



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.332 of 2018
and
Crl.M.P.No.4064 of 2018

1. M/s.B.V.V.Paper Industries Limited,
Rep.by its Managing Director,
B.V.S.S.Krishna Prasad,
No.148-D, Palani Road,
S.V.Mills (Post)
Udumalpet - 642 128.
 2. Mr.B.V.V.S.S.Krishna Prasad
Managing Director,
M/s.B.V.V.Paper Industries Limited,
S/o.B.V.Sathya Narayana Murthy
Aged about 59 years
No.148-D, Palani Road,
S.V.Mills (Post)
Udumalpet - 642 128.
- ... Petitioners

.. Vs ..

R.Balasundaram
Proprietor
R.Balasundaram Waste Paper Mart
No.39, Ponniammam Koil Street,
Kottur, Chennai - 600 085.

... Respondent

Prayer :- Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records in C.C.No.1171 of 2003 on the file of learned IX Metropolitan Magistrate, Saidapet, Chennai and set aside the order dated 07.03.2018 in Crl.M.P.No.362 of 2018 in C.C.No.1171 of 2003 passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.B.Natarajan

For Respondent : Mr.K.R.Ramesh Kumar



O R D E R

The accused/Company are the revision petitioner herein.

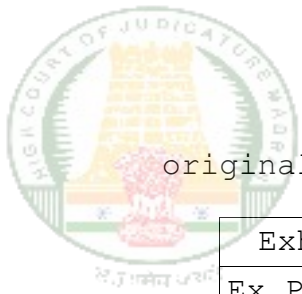
2. The accused has preferred this Criminal Revision against the order passed in CrI.MP.No.362 of 2018. The respondent herein has filed C.C.No.1171 of 2003 alleging dishonour of cheque issued by the accused. After the completion of all statutory compliance under Section 138 of Negotiable Instruments Act, the respondent/complainant preferred private complaint before the Court in the above mentioned C.C.No.1171 of 2003. The complaint was taken on file and on receipt of summons, the accused approached this Court in CrI.O.P.No.20009 of 2003 to quash the proceeding. At that time of admission, interim stay was granted by this Court and finally CrI.O.P was disposed on 21.12.2009 and relevant portion reads as follows:-

"13. For the aforesaid reasons, the above Criminal Original Petition is partly allowed and all further proceedings in C.C.No.1171 of 2003 on the file of the learned IX Metropolitan Magistrate Court, Saidapet, Chennai, as against the fourth accused / fourth petitioner herein alone, is hereby quashed. It is made clear that as far as accused 1 and 3 / petitioners 1 and 3 herein are concerned, the above Criminal Original Petition stands dismissed. Since C.C.No.1171 of 2003 is pending from the year 2003, the learned IX Metropolitan Magistrate Court, Saidapet, Chennai, is hereby directed to dispose of the same within a period of six months from the date of receipt of a copy of this order."

3) In view of the directions issued by this Court, the Court below has proceeded further, received the Proof Affidavit and recorded the evidence of the complainant. Since this Court has inadvertently omitted to record the substance of the accusation under Section 251 Cr.P.C, again the accused has taken up the matter to the High Court, Madras in CrI.O.P.No.23176 of 2010 and interim stay was granted and finally on 27.01.2017 this Court disposed of the quash petition and the order passed by this Court reads as follows:-

"7. In the light of the above, this Court is inclined to direct the learned IX Metropolitan Magistrate, Saidapet, Chennai to comply with the provisions of Section 251 Cr.P.C. and dispose of the case in accordance with law expeditiously. The evidence already recorded is ordered eschewed."

4) While the proof affidavit was filed on May, 2010 all the



original documents were marked as Exhibits as follows:-

Exhibits	Contents of Documnets
Ex.P1 Series	Invoices (30 Nos)
Ex.P2	Cheque No.702179, Dt.01.11.2002, for Rs.8,00,000/- drawn Indian Bank, Nungambakkam High Road, Chennai.
Ex.P3	Cheque No.702180, Dt.02.11.2002, for Rs.8,50,000/- drawn Indian Bank, Nungambakkam High Road, Chennai.
Ex.P4	Return Memo Dt:19.12.2002 for reason "Insufficient Funds" (Cheque No.702179)
Ex.P5	Return Memo Dt:19.12.2002 for reason "Insufficient Funds"(Cheque No.702180)
Ex.P6	Debit Advice date 22.12.2002
Ex.P7	Legal notice dated 04.01.2003
Ex.P8 Series	Postal Receipts dated 04.01.2003 (11 Nos)
Ex.P9 Series	Returned Covers (8 Nos)
Ex.P10 Series	Acknowledgment Cards dated 07.01.2003, 08.01.2003 & 08.01.2003 (3 Nos)
Ex.P11	Statement of Accounts of the complainant for the period 01.04.2002 to 31.03.2003
Ex.P12 Series	Statement of Accounts of the Accused (29 Nos)

5) In view of the order passed in Crl.O.P.No.23176 of 2010, a fresh Proof Affidavit was filed by the petitioner, relying the same exhibits. Now the respondent/complainant reliably understands that the Original Acknowledgment Cards received from the Postal Authorities for the notice issued under Section 138 of Negotiable Instruments Act, which was also marked as E.P10 Series (3 Nos) which is not available in the Court Bundle.

6) Since Original Acknowledgment Card is not available before this Court, the respondent/complainant sought permission to substitute the xerox copy of the Acknowledgment Cards and the same may be treated as a Secondary Evidence.

7. Hence, pursuant to the order passed by this Court in Crl.O.P.No.20009/13 CRL.o.p.no.23176 OF 2010, the petitioner filed a proof affidavit on May 2010 and Exhibits P1 & P12 were



marked and Acknowledgment Card was marked as Ex.P10 Series. Since he failed to comply with the provisions of Section 251 of Cr.P.C., and it is found out that the Ex.P10 which was marked and deposited before the Court, was found to be missing.

WEB COPY

8. At this juncture he has filed the petition under Section 65 of the Indian Evidence Act to substitute the xerox copy of the acknowledgment, based on original acknowledgment card, which was given to the Court in the first round of recording in the year 2010. Due to passage of 18 years, it appears that the acknowledgment earlier marked as Ex.P10 was found to be missing from the Court's custody and hence the learned Magistrate has allowed the petition under Section 65 of the Indian Evidence Act since original that was given to the Court on May 2010 is found. Hence I do not find any error in the said order passed by the Court below.

9. Accordingly, this Criminal Revision Petition is dismissed. As to the plea of complainant under Section 251 of Cr.P.C as per the earlier order passed by this Court in Crl.O.P.No.20009/03 and Crl.O.P.No.23176 of 2010, the learned Magistrate shall dispose of in C.C.No.1171 of 2003 within a period of four months from the date of receipt of this order. Consequently, connected Crl.M.P is closed.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

nvi

To

1. The IX Metropolitan Magistrate, Saidapet, Chennai

2. Do This The CMM, Egmore, Chennai.

+1cc to Mr.K.R.Ramesh Kumar, Advocate, S.R.No.39027

Crl.R.C.No.332 of 2018 and
Crl.M.P.No.4064 of 2018

gp(CO)
CT(26/08/2021)