IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION (ST) NO.22025 OF 2022
WITH
INTERIM APPLICATION NO. 3933 OF 2023

1. M/s. Anand Metal Roofing
2. Mr. Anand Kumar Srivastav
Age: 50 years, Occu. Business,
Office and Residence on same address proof.
R/at: Flat No.8, Rubina Apartment, Balsai
Road, Taluka Uran, Dist. Raigad
Maharashtra-400 702. **...Applicants**
(Original Accused)

Versus

1. The State of Maharashtra
2. M/s. Pristine Commercials Pvt. Ltd.
111-B, Mittal Tower, 210, Narimal Point,
Mumbai-400 021. Through it's, Director
Mr. Nikung Nar Narayan Saraf
Age: 39 years. Occ. Business **...Respondents**
(Respondent No.2 Original Complainant)

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Mr. Suhas Rohile i/by Dr. P. K. Deshmukh, Advocate for Applicants.

Mr. Jash Dalia, Advocate for Respondent No.2.

Mr. Arfan Sait, APP for Respondent No.1-State.

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CORAM : PRAKASH D.NAIK, J.

DATE : 7th FEBRUARY 2024.

<u>JUDGMENT</u> :-

1. Vide order dated 12th December 2023, it was directed that this Criminal Revision Application be listed for final disposal at the admission

stage on 10th January 2024. With the consent of both the sides, Revision Application is heard for final disposal.

2. The Revision Applicant was prosecuted for offence under Sections 138 read with Section 141 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as N. I. Act*) vide C.C. No.1347/SS/2016.

3. Vide Judgment and Order dated 4th January 2018 passed by learned Metropolitan Magistrate, 6th Court, Mazgaon at Sewree, Mumbai, the Applicants were convicted for offence punishable under Section 138 read with Section 141 of N. I. Act and sentenced to suffer simple imprisonment for 6 (six) months and double the amount of cheques bearing Nos.233641, 233642, 233643, 84718, 847190, 847192 signed by accused No.2 for Rs. 2,31,14,014/- (Rupees Two Crores Thirty One Lacs Fourteen Thousand and Fourteen Only) towards compensation to the complainant under Section 357(1)(b) of Cr.P.C. and in default to undergo simple imprisonment for a period of 3 (three) months with 9% simple interest from the date of filing of the complaint till it's realization.

4. The Applicants preferred Criminal Appeal No.70 of 2018 challenging the trial Court's Judgment before Sessions Court. By Judgment and Order dated 18th April 2019, Appeal was dismissed.

5. Vide order dated 19th January 2023, this Court suspended the execution of substantive sentence of imprisonment, pending delay condonation application on the condition of depositing a sum of Rs.40,00,000/- by the Applicant in the trial Court within a period of four weeks. It was further directed that, in case of failure to deposit the amount within a time frame, the order granting suspension of execution of substantive sentence of imprisonment may be recalled. Vide order dated 5th September 2023, application for condonation of delay was allowed and the delay was condoned subject to cost of Rs.10,000/-. The cost was paid. It was directed that, Revision Application be listed for final disposal at the admission stage on 10th January 2024.

6. Brief facts of the complaint are as follows:-

(i) The complainant is Private Limited Company engaged in Steel Coil and Allied products. The accused No.1 is proprietary concern and accused No.2 is it’s proprietor. Accused No.1 is engaged in business of supply and fixing work of pre-engineering building coated steel sheet, galvalume sheet, fiber sheet etc. The complainant and accused No.1 were having business terms. Accused would put several orders with the complainant-company for purchase of goods.

(ii) During the period from 2nd February 2015 to 1st July 2015, the accused had placed orders for supply of goods from complainant and the goods were supplied.

(iii) The complainant raised 10 invoices for an amount of Rs.2,68,03,803/-. The complainant was entitled to charge interest @2.5% per month. The accused paid same amount to the complainant but did not pay the entire bill amount.

(iv) On 17th June 2015, the accused No.2 confirmed and admitted the liability to pay an amount of Rs.2,18,22,600/-.

(v) On 7th July 2015, the accused No.2 confirmed the ledger with the complainant and admitted liability to the extent of Rs.2,54,56,743/-. Amount of Rs.2,60,10,639/- was due from the accused as on 31st March 2016.

(vi) In discharge of liability, the accused issued 10 cheques dated 19th May 2016 to the tune of Rs.2,68,03,803. When the cheqeus were presented for encashment, the same were dishnoured with remarks "insufficiency of funds or exceed arrangement".

(vii) Demand notice was issued to the accused through Advocate on 9th June 2016 calling upon the accused to make payment towards cheques. Vide reply dated 26th June 2016, the accused contended that, the cheques were issued by way of security and not paid for payment of liability.

7. Affidavit of evidence in the form of examination-in-chief of complainant was filed on 25th July 2016. The witness was cross-examined at the instance of accused on 18th February 2017 and 14th March 2017. CW-2 (Jay Omprakash Mawar) was examined on behalf of complainant. His examination-in-chief was recorded on 15th June 2017. Cross-examination was concluded on 23rd August 2017.

8. Learned Advocate for the Applicants submitted as under:-

(i) The Judgment of the trial Court and the Appellate Court are contrary to law.

(ii) The liability was not legally enforceable.

(iii) The cheques were handed over to the complainant by way of security. The complainant has misused the cheques.

(iv) Part payment was made towards liability and hence, the complainant was required to comply Section 56 of the N. I. Act by putting appropriate endorsement before the said cheques are deposited in the bank.

(v) The issuance of cheques is violative of Section 56 of the N. I. Act.

(vi) The complainant has admitted that, the part payment was received by him by RTGS, NEFT and cheques before the institution of complaint.

(vii) Summary suit was filed with regard to the claim and there is violation in respect to the claim in Civil Suit and the Criminal Proceedings.

The accused No.3 was acquitted by the trial Court on the ground that, the demand notice was not executed upon the said accused. Both the Courts ignored the admission of complainant in the cross-examination about part payment and for non-compliance of Section 56 of the N. I. Act. The proceedings under Section 138 of the N. I. Act are not maintainable in law.

(viii) The trial Court committed an error while imposing arbitrary punishment. The trial Court did not assign cogent reason for directing payment of compensation to the extent of double the cheque amount and sentencing the applicants to suffer imprisonment of six months.

(ix) The complainant admitted receipt of the part amount from the accused but ignored compliance of Section 56 of the N. I. Act.

9. Learned Advocate for the Applicants has relied upon the decision of the Supreme Court in the case of Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and Anr.[1].

10. Learned Advocate for Respondent No.2 submitted that, there are concurrent findings Courts below convicting the applicants. No case is made out to entertain the Revision Applications. The liability is proved. The applicants are convicted. There is no infirmity in the quantum of sentence imposed upon the Applicants. The cheques were issued and dishonoured in 2015. The complainant was put to loss. The complainant

1 (2023) 1 SCC 578

was required to conduct the procedure and incur legal expenditure for contesting the criminal proceedings. Both the Courts have assigned reasons for convicting the Revision Applicants. The Revisional Court has limited scope while adjudicating the Revisional Jurisdiction. The accused had executed promissory note. The accused had confirmed his liability by confirmation of account dated 17th June 2015. Goods were supplied to accused No.1 by 10 invoices from 2nd February 2015 to 1st July 2015. The accused executed promissory note and admitted liability. The cheques were signed by revision applicant. Cheques were issued in favour of complainant. Cheques were dishonoured with remarks "funds insufficient and exceeds arrangements". Demand notice was sent to the accused.

11. The complainant is the company engaged in business of sale and supply of pre-painted galvalume sheet. Accused Nos.2 and 3 were brothers. According to complainant, pursuant to various purchase orders placed by accused, complainant sold, supplied and delivered the goods to the accused No.1 during the period from 2nd February 2015 to 1st July 2015 by raising invoices in the name of accused No.1. The invoices were for an amount of Rs.2,68,03,803.00/-. The accused No.2 is in capacity of as a proprietor of accused No.1, signed the confirmation of account dated 17th June 2015, for a period 1st February 2015 to 17th June 2015 admitting liability to pay sum of Rs.2,18,22,600/- to the complainant. The accused No.2 signed another

confirmation of account statement dated 7th July 2015 for a period of 1st April 2014 to 7th July 2015. The accused No.2 executed promissory note dated 23rd November 2015 with commitment to pay a sum of Rs.2,54,56,743/- to the complainant. It was signed by accused No.2 before the notary public.

12. The complainant contended that, the accused No.2 confirmed the liability of accused to pay sum of Rs.2,57,50,673/- to the complainant in four installments. In the meeting dated 29th July 2015, the accused No.2 admitted liability and proposed revised payment schedule to discharge the liability by agreeing to pay a sum of Rs.2,74,56,743/- to the complainant. The accused also assured that, immovable property worth Rs.3.50 crores would be provided to the complainant. The accused admitted receipt of goods. The complainant forwarded confirmation of account statement to the accused to confirm the outstanding balance of Rs.2,60,10,639/- as on 31st March 2016. The accused issued cheques which were dishnoured. Notice was sent to the accused. The complaint was filed.

13. The Advocate for accused cross-examined the complainant. In the cross-examination, the complainant had deposed that, the material was delivered through TATA Bluescope and there is delivery challan after the delivery of material. He did not produce delivery challan on record. The

transporter issue the lorry receipt. The receipts are not placed on record. Except cheques, there is no documents to show that the accused No.3 was having transaction with them. All the cheques were received in April-May 2016. The complainant produced the documents in view of cross-examination by accused. On verifying the ledger account, the complainant has stated that, they have received amount from accused by way of RTGS, NEFT and cheques. He cannot specify actual payments received by cheques. The complainant used to use e-mail-ID for commercial transactions. The cheques were lying with complainant-company. As per ledger account, the last transaction with the accused was on 11th March 2016. Invoices were received by accused on same day. The complainant received certain payments from the accused on various occasions. The said payments are not for the said invoices. The complainant has never received payment from the accused as per invoice of particular amount. There was no communication by the complainant with accused for confirmation of account. The complainant had raised 51 invoices. It is not possible to satisfy from the ledger account for how many invoices the payments were received and for which invoices for delayed the payment, the interest were shown. Summary suit for recovery amount was filed in the High Court.

14. CW-2 (Jay Omprakash Mawar) is the Manager with Panjab National Bank. He stated that, Anand Metal Roofing having Cash Credit Account

with his bank. For opening the account, mandate was given to the Bank in the name of Anand Shrivastav and Amar Shrivastav. Cheques Exh.25 to Exh.34 were issued by the Bank to the account holder i.e. Anand Metal Roofing. Cheques at Exh.25 to Exh.27 and Exh.32 to Exh.34 were signed by Anand Shrivastav and cheques at Exh.28 to Exh.31 were signed by Amar Shrivastav. In the cross-examination it was stated that, Anand Metal Roofing is in proprietorship concern. Mr. Anand Shrivastav is it's proprietor. On 19th May 2016, there was no valid mandate in the name of Amar Shrivastav. He cannot be told by more than thousands entries in the statement at Exh.115. There are number of transactions of which he could not given full forms. The Bank never used to maintain ledger of any customer. It was found that M/s.Anand Metal Roofing has paid Rs.2,14,35,903/-.

15. Learned Magistrate has observed that, the demand notice was valid. The accused No.2 was proprietor of accused No.1. Notice was not served on accused No.3. There was no valid mandate in the name of accused No.3. The complainant has failed to prove the role of accused No.3. The accused has confirmed his liability. In the cross-examination of the complainant, the invoices were not disputed. The evidence shows that, there was transaction between complainant and accused. The defence of the accused that, they have made various payments, is not supported by any evidence. In answer

to question Nos.2, 5 to 7 and 31 to 36 of the statement of the accused it is stated that, the accused and the complainant-company were dealing with each other. The accused have admitted their signatures on the cheques. The accused failed to give any evidence in their defence that such cheques were misused for extorting for extra money. The accused contended that, the cheques were issued by way of security. It was claimed that, the goods were of sub-standard quality and short in quantity. It shows that, there was transaction between complainant and accused. The trial Court held that, though the transaction has been proved, the complainant-company would be entitled for the amount of disputed cheques bearing Nos.233641, 233642, 233643, 847189, 847190, 847192 signed by accused No.2 for an amount of Rs.1,15,57,007/-. The disputed cheques signed by accused No.2 were issued for discharge of legal liability. Relying upon the decision of the Supreme Court in the case of **R. Vijayan Vs. Baby & Anr.**[2], the Court sentenced accused Nos.1 and 2 for imprisonment of six months and double the amount of cheque. Accused No.3 was acquitted.

16. The Appellate Court confirmed the decision of trial Court. It was held that, the accused issued cheques in question for discharge of liability towards complainant. It was observed that, the accused did not examine any witness nor filed any documentary evidence. The accused tried to rebut

2 2012 ALL MR (Cri.) 1325

presumption by cross-examining the complainant’s witness. The line of cross-examination indicate that, if the cheques were issued towards security for their business transaction, there is no evidence to support the said defence. The accused could not show as to why security was given and towards what. The accused has not explained as to for what necessity such cheques were issued.

17. The contention of the accused that, there was no legally enforceable debt or liability is devoid of merits. The evidence on record indicate that, there were transactions between complainant and accused. The cross-examination of the complainant itself indicate that, there was transaction. Although, the complainant has admitted that, some amount is received, it cannot be accepted that, there was no existence of liability in respect to the cheques which was dishnoured. The trial Court has adjusted the amount which was received and convicted the applicants for the liability of Rs.1,15,57,007/-.

18. Undisputedly, the cheques were signed by accused. The cheques were in possession of complainant. The cheques were dishnoured on account of insufficient funds. Procedural safeguard were complied by complainant. The defence of the accused was that, the cheques were given for security purpose and not towards liability. However, except the version

of accused, there is no evidence on record to establish that the cheques were given by way of security and the same were misused by the complainant. The evidence indicate that, certain payments were made. However, it cannot be said that, there was no existence of legally enforceable liability in respect to dishonoured cheques. On the basis of admission that certain payments were received, accused for the first time contended that, there was no compliance of Section 56 of the N. I. Act. Reliance is placed on the decision of Apex Court in the case of **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel** (supra), the said decision is not applicable in the present case. It cannot be said that there was no existence of liability in respect to the dishnoured cheques and that since part payment was made in respect to the cheques, it was necessary to put the endorsement in accordance with Section 56 of the N. I. Act on those cheques. The accused is held liable by the trial Court of Rs.1,15,57,007/-. Thus, there is no substance in the submission that the accused cannot be prosecuted or convicted for non-compliance of Section 56 of the N. I. Act.

19. The complainant has alleged that, he had sold, supplied and delivered the goods to accused No.1 by raising 10 invoices. The accused confirmed his liability by confirmation of account dated 17^{th} June 2015. The goods were delivered during the period from 2^{nd} February 2015 to 1^{st}

July 2015. The accused executed promissory note dated 23rd November 2015 and admitted liability. The liability was confirmed on 7th July 2015 and 29th July 2015. The liability was admitted vide letter dated 29th September 2015 and 29th April 2016. Invoices at Exh.7 to Exh.17 were adduced in evidence confirmed on accounts at Exh.17, promissory notes at Exh.19 as well as letter at Exh.20 to Exh.23 were exhibited in evidence. The documents were not disputed. The cross-examination establishes transaction between both the parties. The accused did not examine himself or any other witness in his defence. The accused admitted issuance of cheques to claim that the same were issued by way of security. In reply to the notice, it was contended that, the goods were received but there were sub-standard and in short quantity. The trial Court has rightly concluded that, the transaction is held to be proved and the applicants were liable to be convicted for the offence under Section 138 of the N. I. Act.

20. The Appellate Court has confirmed the findings of trial Court by assigning cogent reasons. It was observed that, the promissory note of the reply shows that, the accused has admitted his indebtedness to the complainant and promise to pay the same. The documentary evidence was placed on record which corroborates the version of complainant.

21. Thus, the trial Court and the Appellate Court has analysed the evidence on record and accused were held liable to be convicted for the

offence under Section 138 of the N. I. Act. The Court also considered the decision of Supreme Court in the case of **R. Vijayan Vs. Baby and Anr.** (supra) while imposing the sentence.

22. I do not find any infirmity in the orders of both the Courts convicting the applicants for offence under Section 138 of the N. I. Act and sentencing the accused to suffer simple imprisonment for six months in respect to the cheques in question. The trial Court has fixed the liability to the extent of Rs.1,15,57,007/- and directed the accused to pay double the amount of cheques towards Rs. 2,31,14,014/-. There is sufficient evidence to convict the applicants for the offence under Section 138 of N. I. Act.

23. There is no debate that, the Court is empowered to impose the fine to the extent to fine towards double the cheque amount or award compensation filed under Section 357(1)(b) of the Cr.P.C.. It is pertinent to note that, there were commercial transactions between the parties. Certain payments were made though same could not be appropriated towards cheques in question. There was no reason to impose the sentence to the extent of double the cheque amount. To that extent, the judgment of both the Courts below is required to be modified.

ORDER

(i) Criminal Revision Application (ST) No. 22025 of 2022 is partly allowed and disposed off.

(ii) The Judgment and Order dated 4th January 2018 passed by learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai in C.C. No. 1347/SS/2016 convicting the applicants for offence under Section 138 read with section 141 of Negotiable Instruments Act, 1881 and sentencing accused No.2 to suffer simple imprisonment for six months is confirmed.

(iii) The Judgment and Order dated 18th April 2019 passed by Ad-hoc Additional Sessions Judge at Greater Mumbai in Criminal Appeal No.70 of 2018 to the extent of dismissal of Appeal and confirming the conviction of the applicants for offence under Section 138 of the Negotiable Instrument Act, 1881 and sentencing them for six months simple imprisonment is upheld.

(iv) The Judgment and Order dated 4th January 2018 passed by the trial Court as well as Order dated 18th April 2019 passed by Appellate Court to the extent of imposing the sentence of double the cheque amount i.e. Rs.2,31,14,014/- is modified and the applicants are directed to pay the amount of Rs.1,15,54,007/- to be paid to the complainant as compensation along with 9% simple interest from the date of filing of the complaint till it's realization and in default the applicants shall undergo further imprisonment of three months.

(v) The applicants shall deposit the amount of Rs.1,15,54,007/- along with 9% interest @ 9% p.a. from the date of filing of the complaint within a period of eight weeks from the date of uploading of this judgment.

(vi) The applicant No.2 is granted eight weeks time to surrender to custody for undergoing sentence.

(vii) In view of disposal of Revision Application, Interim Application does not survive and stands disposed off.

(PRAKASH D. NAIK, J.)