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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.777 of 2016
and
Crl.M.P(MD)Nos.11138 & 11139 of 2016

R.Sridharan ... Revision Petitioner/
Appellant/Accused

Vs.

M/s.Cethar Industries Limited,
Represented by its Senior Executive (Legal),
Sri Mathivanan,
No.4, A Block, 2nd Floor,
Dindigul Road,
Tiruchirappalli – 620 001. ... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the Judgment dated 18.08.2015 made in Crl.A.No.13 of 2015 on the file of the learned III Additional District Judge, Tiruchirappalli, confirming the conviction and sentence passed by the learned Judicial Magistrate No.II, Tiruchirappalli in C.C.No.1410 of 2005, dated 27.01.2015 and set aside the same by allowing the above revision petition.

For Petitioner : Mr.Ram Sundar Vijay Raj
for M/s.Veera Associates

For Respondent : Mr.T.Antony Arul Raj

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ORDER

This revision has been filed as against the Judgment dated 18.08.2015 passed in Crl.A.No.13 of 2015 on the file of the III Additional District Court, Tiruchirappalli, thereby confirming the conviction and sentence passed in C.C.No.1410 of 2005, dated 27.01.2015, on the file of the learned Judicial Magistrate No.II, Tiruchirappalli, thereby convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo 12 months Simple Imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo 3 months Simple Imprisonment. The trial Court also ordered compensation to the tune of Rs.23,00,000/- to the respondent payable by the petitioner herein.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the respondent is a public limited company, and it is represented by its Senior Executive (Legal). The petitioner introduced M/s.Trial Tex and TKT Corporation

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of Tiruppur to the respondent in the year 1999. The petitioner wanted the respondent to execute job work for the export orders of the said companies to the tune of Rs.25,00,000/-. The petitioner stood as a guarantee for the payment to be made by the said two companies for the job work executed by the respondent. Accordingly, the respondent had executed the job work as agreed by them. The total payment due to the respondent was Rs. 25,00,000/-. The said two companies are having some problems with the customs authorities regarding the shipping dues. Even after repeated requests from the respondent, the said two companies failed to pay the amount for the job work done by the respondent. Therefore, the respondent approached the petitioner, since he stood as guarantor for the said two companies. He issued a cheque, dated 23.12.2004 to discharge the part liability of the aforementioned two companies to the respondent for the job work done. The said cheque was presented for collection and the same was returned 'dishonoured' for the reason that the 'funds insufficient'. Therefore, the respondent caused legal notice to the petitioner and the same was duly served on 06.05.2005. On receipt of the same, the petitioner also issued a reply notice without making any payment on the dishonoured cheque. Hence, the complaint.

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4.On the side of the respondent, they had examined P.W.1 and marked Ex.P.1 to P.9. On the side of the petitioner, he himself was examined as D.W.1 and marked Ex.D.1 to Ex.12.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo 12 months Simple Imprisonment and to pay a fine of Rs. 5,000/- and in default, he shall undergo 3 months Simple Imprisonment. The trial Court also ordered compensation by paying the cheque amount of Rs.23,00,000/- in favour of the respondent payable by the petitioner. Aggrieved by the same, the petitioner filed an appeal in Crl.A.No.13 of 2015 on the file of the III Additional District Court, Tiruchirappalli and the same was also dismissed confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

6.The learned counsel appearing for the petitioner would submit that the petitioner is only an adviser of Central Excise, Customs and Foreign Trade, and he is no way connected with the functioning of any company called M/s.Trial Tax and TKT Corporation at Tiruppur. The respondent obtained EPCG licence to fulfil the

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export obligations, and they sought permission from the concerned department for fulfilling the export obligation to the tune of 30% through third parties. The respondent also gave a bank guarantee while availing the EPCG licence for the customs concessions and they submitted necessary bills for the fulfillment of third-party obligations through M/s.Trial Tax and TKT Corporation of Tiruppur to the concerned Ministry and secured necessary order for releasing the Bank guarantee. Later those documents were found to be fabricated and there was no such company and all the bills claimed were found bogus. Therefore, the petitioner was engaged only as an adviser of the respondent with regard to any dispute that arose in the department of Customs and Central Excise.

7.The learned counsel appearing for the petitioner would further submit that the misconduct of the respondent and its fraudulent Act were noticed by the customs authorities and also directed to take appropriate action as against the respondent before the Settlement Commissioner of Customs. In the said proceedings, the respondent admitted their guilt and also paid a fine amount to the authorities. There are no such companies called M/s.Trial Tex and TKT Corporation and as such, there was no job work executed by the respondent. There is no contract of guarantee as alleged by

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the respondent to punish the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. Even assuming that the petitioner stood as a guarantor for the said two companies, he cannot be held liable to be punished for the offence under Section 138 of the Negotiable Instruments Act. In fact, the petitioner issued a cheque to one Lakshminarayanan, who is one of the senior officials of the respondent company towards meeting the educational expenses of his daughter. Instead of repaying the said debt, he misused the said cheque by the respondent and foisted a false complaint against the petitioner. There is no written contract of guarantee given by the petitioner in favour of the respondent. Therefore, both the Courts below failed to consider the above and convicted the petitioner.

8.Per contra, the learned counsel appearing for the respondent would submit that the grounds raised by the petitioner before both the Courts below were duly considered and rejected the same since the petitioner is held to be liable for the offence punishable under Section 138 of the Negotiable Instruments Act. The respondent marked Ex.P.8/the statement of accounts, and it is revealed that the petitioner is the authorized representative of M/s.Trial Tax and TKT Corporation and he with full conscious had

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admitted in writing that the said statement can be used against him as evidence. Therefore, the petitioner cannot say that he had no connection with the said firms and that both the firms are not existence and bogus. Hence, the petitioner is estopped from claiming that he is no way connected with the said firms and that there is no existence of the said firms. The petitioner did not deny his signature and categorically admitted his signature found in the cheque. Therefore, the respondent discharged its initial burden in order to prove its case under Section 138 of the Negotiable Instruments Act. The petitioner failed to rebut the same by oral or documentary evidence. Hence, both the Courts below rightly convicted him for the offence punishable under Section 138 of the Negotiable Instruments Act and it does not warrant any interference by this Court.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.The respondent lodged the complaint to punish the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, on the ground that the petitioner had issued cheque on behalf of the two companies as guarantor, which

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were allegedly introduced by the petitioner, namely M/s.Trial Tex and TKT Corporation at Tiruppur. Further, alleged that the petitioner introduced the said companies in order to do job work. After completion of job work to the tune of Rs.25,00,000/-, the respondent repeatedly demanded payment under the job work done by the respondent to the said companies. The petitioner, being stood as a guarantee for the payment by the said two companies, issued cheque for a sum of Rs.23,00,000/- to discharge the part liability of the aforementioned two companies to the respondent for the job work.

11.Admittedly, the petitioner had stood as a guarantee for the companies called M/s.Trial Tex and TKT Corporation at Tiruppur. The job work of the said two companies was executed by the respondent to the tune of Rs.25,00,000/-. On repeated requests, the said two companies failed to pay the amount for the job work done by the respondent and as a guarantee, the petitioner issued cheque for a sum of Rs.23,00,000/- for the job work on behalf of the said two companies.

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12.Though the respondent discharged its initial burden to presume that the cheque was issued for legally enforceable debt as contemplated under Section 138 of the Negotiable Instruments Act, the petitioner, rebutted the said presumption by the issuance of reply notice, examined himself as D.W.1 and marked Ex.D.1 to Ex.D.12. Therefore, the alleged cheque was not issued for any legally enforceable debt, since even according to the respondent, the petitioner as a guarantee on behalf of the aforesaid two companies issued the alleged cheques. Therefore, there was no liability for the petitioner to discharge any legally enforceable debt in favour of the respondent.

13.The specific stand of the petitioner is that the said two companies were not in existence, and he is no way connected with the said companies, and he never stood as a guarantee. The petitioner is only an adviser of the Central Excise, Customs and Foreign Trade. In fact, he acted as a consultant and adviser for the respondent and claimed a bill for his travel expenses and fees. It was marked as Ex.D.10. Immediately, after receipt of the statutory notice, the petitioner issued a reply notice, which was marked as Ex.P.7. It revealed that the petitioner was engaged by the respondent as an export consultant for solving their problem with

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DGFT/customs Department at various levels. The petitioner is in no way connected with M/s.Trial Tex and TKT Corporation at Tiruppur and he never introduced those concerns to the respondent. The respondent failed to clear the bill for his professional service and as such, the petitioner issued a letter, dated 21.01.2004, which was marked as Ex.D.10. He categorically denied the issuance of the said cheque and further stated that he had money transaction with one Lakshminarayanan, a former executive of the respondent company and he collected a blank cheque in the year 2001. Subsequently, he colluded with the respondent and presented the cheque for collection. Further, in the proceedings initiated by the Customs and Central Excise Settlement Commission, by its order, dated 02.02.2009, in which the respondent got EPCG licence to fulfill the export obligation and they sought permission for fulfilling the export obligation to the tune of 30% through a third party. The respondent produced a bank guarantee while availing EPCG licence for the customs concession and they submitted necessary bills for fulfillment of third party obligations through the said companies, namely M/s.Trial Tex and TKT Corporation to the concerned Ministry and secured the necessary order for releasing the bank guarantee. Later those documents were found to be fabricated and there were no such companies and all the bills claimed were found bogus.

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Therefore, the petitioner never introduced those companies to the respondent and he never stood as a guarantee for the job work done by the respondent.

14.Even assuming that the petitioner stood as a guarantee for the said companies and issued impugned cheque in the present complaint in the capacity of guarantee, whether he is liable to be punished for the offence punishable under Section 138 of the Negotiable Instruments Act.

15.Even according to the respondent, a sum of Rs. 25,00,000/- was payable by the two companies called M/s.Trial Tex and TKT Corporation of Tiruppur, on behalf of the said two companies, the petitioner, being a guarantee, issued cheque on behalf of the said two companies. However, the respondent did not issue any statutory notice as contemplated under Section 138 of the Negotiable Instruments Act to the said companies. The respondent also failed to add them as parties to the proceedings initiated for the offence punishable under Section 138 of the Negotiable Instruments Act.

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16.The guarantor's liability under the Indian Contract Act, 1872 is a civil liability. However, vicarious liability in the criminal law in terms of Section 141 of the Negotiable Instruments Act cannot be fastened because of the civil liability. Vicarious liability under sub-Section (1) to Section 141 of the Negotiable Instruments Act cannot be pinned when the person is in overall control of the day-to-day business of the company or firm.

17.Therefore, there was no legally enforceable debt in order to issue any cheque by the petitioner. The petitioner, being stood as a guarantee for the aforesaid two companies, was not liable to pay any amount to the respondent and nothing warranted for the petitioner to issue cheque for any enforceable debt in favour of the respondent herein. Therefore, the alleged cheque was not issued for any legally enforceable debt and the petitioner cannot be held to be liable for the offence punishable under Section 138 of the Negotiable Instruments Act. Unfortunately, both the Courts below mechanically convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and it cannot be sustained against the petitioner herein.

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18.Accordingly, the Criminal Revision Case is allowed and the Judgment dated 18.08.2015 passed in Crl.A.No.13 of 2015 on the file of the III Additional District Court, Tiruchirappalli, thereby confirming the conviction and sentence passed in C.C.No.1410 of 2005, dated 27.01.2015, on the file of the learned Judicial Magistrate No.II, Tiruchirappalli, are set aside. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and fine amount if paid is ordered to be refunded to the appellant/accused forthwith. Consequently, connected Miscellaneous Petitions are closed.

27.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1.The III Additional District Court,
Tiruchirappalli.

2.The Judicial Magistrate No.II,
Tiruchirappalli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.777 of 2016

27.03.2023