



BAIL SLIP

The Petitioner /Accused namely M/s Ideal Leathers Rep. by its Partner I.Nazar (Died), I. Nasar (Died), and N.Ayesha Mariam, W/o.I.Nasar(Died), were released on bail by the order of this Court dated 18/08/2014 made in M.P.No.1 of 2014 in CrI.R.C.No.799 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 10.12.2021

Order Pronounced on : 17.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.799 of 2014

1. M/s.Ideal Leathers
Rep. by its Partner I.Nazar (Died)
2. I.Nasar (Died)
3. N.Ayesha Mariam
(Impleaded R3 as per order in
CrI.R.C.No.799 of 2014, dated 06.12.2021)

.. Petitioners

Versus

M/s.S.S.A.Chemicals,
No.1, Devaraj Nagar,
Opp. to IVPM nagar, MBT Road,
Ranipet, Vellore District,
Represented by one of its Partner
J.Syed Khadir,
Son of C.S.Johny.

.. Respondent

Prayer :

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records in C.A.No.103 of 2013 on the file of the learned II Additional District Judge, Ranipet, Vellore District and set aside the order dated 16.07.2014 passed by the learned II Additional District Judge, Vellore District,



Ranipet in C.A.No.103 of 2013 and the judgment dated 11.12.2013 passed by the learned District Munsif, Ranipet, in C.C.No.214 of 2011.

WEB COPY

For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mr.S.Parthasarathy

ORDER

This revision was originally filed by the first and second petitioners namely M/s.Ideal Leathers and I.Nasar, aggrieved by the judgment of the learned District Munsif at Ranipet, Vellore jurisdiction (confirmant of criminal jurisdiction) dated 11.10.2013 in C.C.No.214 of 2011 and the learned Additional District and Sessions Judge, Vellore District at Ranipet dated 16.07.2014 in Crl.A.No.103 of 2013, thereby, convicting the petitioners for the offence under Section 138 of the Negotiable Instruments Act and imposing a sentence of one year Simple Imprisonment on the second petitioner and directing both the petitioners to pay a compensation of Rs.6,95,000/- being the cheque amount under Section 357(3) of Cr.P.C.

2. Pending the Criminal Revision Case, Mr.I.Nasar, who was representing the first petitioner firm and who was the second accused in this case died on 29.10.2019. The said fact as also verified by the Inspector of Police, Ranipet Circle and therefore, the punishment of imprisonment ceases. For the limited purpose of disposing of this Criminal Revision Case of merits, Mrs.N.Ayesha Mariam, wife of the deceased second petitioner was impleaded and brought on record as the third petitioner in this case and she continued the revision by instructing the learned Counsel for the revision petitioner and accordingly, this case was taken up for hearing today.

3. The short facts of this case are that the respondent/complainant namely, M/s.S.S.A.Chemicals was supplying chemicals to the accused firm namely, M/s.Ideal Leathers and they had running account. According to the private complaint filed under Section 200 of Code of Criminal Procedure, as per the statement of accounts as on 19.09.2009, there was a balance of Rs.6,95,000/- and therefore, the cheque bearing No.003845 drawn on HDFC Bank Limited, Annasalai, Nandanam was issued by the accused. Upon being presented to the complainant bank namely, Punjab National Bank, Arcot on 19.01.2010, the same was returned dishonoured on 23.01.2010 with an endorsement "funds insufficient". The complainant issued a statutory notice on 02.02.2010. However, the accused neither paid the amount nor



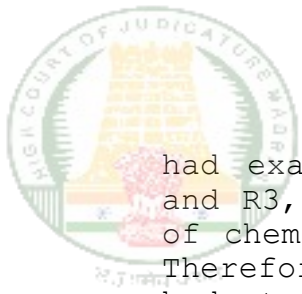
replied to the notice and hence, upon expiry of 15 days time, the above complaint was filed.

4. The learned Magistrate took the case on file in C.C.No.214 of 2011. Upon being summoned and furnishing of copies, the accused denied the charges and during the trial, on behalf of the complainant, one Syed Khadir was examined as P.W.1 and the Xerox copy of the Partnership deed was marked as Ex.P1; the resolution to file the case was marked as Ex.P2; ledger of accounts maintained by the complainant firm dated 09.12.2009 showing a closing balance of Rs.6,95,629.75 p., was marked as Ex.P3 and another confirmation of accounts showing the same details of transaction, being a photo copy, is marked as Ex.P4; the cheque was marked as Ex.P5; the bank challan, for deposit of the cheque, was marked as Ex.P6; the memorandum of dishonour, issued by the bankers of the accused, was marked as Ex.P7; the legal notice was marked as Ex.P8 and the acknowledgment as Ex.P9 and the certificate of posting as Ex.P10; and the assessment order as Ex.P11; and the ledger extract as Ex.P12.

5. Upon being questioned as per Section 313 of Cr.P.C., about the evidence on record and the incriminating circumstances, the accused denied the same as false. Thereafter, on the side of the defence, one Muralidharan, Assistant from the Commercial Tax Office was examined as D.W.1 and Ex.R1, being the communication of Commercial Tax Officer and Ex.R2, being the sales upto December, 2009 and Ex.R3, being the sales upto March, 2010 were marked. Thereafter, the Trial Court proceeded to hear both sides learned Counsel. The Trial Court found that on the basis of Ex.P3, statement of accounts and Ex.P4, confirmation of accounts coupled with the presumption under Sections 118 and 139 of N.I.Act, the offence under Section 138 of N.I.Act stood proved and the Trial Court rejected the defence of the accused. On appeal, the Appellate Court also, after independently appraising the evidence on record, confirmed the findings and conclusion of the Trial Court.

6. Heard Mr.P.Ramesh Kumar, the learned Counsel for the petitioners, Mr.S.Parthasarathy, the learned Counsel for the respondent.

7. It is the contention of the learned Counsel for the petitioners that even though there is opening balance of Rs.6,95,000/-, found in Ex.P3, the complainant did not adduce any evidence as to how that opening balance was there. As far as the cheque liability is concerned, the complainant was cross-examined and he specifically answered that this liability was for supply of chemicals, during the month of June and July, 2009 and later, on retracted to say that it was for the supply of chemicals during the entire year, 2009. However, the defence



had examined D.W.1 and through D.W.1, they have marked Exs.R2 and R3, which show that there was no such transaction of supply of chemicals during the period as mentioned by the complainant. Therefore, the Courts below ought to have held that the accused had, to the degree of preponderance of probability, rebutted the presumption and ought not to have returned a finding of guilt and imposed the sentence as well as the compensation on the petitioners.

8. Per contra, the learned Counsel for the respondent would submit that there is no any difficulty or iota of doubt in the case of the complainant. Apart from the presumption, the documentary evidence in Exs.P3 and P4 show that this amount was not for the supply, which is made in the year 2009, but this balance outstanding was there even from the year 2008 and a perusal of Exs.P3 and P4 would show the opening balance and the transaction between the complainant and the accused is even proved by the accused own documents namely, Exs.R2 and R3. Further, he would submit that the accused had confirmed accounts in Ex.P4, the entire question is put to rest.

9. I have considered the rival submissions. I do not agree with the learned Counsel for the respondent regarding Ex.P4. It is neither an original nor is projected as photo copy. Therefore, the document in Ex.P4 cannot be termed as confirmation of accounts. At best it will only be the statement of accounts of the complainant. Now, taking Exs.P3 and P4, as statements of account and the averments of the complaint, there is no difficulty or confusion over the complainant's case. The transactions stand proved. That the complainant and the accused were in a commercial relationship, the complainant has been supplying chemicals and the accused has had running account and there was a balance, as per the ledger accounts, to which the cheque is given are all proved. But, a confusion is created by the oral evidence of P.W.1, the complainant, in the cross-examination, as if the legal liability regarding the cheque is only for the supply of the chemicals during the year 2009 and therefore, that part of the oral evidence of the complainant being disproved by D.W.1's evidence in Exs.R2 and R3, the petitioner/accused is praying for the benefit of doubt.

10. In my opinion, when there is clear cut documentary evidence on record, the oral evidence of the complainant to the contrary in cross-examination will not in any manner alter the situation. When the documentary evidence is clear, as per Section 94 of the Evidence Act no further evidence is necessary to corroborate the same. As a matter of fact, evidence let in by the accused had only dislodged the erroneous answer in the cross-examination by the complainant and therefore, this Court would read the available evidence on record in total and as a



whole, remove the chaff from the grain and read meaning in the evidence on record and if such an exercise is carried on, the liability stands proved and the accused has not let in any rebuttal evidence to prove that there was no opening balance of Rs.6,95,000/- at all.

11. In that view of the matter, no exception can be taken to the conclusion of the Trial Court and the lower Appellate Court in returning the finding of the guilt and accordingly, this Revision stands dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

grs

To

1.The II Additional District Judge, Ranipet, Vellore District.

2.The District Munsif, Ranipet. Vellore District

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.68173

Cr1.R.C.No.799 of 2014

JPL(CO)

CT 06/01/2022