BAIL SLIP IN CRL.R.C.No.664 OF 2016

The Appellant / Accused namely Mr.P.Chinnadurai, S/o.Perumal was directed to be released on bail as per order of this Court dated 22.04.2016 in Crl.M.P.No.4696 of 2016 in Crl.R.C.No.664 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.01.2022
Pronounced On	01.02.2022

CORAM

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

Crl.R.C.No.664 of 2016

P.Chinnadurai
Proprietor Aravind Leather Craft,
624/1, I.O.B. Nagar, Sipcot,
Ranipet,
Vellore District. ...Petitioner / Accused

Vs.

Goodwill Leather
Rep. by its Proprietor
T.S.P. Dhamodaran
Tannery, Naripallam,
Chithode,
Erode District. ...Respondent / Complainant

Criminal Revision Case filed under Sections 397 & 401 Crl.P.C. seeking to set aside the judgment dated 16.02.2016 made in C.A.No.54 of 2015 on the file of the I Additional Sessions Judge, Erode confirming the conviction imposed in judgment dated 28.05.2015 made in S.T.C. No.558 of 2012 on the file of the Judicial Magistrate (F.T.C) No.II, Erode, by allowing this criminal revision petition.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Ms.R.Shase
for M/s. Guruprasad

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned I Additional Sessions Judge, Erode dated 16.02.2016 passed in C.A.No.54 of 2015, which confirmed the judgment of the learned Judicial Magistrate, Fast Track Court No.II, Erode, dated 28.05.2015, passed in S.T.C.No.558 of 2012.

2. The Revision Petitioner was the Accused before the trial Court.

3. This case has arisen out of a private complaint given by the complainant on the allegation that the revision petitioner owed an outstanding sum of Rs.10,90,032/- in connection with his business transactions that he had with the respondent/complainant's Company; the revision petitioner had issued two cheques dated 16.08.2012 and 20.08.2012 for the sums of Rs.5,00,000/- and Rs.4,00,000/- respectively towards discharging the above said dues; but when the respondent/complainant presented them for collection, they got returned for the reason 'funds insufficient'. After issuing mandatory pre-legal notice on 08.09.2012 and on complying the legal mandates, the respondent/complainant has filed a complaint against the petitioner for the offence under Section 138 r/w. 142 of the Negotiable Instruments Act. After the case was taken on file and on being satisfied with the materials available on record, the accused was questioned. The accused pleaded innocence and claimed to be tried. Hence, the trial was conducted.

4. During the course of the trial, on the side of the complainant, 2 witnesses were examined as P.W.1 & P.W.2 and 20 documents were marked as Exs.P1 to P20. When the incriminating materials surfaced in the evidence of the complainant was put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the defence, no witness was examined and no document was marked.

5. At the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge found the accused guilty for the offence under Section 138 of N.I. Act and convicted and sentenced him to undergo One year of Simple Imprisonment and also imposed a fine of Rs.5,000/- in default to undergo One month Simple Imprisonment. Challenging the above judgment, the accused filed an appeal before the Appellate Judge and the same was also dismissed on 16.12.2016. Aggrieved over that, the petitioner/accused has filed this present revision case.

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

7. The learned counsel for the petitioner/accused submitted that as per the invoices marked as Ex.P6 series, goods were not delivered to the petitioner; even according to the respondent/complainant, the goods relating to the invoices (Ex.P6 series) have been delivered only vide lorry receipts – Exs.P7 & P8; but it is seen from Exs.P7 & P8 that a lesser quantity of goods have been delivered and hence, there cannot be any legally enforceable liability; the cheques were issued by the petitioner/accused as a security during the usual business transactions and they were not meant to discharge any liability; the learned trial Judge without properly appreciating the evidence on record had found the accused guilty and hence, this revision case should be allowed.

8. The learned counsel for the respondent/complainant submitted that as per the accounts maintained by the complainant Company, the accused owes a sum of Rs.10,90,032/- for the goods purchased by him through the invoices dated 16.07.2011 and 26.05.2012 (Ex.P6 series); whenever the goods are purchased, it will be delivered to the petitioner and others only through lorries and the goods may not be sent in one lorry at a time and it will be delivered according to the convenient bookings; the petitioner/accused had not given any complaint that the respondent/complainant has not delivered the goods purchased by him; had the goods were not delivered according to the purchase order, the petitioner would not have given the cheques. The Courts below have rightly appreciated the evidence on record and hence, the revision case should be dismissed.

9. Point for consideration :-
Whether the finding of the guilt of the accused for the offence under Section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate, Fast Track Court No.II, based on the materials available on record is fair and proper?

10. The fact that the petitioner/accused and the respondent/complainant were known to each other in connection with their business dealings, is not disputed. The complainant Company being a leather supplier, used to supply cow hides and other related products to his purchasers. The petitioner/accused who is using the leather supply for his leather craft business, gave some orders for supplying the raw materials. Accordingly, on 16.07.2011 and 26.05.2012, goods worth of Rs.35,97,710/- and Rs.1,59,145/- respectively, have been purchased by the petitioner. Invoices which are produced as Ex.P6 series would show that the petitioner/accused had purchased the said goods on the said date. Though the

petitioner/accused does not deny the genuineness of the invoices (Ex.P6 series), he claims that the goods so purchased against the above invoices were not delivered to him and that is evidenced through Exs.P7 & P8 - lorry receipts.

11. It is further submitted by the learned counsel for the petitioner/accused that even in the evidence of P.W.1, he had admitted that the goods pertaining to Ex.P6 series have been transported through lorries vide Exs.P7 & P8. The claim of the respondent/complainant is not only basing on the invoices but also on the basis of the accounts maintained by him. The learned trial Judge has observed that the following payments have been made by the petitioner/accused towards the purchase he made vide Ex.P6 series and along with the outstanding already pending against the petitioner. This is evidenced by the copy of the accounts of the respondent/complainant produced as Ex.P10. According to Ex.P10, the balance outstanding against the petitioner/accused as on 01.04.2011 was Rs.8,77,977/- and the accused is said to have given a cheque for Rs.5,00,000/- on 14.07.2011; after crediting the above Rs.5,00,000/-, the balance amount was Rs.3,77,977/-. The purchase made through the impugned invoices was to the tune of Rs.35,97,710/-. Altogether the accused owed a sum of Rs.39,75,687/-. The petitioner/accused made payments to the tune of Rs.12,20,887/- from 18.08.2011 to 07.02.2012. On 26.05.2012 vide invoice No.3, the petitioner/accused again purchased the goods worth of Rs.1,59,145/-. So as on 26.05.2012, the accused owed a total sum of Rs.13,80,032/-. On 16.02.2012, the accused made a payment of Rs.2,90,000/-, so he owed a balance of Rs.10,90,032. Only towards discharging these dues, the petitioner/accused is said to have given two impugned cheques for the sums of Rs.5,00,000/- and Rs.4,00,000/- respectively.

12. The purchases through Ex.P6 series have been made in the month of July, 2011 and May, 2012 respectively. After the cheques were presented for collection on 05.09.2012, it got returned for the reason 'Funds insufficient'. Immediately thereafter, the respondent/complainant has sent a legal notice on 08.09.2012. The petitioner/accused has also sent a reply notice on 22.09.2012. In the reply notice dated 22.09.2012, the petitioner/accused has not stated that the goods purchased by him through Ex.P6 series - invoices were not delivered to him. Neither had he filed any complaint against the respondent/complainant that he had misused the cheques issued for security or that he had not supplied the goods which had actually purchased by him. No doubt, P.W.1 has stated in his evidence that vide the lorry receipts dated 16.07.2011 and 26.05.2012, the goods were sent to the petitioner.

13. According to the respondent/complainant, the goods used to be sent in accordance with the space available in the lorries and just because Exs.P7 & P8 contained a lesser quantity that does not mean that the rest of the quantities were not delivered to the petitioner. It is submitted by the learned counsel for the respondent that the Commercial Tax Officer who was examined as P.W.2, has stated that the commercial tax for the goods involved in Ex.P6 series - invoices, have been fully paid by the complainant. She has further stated that after the goods were received by the petitioner/accused, he would submit Annexure I to the Commercial Tax Office. The said Annexure I was also submitted by the petitioner/accused in connection with the goods involved in Ex.P6 (series) and they have been marked as Exs.P19 & P20. If the respondent/complainant did not intend to deliver the goods to the petitioner, the tax would not have been paid by the complainant and if the goods were not received by the petitioner, he would not have filed Annexure I to the Commercial Tax Department.

14. The above documents filed to the Commercial Tax Department would show that there were business transaction was between the respondent/complainant and the petitioner/accused. Though it may not be within the knowledge of P.W.2, whether the goods were actually delivered or not, the records of the department would show that such Annexures have been filed. In the usual business transactions unless the goods were received as ordered, Annexure I will not be filed.

15. It is to be noted that in the cases filed for dishonour of cheques, the liability fastened on the holder of the cheque is not akin to the liability to prove a civil claim. It is sufficient if the complainant could show prima facie materials which would make his case probable. Moreover, when the drawer of the cheques does not dispute his signatures on the cheques, the initial presumption as contemplated under Sections 118 and 139 of the Negotiable Instruments Act would be in favour of the holder of the cheques. Though it is always open to the petitioner/accused to refute the initial presumption by way of producing rebuttal evidence, such rebuttal proof should be such a standard that it should tilt the preponderance of probability in his favour.

16. In the case in hand, the petitioner/accused did not come to the box and subject himself for cross-examination with regard to the allegation he made about the short delivery of goods. There is also no explanation from the side of the petitioner as to why he did not elaborate on this aspect when he sent his reply notice. Moreover, the respondent/complainant has proved the liability of the petitioner not only through his invoices but also through accounts maintained by him. So in the above

background of facts and evidence, the preponderance of probability is still found to be in favour of the respondent/complainant and the petitioner/accused did not refute the same by way of any strong rebuttal proof. Since the delivery of goods were made through several loads, it cannot be concluded that the respondent/complainant has not delivered the goods in full. The probability of the delivery of goods as found in Ex.P6 series is more probable in the light of the fact that the respective tax was paid fully by the complainant and the respective papers were also filed by the petitioner/accused to the Commercial Tax Department, in connection with the alleged transaction of goods. The learned trial Judge and the Appellate Judge have appreciated the evidence only in right perspective and therefore, I find no reason for interference.

In the result, this Criminal Revision Case is dismissed and the judgment of the I Additional Sessions Judge, Erode, dated 16.02.2016 passed in C.A.No.54 of 2005 is confirmed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1.The I Additional Sessions Judge,
Erode.

2.The Judicial Magistrate,
Fast Track Court No.II,
Erode.

3.The Chief Judicial Magistrate,
Erode.

+1cc to M/s.A.Thiyagarajan, Advocate Sr.No.6513

+1cc to Mr.M.Guruprasad, Advocate Sr.No.6162

Crl.R.C.No.664 of 2016

SRA(CO)
RVM(11/02/2022)