IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.NO.1569 OF 2013

D.Shanmugam
Proprietor - Weavers International
12, Velmurugan Complex
32, Nachiappa 1st Street
Erode-1
Erode Taluk ...Petitioner/Accused

Vs.

Karpaga Vinayagar Dyeing Mills
A Partnership Firm
Represented by its Managing Partner
R.Kannappan
S/o.Ramasamy
S.F.456/7, Anthiyur Road
Pudhukadayampatti
Bhavani Taluk
Erode District ...Respondent/Complainant

Prayer: Revision petition filed under Section 397 r/w 401 of Cr.P.C. to call set aside the order dated 07.10.2013 passed by the learned Principal District and Sessions Judge, Erode in C.A.No.52/2013 confirming the Judgment dated 01.07.2013 of the learned Judicial Magistrate No.2, Erode in C.C.No.31 of 2008.

For Petitioner : Mr.Stalin Abhimanyu (Appointed by the Court to represent the petitioner)
For Respondent : No appearance

O R D E R

Since there is no representation for the petitioner continuously, this Court appointed Mr.Stalin Abhimanyu, learned counsel to appear on behalf of the petitioner and to assist the Court.

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

3.The case of the complainant is that he is the Managing Director of M/s.Karpaga Vinayagar Dyeing Mills, a Partnership Firm and the accused is doing a textile business in the name and style of "Weavers International". The accused used to place orders for processing the textile goods to the complainant. In the above transaction, the accused had to pay the complainant to the tune of Rs.64,989/-. In order to discharge his liability, the accused had issued a cheque dated 21.05.2007 for a sum of Rs.64,989/- (Ex.P1), drawn on IDBI Bank, Erode Branch. The complainant presented the said cheque on 26.05.2007 through his banker viz. ING Vysya Bank Limited, Erode Branch and the said cheque was dishonoured with the endorsement "Insufficient Funds"; When the same was intimated to the accused, the accused asked him to deposit the cheque again for collection, thereby, the complainant presented the cheque again on 22.09.2007, however, the same was returned unpaid on 24.09.2007 with an endorsement "insufficient funds" vide bank memo viz. Ex.P2. Therefore, the complainant issued a statutory demand notice dated 30.09.2007 (Ex.P3), which was received by the accused vide postal receipt dated 15.10.2007 (Ex.P4); the accused neither replied to the notice nor paid the cheque amount as demanded by the complainant. Therefore, the complainant initiated prosecution by way of private complaint in C.C.No.31 of 2008 before the Learned Judicial Magistrate No.2, Erode, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity the NI Act) against the accused.

4.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

5.The complainant examined himself as P.W.1. and marked Ex.P1 to Ex.P7.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and did not offer any explanation as to the circumstances under which, the cheque issued by him came into the hands of the complainant. During the cross examination, the accused denied the allegations and stated that he is not liable to pay any amount to the complainant and Ex.P1 viz. Cheque was given to the complainant only for the business transaction as security and that he has paid the entire amount due to the complainant directly by way of cash. The accused also stated that despite the repeated request made by him for return of the cheque, the complainant had not returned the cheque and in order to get undue advantage had filed a false case against him. Other than these statements, the accused had not marked any oral or documentary evidence to defend his case.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 01.07.2013 in C.C.No.31 of 2008 had found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him under Section 255(2) Cr.P.C. to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default to pay the fine amount the accused is to undergo simple imprisonment for one month. Against the said conviction and sentence, the accused had filed an appeal in C.A.No.52 of 2013, which was dismissed by the learned Principal District and Sessions Judge of Erode, District at Erode by Judgment and order dated 07.10.2013. Aggrieved by the concurrent findings of the Courts below, the accused has preferred the present criminal revision case under Section 397 read with 401 Cr.P.C.

8.Heard Mr.Stalin Abhimanyu, learned counsel appearing for the accused.

9.Learned counsel for the accused contended that when the question has been put to the accused while cross examination, he deposed that the amount has been paid to the complainant directly by cash and despite his repeated request, the complainant had not returned the cheque handed over to him. However, he would submit that no reply has been sent to the legal notice denying the demand and to prove that the payment was made directly to the complainant by cash and the cheque was not returned despite repeated requests.

10.Before adverting to the rival submissions, it may be 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. (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. ....

11.It is the case of the complainant that they are the partnership firm and the accused is doing textile business in the name and style of "Weavers International". The accused used to place orders for processing the textile goods and the complainant used to process the same. In the above transaction, the accused had to pay the complainant a sum of Rs.64,989/-. In order to discharge his liability, the accused had issued a cheque dated 21.05.2007 for a sum of Rs.64,989/- (Ex.P1), drawn on IDBI Bank, Erode Branch and the complainant presented the said cheque on 26.05.2007 through his banker viz. ING Vysya Bank Limited, Erode Branch and the said cheque was returned dishonoured with the endorsement "Insufficient Funds"; The same was intimated to the accused, during which the accused conveyed his inability to pay the amount and assured him to deposit the amount when it is re-presented for collection. The complainant again presented the cheque on 22.09.2007, however, the same was returned unpaid on 24.09.2007 with an endorsement "insufficient funds" vide bank memo viz. Ex.P2. Therefore, the complainant issued a statutory demand notice dated 30.09.2007 (Ex.P3), which was received by the accused vide postal receipt dated 15.10.2007 (Ex.P4); the accused neither replied to the notice nor paid the cheque amount as demanded. Therefore, the complainant initiated prosecution by way of private complaint in C.C.No.31 of 2008 before the Learned Judicial Magistrate No.2, Erode, for the offence under Section 138 of the Negotiable Instruments Act, 1881. A presumption is cast under Section 139 of the Negotiable Instruments Act, however the presumption is rebuttable by the accused in this case. The accused in this case had neither replied to the legal notice nor denied his signature in the impugned cheque (Ex.P1) and no oral or documentary evidence had been let in by the accused to prove his case. If the amount had been paid by cash to the complainant directly, the accused should have replied to the statutory notice received by him (Ex.P3), but he did not choose to give any reply. It is the case of the accused that he had repaid the amount for the processing work done by the complainant by cash, however, no evidence has been let in by the accused to prove his case and rebut the presumption. Whereas the complainant has proved his case by letting in cogent evidence.

12.In APS Forex Services Private Limited vs. Shakti International Fashion Linkers and Others reported in (2020) SCC Online SC 193, the Hon'ble Apex Court has held that Section 139 of the N.I. Act is an example of reverse onus clause and once the issuance of cheque has been admitted and the signature on the cheque has been admitted, there is always presumption in favour of the complainant as to the existence of a legally enforcible debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence.

13.In this case, as stated above, the complainant has proved his case by letting in cogent evidence, whereas, the accused has not rebutted such presumption by leading evidence and thereby the Trial Court as well as the Appellate Court found the accused guilty for the offence under Section 138 of Negotiable

Instruments Act. Hence, this Court finds no infirmity or illegality in the judgments of the Courts below.

14.In the result, this Criminal Revision case stands dismissed as devoid of merits. The conviction and sentence imposed by the Trial Court, which is confirmed by the Appellate Court stands unaltered. The Trial Court is hereby directed to secure the accused and commit him to prison to undergo sentence. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

15.This Court appreciates the assistance rendered by Mr.Stalin Abhimanyu.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge
Erode

2.The Judicial Magistrate No.2
Erode

Copy to
The Deputy Registrar
Criminal Side
High Court, Madras

CRLR.C.No.1569 of 2013

AD(CO)
KKV/23/03/2021