



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.11.2021
Pronounced on	09/12/21

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Criminal Revision Case No.859 of 2016
and
Crl.MP.Nos.6565 & 6566 of 2016

P.R.Ramakrishnan
S/o Pandurangan
Prop.RBRA Funds

... Petitioner/Appellant/Accused

Vs.

P.Prakash Textiles,
Rep.by its Partner R.Krishnamoorthy
No.8/48, Trichy Road,
Panappalayam,
Palladam.

... Respondent/Respondent/Complainant

PRAYER: This Criminal revision Petition filed under Section 397 and 401 of Cr.P.C., against the judgement of the learned Principal Sessions Judge, Tiruppur C.A.No.100 of 2013 dated 20.06.2014 confirming the conviction and sentence passed by the learned Judicial Magistrate, (Fast Track Court) Tiruppur in S.T.C.No.69 of 2012 dated 12.11.2013.

For Petitioner : M/S. J.Franklin

For Respondent : M/S.Kingsly Solomon.J

ORDER

This Criminal Revision Petition has been preferred against the judgement of the learned Sessions Judge Tiruppur in C.A.No.100/13 dated 20.06.2014 confirming the learned Judicial Magistrate (Fast Track Court), Tiruppur, dated 12.11.2013, made in STC No.69/2012 for convicting and sentencing the accused. The petitioner herein is the accused in STC No.69/2012 on the file of the learned Judicial Magistrate (FTC) Tiruppur and he was



convicted for the offence under Sec.138 of the Negotiable Instruments Act and sentenced to undergo the punishment as under:-

Sl.No	Provision under which convicted	Sentence
1	Section 138 of the Negotiable Instruments Act	To undergo Simple Imprisonment for one year and to pay a fine of Rs.5,000/-, in default to pay the fine to undergo further simple imprisonment for one month

2. The petitioner has filed an appeal in C.A.No.100/2013 before the learned Principal Sessions Judge, Tiruppur, challenging the above judgement and the appeal was dismissed. Aggrieved over the same, the petitioner has filed the present revision petition, challenging the judgement of the learned Principal Sessions Judge in C.A.No.94/2017.

3. On a private complaint filed by the respondent about the dishonour of the cheque issued by the petitioner, a case in STC No.69/2012 was taken on file. The allegation of the respondent/complainant is that he being the partner of his firm by name 'P Prakash Textiles' subscribed a chit conducted by the petitioner's chit funds. The total chit amount is Rs.12,50,000/-. After joining the chit, he paid the monthly subscription to the tune of Rs.5,51,000/- till 15.09.2004. Thereafter the respondent stopped the chit and did not repay the amount already subscribed by the petitioner towards the chit. Finally the petitioner gave a cheque for a sum of Rs.6,00,000/- on 08.11.2004 to discharge the above said subscription cumulated with interest. When the respondent presented the cheque for collection on 21.04.2005, it was returned for 'Insufficient Funds'. After sending the mandatory pre -suit notice, the respondent filed the private complaint for punishing the petitioner under Sec.138 of the Negotiable Instruments Act.

4. Before the trial Court the complainant himself was examined as PW.1 and Exs.P1 to P7 were marked. When the accused was questioned under Section 313 Cr.P.C., he denied his involvement. On the side of the accused no witness was examined, but one document was marked as Ex.D1.



5. Heard, Mr.J.Franklin, learned counsel for the accused and Mr.J.Kingsly Solomon, learned counsel for the complainant.

6. Point for Consideration:-

Whether the judgments of the Courts below in convicting the appellant for offence alleged against him is correct and if so, whether the punishment is correct?

7. The petitioner did not deny the execution of the cheque dated 08.11.2004 for a sum of Rs.6,00,000/-. But he contended that the above cheque was not meant for discharging any legally enforceable debt and it was given only as security for the interest for the loan amount availed by the petitioner's father namely Pandurangan from the respondent.

8. According to Sec.139 of the Negotiable Instrument Act, the presumption as to the legally enforceable debt is available in favour of the holder of the cheque, if the executant of the cheque does not deny its execution. However the said presumption is rebuttable through contrary proof.

9. In this case the petitioner has not chosen to examine his father Pandurangan in order to substantiate his contention that the cheque was issued as security for some other transactions between the respondent and his father. After receiving the legal notice dated 16.05.2005 the petitioner has not chosen to send any reply notice by disowning his liability. Though it is submitted by the learned counsel for the petitioner that the loan amount availed by his father was discharged, no documents was produced to show the same. Much less, no account details were produced to show that the cheque has been given by the petitioner as security for the interest amount payable by his father Pandurangan.

10. It is observed by the Courts below that the complainant has admitted in his evidence that he filed a complaint against Pandurangan for the offence under Sec. 138 of N.I Act and subsequently his father discharged the said loan. Under such circumstances the natural human conduct would be to get back all the filled or unfilled cheques issued to the respondent. If the petitioner claims that the impugned cheque is the one given by his father, some steps ought to have been taken to recover the cheque immediately after his father discharged the loan.



11. Since no such materials produced before the Court, the trial Court was not able to accept the contention of the petitioner that the cheque was issued by the father of the petitioner only by way of security. In the absence of any rebuttal proof the initial presumption that was taken in favour of the respondent will become the conclusive proof. Since it is not proved by the petitioner that the cheque in question has been issued by way of security, the Courts below held that the petitioner has issued the cheque only for a legally enforceable debt and he is guilty for the offence under Section 138 of Negotiable Instruments Act. Hence I do not find any reason to interfere with the judgement of the learned Principal Sessions Judge, Tiruppur C.A.No.100 of 2013 dated 20.06.2014.

In the result the Criminal Revision Case stands dismissed and the judgements of the Courts below are confirmed. Consequently connected Criminal Miscellaneous Petitions are also closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

jrs
Copy to

1. The Judicial Magistrate,
(Fast Track Court), Tiruppur.
2. The Principal Sessions Judge,
Tiruppur.
3. The Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to M/s.Kingsly Solomon, Advocate Sr.65603

Cr1.RC.No. 859 of 2016 and
Cr1.MP.Nos.6565 & 6566 of 2016

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srg 20/12/2021