BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :28.06.2022

PRONOUNCED ON: 20.07.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.R.C.(MD)No.367 of 2021

K.Ramasubramanian : Petitioner

Vs.

M/s Meenakshi Chemicals Pvt., Ltd.,
Proprietor K.Jeeva. : Respondent

PRAYER : Criminal Revision Case has been filed under Section 397 r/w 401 Cr.P.C., to call for the records relating to Judgment dated 05.01.2021 passed in C.A.No.59 of 2019, on the file of the learned VI Additional Sessions Judge, Madurai, confirming the judgment dated 22.03.2019, passed in STC No.24 of 2016, on the file of the learned Judicial Magistrate No.II, FTC Magisterial Level, Madurai and set aside the same.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for M/s Ajmal Associates

For Respondent : Mr.R.Selvaraj

ORDER

This Criminal Revision is directed against the judgment of conviction passed in Criminal Appeal in C.A.No.59 of 2019, dated 05.01.2021, on the file of VI Additional Sessions Judge, Madurai confirming the judgment of conviction passed in S.T.C.No.24 of 2016, dated 22.03.2019, on the file of the Court of the Judicial Magistrate No.II (FTC Magisterial Level), Madurai.

2. The revision petitioner is the accused. The respondent/complainant has filed a private complaint under Section 200 Cr.P.C., against the petitioner/accused for the offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

4. The case of the complainant is that the complainant is the owner of Sri Meenakshi Chemicals and the accused is managing the business of her wife M/s Kiruthic Chemicals, that the accused and his wife approached the complainant for the sale of M/s Kiruthic Chemicals for Rs.1,75,00,000/- in 2011, that the complainant and the accused entered into a sale agreement on 26.03.2012, whereunder the complainant has to repay the bank loan of

M/s Kiruthic Chemicals to the tune of Rs.90,00,000/-, that the complainant has paid a sum of Rs.85,00,000/- and obtained the ownership of the Kiruthic Chemicals, but the accused without handing over the said concern, had promised the complainant that he will conduct the business as it will fetch an income of Rs.30,00,000/- per month, that the complainant believing the words of the accused, invested Rs.90,00,000/-, by purchasing the raw materials, that the accused failed to keep up his promise and there arose difference of opinion between them, that both the parties thereafter entered into three agreements, lastly on 07.01.2013, whereunder the accused had agreed to repay the amount of Rs.85,00,000/- before 31.03.2013, but he repaid a sum of Rs.3,50,000/- on 05.08.2014, that when the complainant met the accused and demanded the remaining amount on 04.11.2014, the accused issued a signed blank cheque bearing No.618322, drawn on Canara Bank, Rajapalayam, that the complainant presented the cheque, as per the instructions of the accused, on 01.12.2014 with his bankers, that the cheque was returned as dishonoured for want of sufficient funds in the bank account of the accused, that the complainant has then sent a legal notice on 05.01.2015, demanding the payment of the amount covered by the cheque, that the accused, after receiving the said notice, has sent a reply notice dated 20.01.2015 with false allegations and that since the accused has failed to comply with the notice demand, the complainant was constrained to lodge the above complaint.

5. During trial, the complainant has examined himself as P.W.1 and one Thiru.Harsavarthan, as P.W.2 and exhibited 26 documents as Exs.P.1 to P.26. The accused has examined two witnesses as D.W.1 and D.W.2 and exhibited 12 documents as Exs.D.1 to D.12. The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the judgment on 22.03.2019, convicting the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and to pay compensation of Rs.81,50,000/- under Section 357 Cr.P.C., within two months. Aggrieved by the said judgment of conviction and sentence, the accused has preferred an appeal in C.A.No.59 of 2019. The learned VI Additional Sessions Judge, Madurai, on perusing the records and hearing the arguments of both sides, has passed the impugned judgment dated 05.01.2021, dismissing the appeal and thereby confirming the judgment of conviction and sentence passed in S.T.C.No.24 of 2016, dated 22.03.2019 by the learned Judicial Magistrate No.II, (FTC Magisterial Level), Madurai.

6. Not satisfying with the judgment of the Appellate Court, the accused has come forward with the present criminal revision.

7. Whether the concurrent judgments of conviction passed in C.A.No.59 of 2019, dated 05.01.2021, on the file of the VI Additional Sessions Court, Madurai confirming the judgment made in S.T.C.No.24 of 2016, dated 22.03.2019, on the file of the Judicial Magistrate Court (FTC Magisterial Level), Madurai, is liable to be set aside? is the point for consideration.

8. The learned Counsel for the revision petitioner would submit that the Courts below have failed to notice the case of the petitioner that the disputed cheque was given only to one Selvaraj and the same has been misused by the respondent. He would further submit that the respondent has already instituted a civil suit for recovery of money covered by the subject cheque and that the Courts below should have refrained from granting compensation equivalent to the cheque amount which goes contrary to the spirit of Section 357 Cr.P.C. He would further submit that both the Courts below have failed to consider that though the respondent had alleged that he incurred expenditure to the tune of Rs.90,00,000/- in running the petitioner's company, he has not produced any material or evidence to substantiate the same.

9. It is pertinent to mention that the complainant has taken a stand that the accused and his wife have entered into an agreement with him on 07.01.2013, but the revision petitioner has disputed the alleged agreement dated 07.01.2013.

The learned Appellate Judge, on considering the evidence adduced, has specifically observed that the petitioner in the plaint filed in O.S.No.80 of 2013, on the file of the Principal District Munsif Court, Srivilliputhur against the complainant, has specifically admitted the agreement dated 07.01.2013 and therefore, he is clearly estopped from disputing the terms of the agreement dated 07.01.2013 in the present proceedings.

10. As rightly observed by the Courts below, the complainant has clearly proved that the accused was liable to pay Rs.85,00,000/- as on 07.01.2013 to the complainant and after deducting the payment of Rs.3,50,000/- made on 05.08.2014, the accused has to pay Rs.81,50,000/- to the complainant. As rightly pointed out by the learned Counsel for the first respondent, in order to discharge the said liability, the cheque in question came to be issued.

11. The next main contention of the revision petitioner is that the cheque was given only to one Selvaraj, but the same has been misused by the complainant. Admittedly, the accused has not chosen to examine the said Selvaraj. As rightly observed by the learned appellate Judge, though the accused has alleged that the cheque in question was given to one Selvaraj, the said factum has not been proved. As rightly pointed out by the learned appellate Court, the accused did not adduce any evidence nor brought out any materials on

record to prove that the disputed cheque was issued to Selvaraj.

12. It is pertinent to note that the cheque in dispute and the signature found therein have been admitted by the accused. As rightly observed, the presumption under Section 139 of the Negotiable Instruments Act has to be drawn, but the accused has miserably failed to rebut the presumption and on that basis, the Courts below have recorded a finding that the complainant has clearly proved his case.

13. As already pointed out, there is concurrent verdict of conviction and sentence against the revision petitioner. At the outset, it is pertinent to note that the jurisdiction under Sections 397 and 401 Cr.P.C., is confined to legality, propriety and correctness of the concurrent findings of conviction entered and sentence imposed on the revision petitioner. The revisional jurisdiction exercised by the High Court is supervisory jurisdiction for correcting miscarriage of justice. But at the same time, the revisional power cannot be equated with the power of an appellate Court nor it can be treated as a second appellate jurisdiction.

14. The Hon'ble Supreme Court in ***K.Chinnaswamy Reddy Vs. State of***

Andhra Pradesh reported in ***1962 AIR 1788***, has held that the revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in flagrant miscarriage of justice.

15. In ***Duli Chand vs Delhi Administration*** reported in ***(1975) 4 SCC 649***, the Hon'ble Apex Court reminded that jurisdiction of the High Court in Criminal Revision is severely restricted and it cannot embark upon a re-appreciation of the evidence and while exercising the supervisory jurisdiction in revision, the Court would be justified in refusing to re-appreciate the evidence for determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct.

16. It is pertinent to note that the revisional power under Cr.P.C., cannot be exercised in a routine and casual manner and while exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate Courts are required to do. The powers under Sections 397 and 401 Cr.P.C., are required to be exercised sparingly. In the matter of judicial review in criminal revision, this Court is of the view that this Court does not sit in appeal, but the scope is very limited and it is a supervisory jurisdiction, which is exercised by the Court to correct manifest error in the orders of Subordinate

Courts, but should not be exercised in a manner so as to turn the Revisional Court in a Court of appeal. No doubt, there is absolutely no scope for re-appreciation of evidence once again, but at the same time, if the appreciation of evidence is tainted with the perversity, that can be interfered with. Even if an alternative view is possible, this Court cannot substitute its own view, in lieu of the concurrent views of the Courts below.

17. Considering the above and on applying the legal position above discussed, this Court is of the clear view that there is nothing to show that the Courts below have failed to consider any material evidence in favour of the petitioner or have not appreciated the evidence. Hence, this Court decides that there is no illegality or perversity in the impugned order of conviction and sentence passed by the trial Court, which was confirmed by the appellate Court and no ground has been made out for interference in the revisional jurisdiction.

18. The learned Senior Counsel appearing for the revision petitioner would submit that the respondent has already filed a civil suit and obtained a decree, that he has already initiated execution proceedings and are pending, that the petitioner is aged about 50 years, that he is having several health issues and that therefore, the punishment imposed on the petitioner may be reduced and that since the respondent had already initiated execution proceedings for executing

the money decree, the compensation awarded by the Courts below may be reduced.

19. The learned Counsel for the respondent would submit that though the respondent had initiated execution proceedings, the petitioner had already mortgaged all the properties, that the respondent is not in a position to recover the amount, that the trial Court has rightly imposed the punishment and the same was confirmed by the appellate Court and that therefore, the punishment awarded by the Courts below does not warrant any interference and as such, the revision is liable to be dismissed.

20. As already pointed out, the trial Court has imposed punishment of 6 months Simple Imprisonment and the compensation of Rs.81,50,000/- being the cheque amount. Considering the above facts and circumstances and the reasonings given by the Court below, this Court is not inclined to interfere with the punishment awarded. Hence, this Court concludes that the Criminal Revision Case is absolutely devoid of merits and the same is liable to be dismissed.

21. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to take steps to secure the revision petitioner/accused to under the remaining period of sentence, if any.

20.07.2022

Index : Yes/No
Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
1. VI Additional Sessions Court, Madurai.

2. The Judicial Magistrate Court No.II,
FTC Magisterial Level, Madurai.

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

Crl.R.C.(MD)No.367 of 2021

20.07.2022