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Crl.R.C.Nos.963 and 964 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.Nos.963 and 964 of 2017

1.M/s.M.P.Shantex Pvt Ltd
Rep.by its Managing Director
P.Umashankar, 48 years
S/o Palanisamy
S.F.No.145/1A/1A, Parapalayam Road
Near Amman Koil, Mannarai (PO)
Tiruppur – 641 607.

2.P.Umashankar 48 years, S/o Palanisamy,
Managing Director
S.F.No.145/1A/1A, Parapalayam Road
Near Amman Koil, Mannarai (PO)
Tiruppur – 641 607.

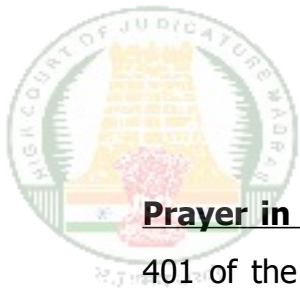
3.S.Umamaheswari, 49 years
W/o Sekar, Director of M.P.Shantex Pvt Ltd.,
S.F.No.145/1A/1A, Parapalayam Road
Near Amman Koil, Mannarai (PO)
Tiruppur – 641 607.

... Petitioners in both
Crl.Revision Cases

vs.

M/s.Sri Chem
Rep.by its Partner S.Senguttuvan
No.25, Veerabathra Street II
Sakthi Road, Erode-3.
By his Power of Attorney Holder/
Manager, M.Sundaralingam, 63 years
S/o A.V.Marimuthu, 85/2k, A.S.Nagar
3rd Street, Erode-3.

... Respondent in both
Crl.Revision Cases



Prayer in Crl.R.C.No.963 of 2017 : Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment passed in Criminal Appeal C.A.No.30 of 2017 dated 28.06.2017 by the II Additional District Sessions Court, Erode confirming the judgment passed in S.T.C.No.89 of 2016 dated 04.01.2017 passed by the Judicial Magistrate Fast Track No.1, Erode.

Prayer in Crl.R.C.No.964 of 2017 : Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment passed in Criminal Appeal C.A.No.31 of 2017 dated 28.06.2017 by the II Additional District Sessions Court, Erode confirming the judgment passed in S.T.C.No.233 of 2016 dated 04.01.2017 passed by the Judicial Magistrate Fast Track No.1, Erode.

In Both Crl.R.Cs

For Petitioners 2 and 3 : M/s.Nithyaesh and Vaibhav
for Mr.Anirudh A.Sriram

For Respondent : Mr.S.Ashok Kumar, Senior Counsel
for M/s.I.C.Vasudevan

ORDER

These Criminal Revision Cases have been filed against the judgment and order passed by the II Additional District and Sessions Court, Erode in Crl.A.No.30 of 2017 and 31 of 2017 dated 28.06.2017, confirming the judgment and order passed by the Judicial Magistrate, Fast Track Court-I, Erode in S.T.C.No.89 of 2016 and 233 of 2016 dated 04.01.2017, convicting and sentencing the petitioners for offence under Section 138 of the Negotiable Instruments Act.

2. The respondent filed private complaints against the petitioners on the ground that they had business transactions with the petitioners on credit basis and on account of various credit purchases made by the petitioners, cheques (five cheques in each



case) were issued towards discharge of the liability. In S.T.C.No.89 of 2016 the total amount covered by the five cheques was to the tune of Rs.41,18,799/- and in S.T.C.No.233 of 2016 the total amount covered by the five cheques was to the tune of Rs.45,63,401/-. The further case of the respondent was that when the cheques were presented for collection on 15.07.2013 through City Union Bank, Erode branch, some cheques were returned with endorsement "Funds insufficient" and some cheques were returned with endorsement "Payment stopped by the drawer". In view of this development, the respondent issued notice to the petitioners calling upon the petitioners to pay the amount covered by the cheques. The notice was received by the petitioners and since neither a reply was given nor the amounts covered under the cheques were paid, the respondent proceeded to file private complaints against the petitioners for offence under Section 138 of the Negotiable Instruments Act.

3. The Trial Court conducted separate trials in both the complaints. Insofar as S.T.C.No.89 of 2016 is concerned, P.W.1 to P.W.3 were examined on the side of the respondent and they marked Ex.P1 to Ex.P27. On the side of the petitioners D.W.1 to D.W.3 were examined and Ex.D1 to D4 were marked. Insofar as the S.T.C.No.233 of 2016 is concerned, the respondent examined P.W.1 to P.W.3 and marked Ex.P1 to P30. The petitioners examined D.W.1 to D.W.3 and marked Ex.D1 to D4. When the incriminating evidence collected in the course of trial was put to the petitioners, they denied the same as false.



4. The Trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to the conclusion that the respondent has made out a case and that the legal presumption under Section 139 of the Negotiable Instruments Act must go in favour of the respondent and further the petitioners have not rebutted the said legal presumption and accordingly, the petitioners were convicted and sentenced by the Trial Court. Insofar as S.T.C.No.89 of 2016 is concerned, all the petitioners were convicted and petitioners 2 and 3 were sentenced to undergo three months simple imprisonment and they were directed to jointly or severally pay a total compensation amount of Rs.41,18,799/- which is equivalent to the amount covered under the cheques. Insofar as S.T.C.No.233 of 2016 is concerned, all the petitioners were convicted and petitioners 2 and 3 were sentenced to undergo nine months simple imprisonment and to jointly or severally pay a total compensation amount of Rs.45,63,401/- which is equivalent to the total amount covered under the five cheques.

5. Aggrieved by the above judgment passed by the Trial Court, Criminal Appeal Nos.30 and 31 of 2017 were filed and it was heard by the II Additional District and Sessions Court, Erode and the appellate Court confirmed the judgment and order passed by the Trial Court. Aggrieved by the same, these Criminal Revision Cases have been filed before this Court.

6. Heard Mr.Nithyaesh learned counsel for the petitioners and Mr.S.Ashok Kumar, learned Senior Counsel for the respondents.



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7. The learned counsel for the petitioners attacked the judgment and order passed by both the Courts below on various grounds. The first ground of attack made by the learned counsel for the petitioners is that the respondent failed to produce the entire statement of accounts and they have not produced the delivery notes or invoices or purchase orders and in short, they have not established the liability towards which the cheques were allegedly issued by the petitioners. It was further submitted that the respondent had improved their case after the completion of the entire evidence by filing an application under Section 311 of Criminal Procedure Code and thereby they plugged the hole in the evidence. In spite of the same, it was contended that the respondent did not make out a case by establishing the liability on the part of the petitioners even as per the evidence that was produced before the Court. The learned counsel for the petitioners also questioned the very admissibility of Ex.P13 and P19 which were the statement of accounts that was produced by the respondent to establish the liability on the ground that the same was not accompanied by certificate under Section 65B(4) of the Indian Evidence Act.

8. Learned counsel for the petitioners further contended that the petitioners and the respondent were having a running account for a long period of time and since goods used to be purchased on credit basis, the cheques were given as security and the same has been misused by the respondent. To substantiate the same, learned counsel for the petitioners pointed out to the serial numbers of the cheques and also the fact that different inks were used to fill up the cheques. Learned counsel for the



petitioners questioned the very tenability of the notice issued before instituting the private complaint on the ground that the partnership firm was not represented by any partner and hence the notice itself is non est in the eye of law.

9. Learned counsel for the petitioners also pointed out to the various findings of the Trial Court to establish that the same suffers from perversity. The learned counsel questioned the maintainability of the complaint as against A3 since the averments in the complaint does not satisfy the requirements under Section 141 of the Negotiable Instruments Act.

10. Per contra, the learned Senior Counsel appearing on behalf of the respondent submitted that each and every ground that was taken by the petitioners was answered by the Trial Court and was confirmed by the appellate Court and those findings do not suffer from any perversity which warrants interference of this Court in exercise of its revisional jurisdiction. The learned Senior Counsel submitted that the scope of interference in the revision is very limited and the petitioners cannot be allowed to canvass these petitions like an appeal and it was contended that this Court cannot once again re-appreciate the evidence available on record. The learned Senior Counsel pointed out to each and every one of the finding of the Trial Court and justified as to how those findings are supported by the available evidence and as to how they do not suffer from any perversity. In view of the same, the learned Senior Counsel appearing on behalf of the respondent sought for dismissal of these criminal revision cases.



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11. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the findings rendered by both the Courts.

12. On an overall appreciation of the materials available on record and on carefully considering the submissions made on either side, this Court is satisfied that the facts of the present case requires proper appreciation of evidence both oral and documentary. On going through the judgment of the appellate Court, it is stated at Para 6 of the judgment that the petitioners were given sufficient opportunity and in spite of the same, they neither made their oral submissions nor submitted any written arguments and hence the appellate Court had the advantage of hearing only the counsel who appeared on the side of the respondent and the evidence that was recorded by the Trial Court and the appellate Court also had the advantage of appreciating the findings rendered by the Trial Court.

13. On carefully going through the judgment passed by the appellate Court it is seen that the appellate Court has not dealt with the main issues that have been raised on the side of the petitioners. The appellate Court has merely confirmed the judgment of the Trial Court by rendering some casual findings. This mode was adopted by the appellate Court probably because there was no effective representation on the side of the petitioners.



14. In the considered view of this Court, each and every ground that was raised by the learned counsel for the petitioners requires appreciation of evidence. Even though the learned counsel for the petitioners was pointing out to the perversity regarding the findings of the Trial Court, it was done only after referring to the relevant oral / documentary evidence that is available on record. Hence, even to test the ground of perversity, this Court has to go into the oral and documentary evidence that is available on record. This Court feels that the scope of appreciation of evidence in a revision is very limited and the revisional jurisdiction is exercised only to test whether the findings rendered by both the Courts suffers from any perversity. Re-appreciation of evidence is not permissible while exercising revisional jurisdiction. However, in the case of an appeal, it is in the nature of continuation of the original proceedings and the appellate Court has been given wide powers to re-appreciate the entire evidence and render its findings. Hence, there is a sea of difference in the exercise of of jurisdiction between an appellate Court and a Court exercising its revisional jurisdiction.

15. Taking into consideration the various grounds that were raised by the learned counsel for the petitioners and after considering the response made by the learned Senior Counsel for those grounds raised by the petitioners, this Court is convinced that the matter has to be remanded back to the file of the appellate Court. This is in view of the fact that the contentions raised on either side requires re-appreciation of evidence. Many of the grounds that have been raised by the petitioners in these Criminal Revision Cases have not even been considered by the appellate Court. This Court does not want to blame the appellate Court on this count



because the appellate Court did not have the advantage of hearing the petitioners who were the appellants before the appellate Court. This Court elaborately heard the learned counsel appearing on either side and this Court also had the advantage of going through the evidence available on record. However, this Court does not want to render any finding on any of the issues raised before this Court since this Court is intending to remand the matter back to the file of the appellate Court. If any findings are rendered, it will have a bearing when the appellate Court deals with the same issue after remand.

16. In the light of the above discussion, the judgment and order passed by the II Additional District and Sessions Court, Erode in Criminal Appeal Nos.30 and 31 of 2017 dated 28.06.2017 are hereby set aside and the matter is remanded back to the II Additional District and Sessions Court, Erode. The appellate Court is directed to hear the appeal afresh on merits and deal with the issues raised by either side after appreciation of evidence and pass final judgment in the appeals on or before **30.06.2023**. The appeal shall be heard with the available evidence since both the sides have exhaustively let in oral and documentary evidence. Therefore, there will be no scope for letting in any additional evidence and the appellate Court shall ensure that no time is wasted in this regard. Learned counsel for the petitioners gave an assurance that the petitioners will cooperate for the disposal of the appeals within the time frame fixed by this Court and the petitioners will be effectively represented before the appellate Court. The entire original records have been sent to this Court. In view of the fact that the matter is remanded back to the file of the appellate Court, registry



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is directed to immediately send back the entire original records to the II Additional District and Sessions Court, Erode.

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17. When these Criminal Revision Cases were entertained by this Court, the sentence imposed by the Trial Court was suspended by imposing certain conditions and the petitioners were directed to execute bail bonds with two sureties. It is brought to the notice of this Court that the petitioners have complied with the conditions imposed by this Court and they have also executed bail bonds with two sureties. The suspension of sentence that was granted by this Court shall continue till the appeals are finally disposed of by the II Additional District and Sessions Court, Erode within the time frame fixed by this Court.

18. These Criminal Revision Cases are accordingly allowed in the above terms.

07.03.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

KST

Note : Issue order copy on 09.03.2023

To

1.The II Additional District and Sessions Court, Erode.

2.The Judicial Magistrate, Fast Track Court No.1, Erode.



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N. ANAND VENKATESH, J.

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