respondent, on instructions, made a fair statement that in order to give quietus to the issue, the respondents, without prejudice to their contentions, are willing to deposit a sum of Rs.3,25,000/- to the credit of C.C.No.216 of 2002 on the file of the Judicial Magistrate No.1, Virudhunagar, within a period of eight weeks, if the revision petitioner expresses his willingness to burry the hatchet. This undertaken given before this Court is recorded.

7.The learned counsel for the respondents states that the respondents will definitely honour his undertaking, the moment, they receive a letter from the complainant to that effect that he would accept the said amount towards full and final settlement of all his claims against the respondents.

8.The case on hand involves two cheques namely Ex.P6 and Ex.P9. Ex.P6 cheque is admittedly a cheque drawn on the account maintained by the partnership firm namely M/s.Ramesh Kanna Trading Centre at Sivakasi. But the firm has not been impleaded as one of the accused. The Courts below have held that failure to implead the firm as a accused is fatal to the very maintainability of the complaint. This proposition is too well settled. After the authoritative pronouncement by the Hon'ble Apex Court in the decision ***(2012) 5 Supreme Court Cases 661 (Aneeta Hada Vs. Godfather Travels and Tours Private Limited)***, the issue is *no longer res integra*.

9.However, the learned counsel appearing for the petitioner would endeavor to distinguish the said decision by referring to the fact that M/s.Ramesh Kanna Trading Centre, at Sivakasi, is comprising only two partners and that, both the partners are before the Court. In my view, that would not make any difference. The Hon'ble Supreme Court, in Paragraph No.59, had held that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. It has been specifically mentioned that several categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. Thus, the liability of S.Ramesh as well as R.Asha Devi would accrue only in their vicarious capacity and not in the primary capacity.

10.The learned counsel for the respondents would bring to my attention to the recent decision of the Madras High Court reported in ***2020 (1) Civil Court Cases 0813 (Rangabashyam and another Vs. Ramesh).*** After referring to Section 141 of the Negotiable Instruments Act, the learned Judge had applied the said proposition to the partnership firm also. Paragraph No.19 and 20 of the said decision reads as follows:-

> "19.Section 141 of the Negotiable Instruments Act deals with the concept of vicarious liability, wherein for the offence committed by the Company or a partnership firm, the directors, or the partners, as the case may, are deemed to be guilty of the offence, when it is shown that they are in charge of and responsible for the conduct of the day to day affairs of the business or the firm, as the case may be. While interpreting the provision, the Hon'ble Supreme Court has categorically held that the complaint cannot be maintained against the directors of the Company, without making the company as an accused person. This concept has been extended even for Partnership Firms. The registration or non registration of the partnership Firm will have no bearing insofar as 141 of the Negotiable Instruments Act is concerned.
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> 20.In view of the above discussion, this Court is not in agreement with the submissions made by the learned counsel for the respondent. In this case admittedly, the cheque was given in the name of the Partnership Firm and after the cheque was dishonored, no statutory notice was issued to the Partnership Firm and the Partnership Firm was not made as an accused in the complaint. Only the partners have been shown as accused persons in this complaint. Such a complaint is

unsustainable and not in accordance with Section 141 of the Negotiable Instruments Act and the law laid down by the Hon'ble Supreme Court."

11.Therefore, I have no hesitation to reject the contention advanced by the learned counsel for the petitioner and sustain the reasons set out in the Judgments of the Courts below.

12.The next question that arises for my consideration is whether the impugned complaint can be allowed to stand in respect of Ex.P9 cheque. Ex.P9 cheque was drawn on the account jointly maintained by Ramesh and his wife Asha Devi. Ex.P9 cheque makes it appear as if Asha Devi has signed. The specific defence of the accused is that Asha Devi did not sign the said cheque and it is a fabricated document. The accused have not taken such a defence in the air. On the other hand, they had the cheque referred for comparison by a hand writing expert. The Hand Writing Expert was not a private expert, but one from the Department. Therefore, his standing cannot be questioned. He has been examined as a witness. He had clearly stated that the signature found in Ex.P9 cheque has not been shown as that of Asha Devi.

13.The learned counsel appearing for the accused drew my attention to the decision of the Hon'ble High Court of Karnataka, made in Criminal Revision Petition No.52 of 2016, dated 05.08.2016, ***(Nasreen Pasha Vs. Sri Malik Ahmed).***

14.The accused, apart from denying the signature attributed to her, had also examined a forensic expert to sustain her defence. Thus, the burden to establish that the signature found in Ex.P9 cheque is that of Asha Devi is squarely on the complainant. Though the Courts below have not rendered a specific finding on this aspect, nothing stops me from going into the said issue. After carefully considering the entire evidence on record, I hold that the complainant has failed to establish that Asha Devi has signed in Ex.P9 cheque. Therefore, the case cannot stand on the strength of Ex.P9 cheque also.

15.That apart, there is another flaw in this case. Though Ex.P6 cheque as well as Ex.P9 cheque arises out of the same transaction, they are in respect of two different accounts. Ex.P6 cheque is in respect of the partnership account. Ex.P9 cheque is in respect of an account jointly maintained in the individual names of the accused. Both the cheques were dishonored. Therefore, the complainant ought to have filed two independent complaints. Filing a composite complaint is clearly bad in law. Therefore, looked at from any angle, exercising my revisional jurisdiction, I cannot differ from the findings of the Courts below. Therefore, the Judgments of the Courts below are confirmed. However, the respondents are directed to pay a sum of Rs.3,25,000/- to the petitioner herein within a period of eight weeks from the date of receipt of a copy of this order, as undertaken before this Court even before commencing his arguments, if in the meanwhile the revision petitioner gives a full quit letter to the respondents herein.

16.With this direction, the revision case is disposed of.

Sd/-

Assistant Registrar(CO)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.1, Virudhunagar.

2.The Additional District and Sessions Judge,
Virudhunagar.

+1 CC to Mr.N.DILIPKUMAR, Advocate SR.No. 26367

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CK(CO)
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