IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.1167 of 2016
and Crl.MP.Nos.10328 & 12127 of 2016

M/s. Krishna Saa Fabs Private Limited,
Rep. by its Managing Director
Duraisamy Aged 50 Years
Nos.17 & 18, I.D.A. Gujulamandayam
AthurPosty, Renigunta, Tirupathi,
Andhra Pradesh - 571520 ... Petitioner/Accused

Vs.

M/s. Union Roadways Limited
Rep. by its Marketing Executive,
Hariom Sharma
Gee Gee Shroff Centre, 2nd floor,
113, Poonamallee High Road,
Chennai – 600084. ... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., against the judgement passed by the learned III Additional District and Sessions Judge, Chennai in C.A.No.218 of 2014 dated 31.08.2016 confirming the judgement passed by the learned Metropolitan Magistrate (Fast Track Court No.4), G.T. Chennai in C.C.No.222 of 2013 by judgement dated 14.08.2014.

For Petitioner : Mr.R.Rajan

For Respondents: M/s.S.Dhassaiya
J.Shahidha

ORDER

This Criminal Revision Case has been preferred challenging the judgement of the learned III Additional District and Sessions Judge, Chennai, dated 31.08.2016 passed in C.A.No.218 of 2014, confirming the judgement dated 14.08.2014 of the learned Metropolitan Magistrate (Fast Track Court No.4), G.T. Chennai, passed in C.C.No.222 of 2013.

2. This case has arisen out of a private complaint given by the respondent/complainant against the petitioner/accused Company on the allegation that the cheque issued by the

petitioner Company for a sum of Rs.26,28,144/- was returned as 'insufficient funds' when it was presented for collection by the respondent/complainant. When the petitioner/accused was questioned, he pleaded innocence and claimed to be tried. Hence, the trial was conducted.

3. On the side of the prosecution, complainant examined himself as P.W.1 and Exs.P1 to P5 were marked. On the side of the defence, no witness was examined and no document was marked.

4. After concluding the trial and on being satisfied with the materials available on record, the learned trial Judge framed the charges against the petitioner/accused Company for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo Two years Rigorous Imprisonment and to pay a compensation amount equal to the cheque amount i.e. of Rs.26,28,144/-. Challenging the said judgement, the petitioner/accused Company preferred the Criminal Appeal in C.A.No.218 of 2014 and the same was also dismissed on 31.08.2016. Aggrieved over that, the petitioner/accused Company has preferred this present revision case.

5. Heard the learned counsel for the petitioner/accused and the learned counsel for the respondent/complainant.

6. The learned counsel for the petitioner/accused Company submitted that the petitioner had chosen to file this case only against the Company and not against its Managing Directors, hence, the findings of the Courts below with regard to the guilt of the Company alone can be maintained and the Company cannot be sentenced to undergo imprisonment.

7. The learned counsel for the respondent/complainant submitted that the person who is representing the Company is the Managing Director and he is having knowledge about the statutory notice and all other details about the dishonour of cheque and hence, he cannot come now and plead that the respondent/complainant has not filed the complaint by impleading all proper and necessary parties.

8. Point for consideration:-
Whether the finding of the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act by the learned III Additional District and Sessions Judge, based on the materials available on record is fair and proper?

9. The learned counsel for the petitioner directly took the Court to the one and only point whether the sentence imposed by the learned Magistrate against the Company could be maintainable against the individuals like Managing Director as well. The

relevant provision under Section 141 of the Negotiable Instruments Act is extracted as under:-

> 141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
>
> 6[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]
>
> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. But in this case, from the inception, the statutory notice seems to have been issued only to the Company represented by its Managing Director. None of the Directors of the Company has been impleaded as parties in their capacity as the Managing Director of the Company. It is correct that the Company being the juristic person, it cannot have hands and mouth to conduct the case and so someone like a Managing Director of the Company has to be shown as the representative of the Company. Despite the juristic person like Company is found guilty for the offence under Section 138 of the Negotiable Instruments Act, the Company cannot be sentenced to undergo the imprisonment.

11. The learned counsel for the petitioner/accused Company attracted my attention to the decision of this Court rendered in the case of 'Karthikeyan Vs. Spydo Security Services' reported in '2016 SCC Online Mad 29413' in order to throw more light on

the above point. Paragraph 4 of the above judgment reads as under:-

> ".....
>
> 4. On a perusal of the cheque in question enclosed in the typed set of papers, it is seen that the signature of the executant is indecipharable. Of course, the cheque has been issued on the account held by Southern Academy Maritime Studies which is a juristic person and is also liable for prosecution under Section 138 of the Negotiable Instruments Act. Since the name of the signatory of the cheque is not clear, Spido Security has launched the prosecution on the bonafide belief that it is Karthikeyan who has signed the cheque. It may be relevant to state here that only Southern Academy of Maritime Studies has been shown as accused in the complaint and no one else has been shown nor prosecuted with the aid of Section 141 of the Negotiable Instruments Act. If Karthikeyan is not the signatory of the cheque in question he need not have any apprehension. When only the juristic person is made as accused in a criminal prosecution, sentence of imprisonment cannot be awarded to the person who is representing the juristic person."

12. In the case in hand, there is no dispute about the signature that has been affixed on the cheque. No doubt, the respondent/complainant had impleaded the Company alone as a party, it was represented by one of its Managing Director. Ultimately, the finding of the guilt of the accused would only be against the Company and for which, the Company alone is liable. Unless its Managing Directors or any other persons in-charge in the Company are also impleaded in his individual capacity, no sentencing of the individuals can be passed. Even in this case, no statutory pre-suit notice was issued to Duraisamy in his individual capacity. The notice was sent to the Company through its Managing Director Duraisamy. Or in other words, the notice has not been sent to Duraisamy, Director. It has been sent to the Company through its Managing Director. Since the Company has not been added as a party, there could have been an understanding in the mind of the petitioner that even if the Company is found guilty, he will not be sentenced to undergo the punishment. Unless the pre-suit notice is given to all the Directors of the Company in their individual capacity the issue revolving the sentence cannot be resolved.

13. Since the respondent/complainant have not opted to implead the Directors of the Company as parties, the sentence part of the judgement of the Courts below cannot be maintained

and hence, I feel that the judgement of the Courts below should be modified to that extent.

In the result, this Criminal Revision Case is partly allowed and the judgement of the learned III Additional District and Sessions Judge, Chennai, dated 31.08.2016 passed in C.A.No.218 of 2014 is hereby modified as follows:

i) that the judgment of conviction against the petitioner/accused Company under Section 138 of N.I. Act, is confirmed;

ii) that the sentence to undergo Rigorous Imprisonment for 2 years is set aside;

iii) that the compensation amount for Rs.26,28,144/- imposed on the petitioner/accused Company is confirmed.

Connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District and Sessions Judge,
Chennai.

2.The Metropolitan Magistrate (Fast Track Court No.4),
G.T., Chennai.

+2cc to Mr.S.Dhassaiya, Advocate, S.R.No.65217
+1cc to Mr.R.Rajan, Advocate, S.R.No.65579

Crl.R.C.No.1167 of 2016

PL(CO)
SB(06/04/2022)
SB(08/04/2022)