IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024
PRONOUNCED ON : 3.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1860 of 2023 and
Crl.M.P.Nos.17474 & 17475 of 2023

G.Manoharan ... Petitioner

Vs.

Thara Devi (Died),
W/o.Ramesh Kumar,
D.No.25/27, Workshop Street,
Rajdhani Towers,
Khaderpet, Tirupur 641 601.

1.Ramesh Kumar,
S/o.Dhanraj,
Proprietor of M/s.Cotton Gallery,
D.No.25/27, Workshop Street,
Rajdhani Towers,
Khaderpet, Tirupur 641 601. ... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the conviction of the petitioner imposed by the judgment dated 19.09.2022 in C.C.No.103 of 2015 by the learned Judicial Magistrate (Fast Track) Court, Tiruppur as confirmed by the judgment, dated 06.10.2023 in C.A.No.140 of 2022 passed by the learned 1st Additional District Sessions Court, Thirupur.

For Petitioner : Mr.S.M.Muralidharan

For Respondent : Mr.P.Navaneetha Krishnan

ORDER

The petitioner was convicted by the learned Judicial Magistrate, Fast Track Court, Tiruppur (Trial Court) *vide* judgment, dated 19.09.2022 in C.C.No.103 of 2015 for offence under Section 138 of the Negotiable Instruments Act, 1881 (In short 'The Act') and sentenced to undergo Simple Imprisonment for a period of six months and to pay compensation of Rs.15,00,000/- to the respondent, in default to undergo Simple Imprisonment for one month. Challenging the same, the petitioner filed an appeal before the I Additional District and Sessions Judge, Tiruppur (Lower Appellate Court) in Crl.A.No.140 of 2022 and the same was dismissed on 06.10.2023 confirming the judgment of the trial Court. Aggrieved over the same, the present criminal revision case is filed.

2.Gist of the case is that the complainant *viz.,* Mrs.Thara Devi (Died) is the Authorized person of M/s.Cotton Gallery, Proprietorship concern and to prosecute the petitioner. After filing the complaint, Mrs.Thara Devi passed away, hence her husband Ramesh Kumar, Proprietor of M/s.Cotton Gallery substituted and continued the prosecution against the petitioner. The petitioner was having business relationship with the respondent. The petitioner purchased cotton clothes from the respondent and the same was supplied *vide* three invoices. Ex.P1 is the Invoice No.8 (Credit Bill), dated 09.11.2012 for a sum of Rs.1,22,650/- and Ex.P2 is the Invoice No.9 (Credit Bill), dated 07.12.2012 for a sum Rs.4,81,675/- and Ex.P4 is the Invoice No.10 (Credit Bill), dated 08.12.2012 for a sum of Rs.8,95,675/-. By these invoices, the respondent supplied goods to the value of Rs.15,00,000/- to the petitioner. In discharge of liability, the petitioner handed over the cheque, dated 28.05.2023 for a sum of Rs.15,00,000/- drawn on Dhanalakshmi Bank, Tiruppur Branch. When the respondent deposited the cheque in ICICI Bank, Tiruppur Branch, the same was returned for the reason 'Account Closed' and return memo (Ex.P5) issued. Thereafter, the respondent sent a statutory notice (Ex.P6) on 26.07.2013 and Ex.P7 is the postal acknowledgement card, dated 27.07.2013. The petitioner sent reply notice (Ex.P8), dated 10.08.2013. The respondent produced the Commercial Tax Returns (Ex.P9) for the year 2011-12, GST Registration of M/s.Cotton Gallery, dated 14.12.2015 (Ex.P10) and Income Tax Returns for the year 2013-2021 (Ex.P11). During trial, the respondent examined himself as PW1 and marked eleven documents as Exs.P1 to P11. On the side of the defence/petitioner, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

3.The learned counsel for the petitioner submitted that the cheque (Ex.P4) was handed over to the respondent/complainant during chit transaction which was clearly stated at the first instance in the reply notice (Ex.P8). In Ex.P8, it is stated about the business transaction with one Senthil, nothing to do with the respondent herein. Without any liability, the security cheque which was given during chit transaction, filled up and false case projected against the petitioner. He further submitted that the petitioner owns 40 shops and having rental income of Rs.10,00,000/- per month, such being the position, the petitioner has no reason or requirement to have business with the respondent on credit basis. He further submitted that Exs.P9 & P11 not signed and authenticated which was not considered by the Courts below. The Cheque (Ex.P4) is a Non-CTS cheque. From the year 2010, the Non-CTS cheque was withdrawn from circulation. The petitioner and his wife participated in indigenous chit conducted by the respondent, at that time, a Non-CTS cheque obtained for security purpose which was filled up in the year 2013. Referring to the evidence of the respondent, the learned counsel submitted that the respondent admits he used to place orders and directly send the consignment goods to the sellers and he does not have specific godown to store the goods. In such circumstances, the respondent's contention that the goods were sold by them and the Invoices (Exs.P1 to P3) raised by them becomes highly doubtful. Thus, the petitioner probablized his defence by disproving Exs.P1 to P3 and also proved the fact that the cheque (Ex.P4) issued much prior to the year 2010 which was misused and a false case projected against the petitioner.

4.The learned counsel further argued that the petitioner's wife said to have received loan of Rs.20,00,000/- in the year 2011 from the respondent. This being so, no prudent man would further supply goods on credit basis to the tune of Rs.15,00,000/- when there is already Rs.20,00,000/- dues to be paid by the petitioner's wife. The learned counsel for the petitioner relied on the citations of the Hon'ble Apex Court in the cases of "***M/s.Kumar Exports versus M/s.Sharma Carpets*** reported in ***(2009) 2 SCC 513***" and "***John K.Abraham versus Simon C.Abraham & Another*** reported in ***(2014) 2 SCC 236***" for the point that burden was heavily upon the complainant in a 138 Case to demonstrate the funds advanced to the accused and issuance of the cheque in support of the said payment was true. Further for the point that to disprove the presumption the accused has an option to prove the non-existence of consideration and debt or liability either by letting in evidence or by way of cross examination coupled with the reply to the statutory notice. Making the above submissions and replying on the decisions, the learned counsel for the petitioner prays for setting aside the judgments of the Courts below.

5.The learned counsel for the respondent submitted that the petitioner was dealing in the business of cotton goods which was supplied by the respondent to the petitioner under Invoices/credit bill (Exs.P1 to P3). In discharge of the same, the cheque (Ex.P4) issued by the petitioner. The issuance of the cheque and its signature not disputed. The defence taken by the petitioner is that for a chit transaction, the cheque (Ex.P4) was given prior to the year 2010. But it is only a usual defence without any substance. The Trial Court rightly observed that the petitioner neither got into the box to disprove the same nor examined any chit subscribers to prove the said fact. Ex.P9 is the Commercial Tax Returns and Ex.P11 is the Income Tax Returns of the respondent which confirms the sale of goods to the petitioner on credit basis. Added to it, the petitioner shown as debtor in Ex.P11. He further submitted that the cheque (Ex.P4) returned for the reason 'Account Closed' and not for any other reason. Considering the evidence and materials produced, the Trial Court rightly convicted the petitioner which was confirmed by the Lower Appellate Court. In support of his submission, the learned counsel for the respondent relied on the judgment of the Hon'ble Apex Court in the case of "***P.Rasiya versus Abdul Nazer and another*** reported in ***2022 SCC OnLine SC 1131***" wherein it had held that the presumption under Section 139 of the Act is a statutory presumption and once it is presumed that the cheque is issued in whole or in part of any debt or other liability it is for the accused to ignore the contrary. Further held that it should not be lost sight of while exercising revisional jurisdiction in dealing with concurrent findings recorded by Courts below. Making the above submissions and replying on the decision, the learned counsel for the respondent prays for dismissal of the revision.

6.Considering the submissions and on perusal of materials, it is seen that in this case, Exs.P1 to P3 Invoices/credit bills, Ex.P4 Cheque, Ex.P9 Commercial Tax Returns and Ex.P11 Income Tax Returns of the respondent.

The petitioner was supplied goods by the respondent covered by credit bills (Exs.P1 to P3). In discharge of the same, the cheque (Ex.P4) issued to the respondent. The petitioner's defence that it is for the chit transaction, the cheque (Ex.P4) issued not supported with any evidence or document is not sustainable. The petitioner's claim of having forty shops and receiving Rs.10,00,000/- monthly income is a defence without any materials. It is not a Rule that a person who received substantial rental income should not do business on credit basis. This stray statement is not sufficient to probablize the defence. Exs.P1 to P3 credit bills not seriously disputed on the other hand confirms the business transaction between the petitioner and respondent. Finding that the petitioner not disputed the signature in Ex.P4 and statutory presumption in favour of the respondent coupled with the fact that Exs.P1, P2, P3, P9 & P11 confirmed the cheque issued in discharge of liability, the Courts below rightly convicted the petitioner. Hence, the petitioner unable to dislodge the statutory presumption and not probablized his defence. These facts were considered by both the Courts below by detailed judgments.

7.In view of the above, this Court finds no illegality or infirmity in the judgment, dated 19.09.2022 in C.C.No.103 of 2015 passed by the learned

Judicial Magistrate, Fast Track Court, Tiruppur and in the judgment, dated 06.10.2023 in Crl.A.No.140 of 2022 passed by the learned I Additional District and Sessions Judge, Tiruppur and the same are confirmed. Accordingly, the criminal revision case stands dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

3.09.2024

Neutral Citation : Yes/No
Speaking Order/Non Speaking Order
Index : Yes/No
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M.NIRMAL KUMAR, J.

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To

1.The I Additional District and Sessions Judge,
Tiruppur.

2.The Judicial Magistrate,
Fast Track Court, Tiruppur.

PRE-DELIVERY ORDER IN
Crl.R.C.No.1860 of 2023

3.09.2024