



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2022

Pronounced on : 16.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
Crl.R.C.No.649 of 2019
and
Crl.M.P.No.9057 of 2019

1. M/s. Panchasheel Alloys Construction Pvt Ltd.,
Rep.by its Managing Director,
Mr.M.Jaswant Singh Rawat,
New No.39/1, Old No.262,
Sundaram Pillai Nagar,
Tondiarpet, Chennai - 600 054.

2. Mr.M.Jaswant Singh Rawat

...Petitioners

Versus

M/s. Chitrakoot Steel and Power Private Ltd.,
No.22/12, 1st Cross Street,
C.I.T Colony, Mylapore,
Chennai -600 004,
Rep.by their Authorised Person,
Mr.M.Penchal Naidu

...Respondent

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in CA.No.248 of 2016, on the file of VII Additional Sessions Judge, Chennai in CC.No.4273 of 2009 on the file of the Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai and set aside the conviction and the order of payment of compensation and render justice.

For Petitioners : Mr. Ramesh Kumar Chopra

For Respondent : Mr.V.Deenadayalan



ORDER

By a judgment dated 16.09.2016 passed in C.C.No.4273 of 2009, by the Learned Fast Track Court, Magistrate level, No.I, Egmore, Chennai, the petitioners were convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo six months Simple Imprisonment and directing the first and second accused, to jointly pay of compensation of Rs.10,87,575/-. On appeal, the said conviction was confirmed by the VII-Additional Sessions Judge, Chennai in Crl.A.No.248 of 2016 however, the sentence of imprisonment as against the accused alone was modified as Simple Imprisonment till the rising of the Court inter alia confirming the payment of compensation imposed by the Trial Court.

2.Heard Mr.Ramesh Kumar Chopra, learned counsel for the petitioners and Mr.V.Deenadayalan, learned counsel for the respondent.

3.Learned counsel appearing on behalf of the petitioners would submit that as far as the second petitioner is concerned, he has already undergone the sentence of imprisonment and in respect of the compensation amount, so for a sum of Rs.6 Lakhs is deposited into the Court.

4.Continuing his arguments on merits, the learned counsel assailed the Judgment of the Courts below on four grounds.

5.It is his submission that at the time of filing of the complaint, no letter of authorization from the respondent/complainant, which is a corporate entity, was filed nor any Power of Attorney was produced. Subsequently, during the cross-examination, the letter of authority was marked and therefore, the complaint as such was filed without any authority whatsoever, and therefore, the petitioners are entitled to acquittal.

6.It is his second submission that the complainant/company viz., M/s.Chitrakoot Steel and Power Private Ltd., got merged with another company viz., M/s.Tulsyan NEC Ltd., and therefore, once the complainant/company was taken over by a different company unless the said company comes on record by way of substitution, the complaint is construed as the one filed by a non-existing person and therefore, it is not maintainable. This apart, after taking over, without any authority of the said company, the erstwhile complainant cannot pursue the complaint by misusing the cheque without even confirming with the new entity.

7.His third contention is that the complainant ought to have proved the transaction, the goods supplied and that the money was due and payable by the accused through relevant invoice and other materials. The Trial Court as well as the first Appellate Court simply relied upon the admission made on behalf of the accused side witness and convicted them. In this



regard, he would rely upon the Judgment of the Hon'ble Supreme Court of India, in Nagubai Ammal & Others Vs. B.Shama Rao & Others¹, more fully on paragraph No.16, for the proposition that admission by itself cannot be regarded as truth of the complaint and the complainant ought to have adduced further evidence to prove the transaction. For the very same proposition, the learned counsel also relied upon the Judgment of this Court in M.Manoharan Chetty and Others, Vs. M/s.C.Coomaraswamy Naidu & Sons Madras², more fully relied upon paragraph No.10 of the said Judgment.

8.Finally, the learned counsel would conclude that while the cheque amount was ordered to be paid as compensation, the complaint did not contain any averments as to the loss suffered by the complainant and in the absence of any pleadings in the complaint and any evidence on record, ordering compensation is not in consonance with the procedure prescribed as per the Section 357(3) of Cr.P.C.

9.The learned counsel for the respondent/complainant would submit that M/s. Chitrakoot Steel and Power Private Ltd., is a company incorporated under the Companies Act and the same is in existence even as on date. Merely because, the management has been taken over by some other company, the legal entity does not change. As on the date of filing of the complaint and as on today, the complainant is entitled to institute and continue the legal proceedings as against the petitioners/accused.

10.As far as the authorization is concerned, the same was subsequently produced and marked as Ex.P18, therefore, once Ex.P18 is marked, technical objection is no longer sustainable. He would further submit that there is a categorical admission of D.W.1 himself that they are liable to pay the balance amount of Rs.10,87,575/-, coupled with the said averments, the presumption under Section 138 of the Negotiable Instruments Act, 1881, the offense is clearly made out by the complainant. Therefore, the complainant has proved the liability beyond any doubt and the Trial Court as well as the first Appellate Court has rightly convicted the petitioners.

11.It is the further submission that the cheque amount is only ordered as compensation. The complainant has prayed before the Court that the compensation has to be ordered to be paid and the same was rightly granted, considering that the offence under Section 138 of the Negotiable Instruments Act is proved.

12.I have considered the rival submissions and perused the material records of this case.

13.As far as the contention of the petitioner that there was no authorization issued to the complainant to file the

<https://hcservices.ecourts.gov.in/hcservices/>

¹ AIR 1956 SC 593
² 92 L.W. Page No.736



complaint is concerned, it is seen that the same is technical in nature and when the technical flaw has been subsequently cured by producing authorization letter under Ex.P18, it would be no longer open for the petitioners to make such a hyper technical contention. In any event, the non production of authorization letter along with the complaint and producing it belatedly is not a ground for acquittal.

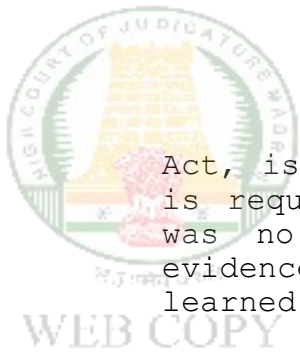
14.As far as the contention relating to take over is concerned, there is difference between the take over of the management and merger of the company. It is the case of the accused that the company has merged and the same being a public document it was very much open for the petitioners, to apply for certified copies from the Registrar of Companies and produce the same before this Court.

15.On the other hand, the learned counsel for the respondent placed strong reliance on the cross-examination of P.W.1. It is his contention that when P.W.1 in his cross-examination has admitted that their company has been taken over, then the Trial Court should have dismissed the complaint.

16.A complete reading of cross-examination would make it clear that in the first sentence P.W.1 admitted the company has been taken over and in the next sentence he denied the same and stated that it was not taken over on the date of complaint and further, he answered that the complainant company is still in existence and therefore, it is entitled to continue the complaint. Therefore, the admission of P.W.1 does not lead to acquittal of the accused. As rightly pointed out by the Trial Court it is the defence of the accused and therefore, they are duty bound to produce clinching evidence in respect of the same and when they have not done so, the Trial Court has rightly rejected the said defence. Therefore, I am unable to accept this contention of the learned counsel for the petitioner.

17.The further contention that the petitioners ought to have proved the liability is concerned, this is a case where there is presumption under Section 139 of the Negotiable Instruments Act, in favour of the complainant. Once the petitioners accept their signature and issuance of cheque, it is their duty to prove that there was no liability. D.W.1 has got into the box and categorically admitted that they are liable to pay the balance of Rs.10,87,575/- and therefore, this argument of the petitioners has to be rejected..

18.As far as the Judgments relied upon by the learned counsel are concerned, the Hon'ble Supreme Court of India as well as this Court has only held that weightage given to admission should depend upon the facts and circumstances of each case. In this case, D.W.1 has categorically admitted the total liability and what was pending balance and what was already paid. Therefore, in this case, the admission of DW1 has been rightly taken into account by the Trial Court as well as the first Appellate Court. Even in the absence of admission, the presumption under Section 139 of the Negotiable Instruments



Act, is more in favour of the complainant. No further evidence is required to prove the complainant's case. If at all there was no liability, the accused ought to have let in such evidence to prove the same. Therefore, this contention of the learned counsel is also without any merits.

19.Final contention of the learned counsel for the petitioners is that there was no pleading as to the prejudice or loss for grant of compensation. It is not a case, where any offence like bodily injury is committed, where the complainant has to show some proof that they sustained loss for the purpose of determining compensation. It is an offence under Section 138 of the Negotiable Instruments Act and it is statutory mandate to order compensation of the cheque amount including twice the cheque amount. Therefore, considering the nature of the offence under Section 138 of the Negotiable Instruments Act, the argument of the learned counsel based upon the Section 357 of Cr.P.C., is without any merits. Therefore, the learned counsel is unable to establish any point so as to upturn the findings of conviction and sentence imposed by the Courts below.

20.Two weeks time is granted from the date of receipt of a copy of this order to the second petitioner to pay the balance amount, failing which, it will be open for the complainant to approach the Trial Court for execution of warrant for the second petitioner to undergo the default sentence. The amount already deposited before the Trial Court is ordered to be paid to the respondent/complainant.

21.With the above observations and directions, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Klt

To

1.The VII Additional Sessions Judge,
Sessions Court, Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.I, Egmore, Chennai.

3.-do- through The Chief Metropolitan Magistrate,
Egmore, Chennai.



4.The Public Prosecutor,
High Court of Madras.

Copy to:

The Section Officer,
Criminal Section/Records,
High Court, Madras.

+2ccs to Mr.V.Deenadayalan, Advocate SR. No. 35664

Crl.R.C.No.649 of 2019

SKM (CO)
PR (30/06/2022)