IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1187 of 2019

1. M/s.Indra Globb In Traders,
   No.7, Artisan Shanmugam Street,
   Ayanavaram,
   Chennai - 600 023.

2. Mr.Rajashekar Reddy,
   Managing Director,
   M/s.Indira Globb in Traders,
   No.7, Artisan Shanmugam Street,
   Ayanavaram, Chennai - 600 023. ... Petitioners / Accused

Vs.

B.Raja Mohan ... Respondent /

Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgments and orders, dated 25.03.2019 in C.A.No.54/2013 passed by the XIX Additional Sessions Judge, City Civil Court, Chennai, confirming the Judgment and orders, dated 14.02.2013 in C.C.No.6705 of 2008 passed by the VII Metropolitan Magistrate, George Town, Chennai.

For Petitioners : Mrs.Jayasri Baskar,
Legal Aid Counsel

For Respondent : Mr.P.M.Bakthavatsalam

ORDER

Challenging the conviction and sentence passed by the Courts below, the present Criminal Revision case is filed by the petitioners/Accused.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The case of the complainant in a nutshell is as follows :

i. The second accused Mr.Rajashekar Reddy (since deceased), is the Managing Director of the 1st accused company M/s.Indra Globb in Traders having its office at No.7, Artisan Shanmugam Street, Ayanavaram, Chennai. The company is engaged in finance business.

ii. The complainant approached the accused for settling his financial rest for which the 2nd accused insisted the complainant to invest a sum of Rs.23,50,000/- with his company, the 1st accused. Accordingly, the complainant invested a sum of Rs.23,50,000/- by way of cash on different dates during 2008.

iii. The accused promised to repay the said amount within two months, but did not keep up his promise.

iv. After much persuasion by the complainant, the accused issued a Cheque bearing number 270524, dated 23.04.2008 (Ex.P1) for a sum of Rs.20,00,000/- drawn on ICICI Bank, Purasawakkam Branch, Chennai in favour of the complainant.

v. When the cheque was presented for collection by the complainant through his bankers viz., M/s.Lakshmi Vilas Bank, West Tambaram, Chennai, on 01.08.2008, the same was returned for the reason 'insufficient funds' as is evidenced by the cheque return memo, dated 02.08.2008 (Ex.P3)

vi. Thereafter, the complainant issued a statutory notice, dated 06.08.2008 (Ex.P5) to the accused calling upon him to pay the amount due under the cheque within fifteen days from the date of receipt of the notice.

vii. The accused received the notice as is evidenced by the postal acknowledgment Card (Ex.P6), but did not come forward to make good the payment and did not also send any reply notice

viii. Therefore, the complainant filed a private complaint before the VII Metropolitan Magistrate, George Town, Chennai under Section 200 Cr.P.C., against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.6705 of 2008.

ix. The learned Metropolitan Magistrate, took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.

x. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.

xi. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P7.

xii. The 2nd accused, when questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. The 2nd accused examined himself as D.W.1 and one another witness as D.W.2 and marked Ex.D1 to Ex.D6.

xiii.The Income Tax returns of the complainant was marked as Ex.C1.

xiv. After full contest, the learned Judicial Magistrate, vide his Judgments dated 14.02.2013 convicted both the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and convicted and sentenced the Accused as under:

<table>
<tr><th>Case No.</th><th>Accused</th><th>Conviction</th><th>Sentence</th></tr>
<tr><td rowspan="3">C.C.No.6705 /2008</td><td rowspan="2">1st Accused (company)</td><td>138 of the Negotiable Instruments Act</td><td rowspan="2">to pay compensation of Rs.21,00,000/- to the complainant within a period of one month</td></tr>
<tr><td rowspan="2">138 of the Negotiable Instruments Act</td></tr>
<tr><td>2nd Accused (Managing Director)</td><td>to undergo simple imprisonment for a period of six months</td></tr>
</table>

xv. Aggrieved over the same, the accused filed Criminal appeal in C.A.No.54/2013 before the XIX Additional Sessions Judge, City Civil Court, Chennai.

xvi. The learned Additional Sessions Judge after analysing the evidence on record, confirmed the findings recorded by the trial Court Judge and dismissed the appeal, as against which, the present Criminal Revision Case is filed by the accused.

4. Heard Mrs.Jayasri Baskar, learned legal aid counsel for the accused and Mr.P.M.Bakthavatsalam, learned counsel appearing for the Respondents.

5. Mrs.Jayasri Baskar, learned legal aid counsel filed a death extract of the 2nd accused which shows that the 2nd accused died on 14.04.2024. He was the Managing Director of the 1st accused company viz., M/s.Indra Globb in Traders. According to the legal aid counsel, the 1st accused company is not in existence. In order to substantiate the same, she had filed a letter addressed to her by the Registrar of

Companies, Tamil Nadu stating that M/s.Indra Globb in Traders, has not been registered within the jurisdiction of their office as per MCA 21 Portal. They have also requested the counsel to specify the exact name of the company to enable them to furnish the requested information.

6. It is seen from the records that the 1st revision petitioner company is an incorporated company and based on the above said letter allegedly sent by the Registrar of companies, it cannot be concluded that there is no such company. In fact this plea was not at all taken before both the Courts below.

7. At the outset it may be observed that the accused did not deny his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act, unless the contrary is proved.

8. The cheque was issued on behalf of the 1st accused company. The 2nd accused had admitted that he is the Managing Director of M/s.Indra Globb In Traders, the 1st accused company.

9. In the instant case, it is contended by the counsel for the accused that the 2nd accused issued a cheque in favour of the complainant in order to tide over the financial crisis of the complainant since he was facing SARFAESI proceedings. In fact, the complainant, had issued an authorisation letter, dated 13.04.2007 (Ex.D1) in favour of the accused to negotiate with the officials of Bank of Baroda from where he had borrowed money. The accused had also filed the proposal sent by the Bank of Baroda (Ex.D6). However, it is difficult to hold on the basis of Ex.D1 and Ex.D6 that the accused issued the cheque only to tide over the financial crisis of the complainant. It is incomprehensible as to how a bank would decline from taking further proceedings under SARFAESI Act if a person shows a cheque drawn in his favour.

10. The 2nd accused had admitted that he issued the cheque (Ex.P1) in favour of the complainant and therefore the presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant. Both the Courts below had analysed the entire evidence on record and had come to a definite conclusion that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. I do not find any reason to interfere with the same.

11. Since the 2nd accused is no more, the 1st accused viz., M/s.Indra Globb In Traders is directed to pay the compensation of Rs.21,00,000/- within a period of one month from the date of receipt of a copy of this order/uploading of this order. This Court while exercising revisional jurisdictional under Section 397 Cr.P.C., cannot act as a second appellate Court unless the conviction and sentence passed by both the Courts below are termed as perverse.

12. In the result,

i. the Criminal Revision Case is dismissed;

ii. the conviction of the accused in C.A.No.54/2013 passed by the XIX Additional Sessions Judge, City Civil Court, Chennai and the conviction in C.C.No.6705 of 2008 dated 14.02.2013 passed by the VII Metropolitan Magistrate, George Town, Chennai, are hereby confirmed;

iii. The Charge against the 2nd Accused is dismissed as having abated.

iv. The 1st accused company is directed to pay compensation of Rs.21,00,000/- (Rupees Twenty One Lakhs only) to the complainant within a period of one month form the date of receipt of a copy of this order/uploading of the order, failing which, the trial Court shall take steps to recover the same under the Revenue Recovery Act.

v. This Court places on record its appreciation to Mrs.Jayasri Baskar, learned Legal Aid counsel, for her valuable assistance in deciding this case. The High Court Legal Services Committee shall pay her fees as per Rules.

24.07.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

To

1.The XIX Additional Sessions Judge, City Civil Court, Chennai.

2. The VII Metropolitan Magistrate, George Town,
   Chennai.

Copy to

The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai - 104.

R. HEMALATHA, J.

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