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Crl.R.C. No. 236 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

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THE HON'BLE MR .JUSTICE M. NIRMALKUMAR

CRIMINAL REVISION CASE NO. 236 of 2024

&

Crl.M.P. Nos. 2130 & 2132 of 2024

K. Ganeshpandi

..Petitioner

Vs.

S. Kennady

..Respondent

Prayer: Criminal Revision under Section 397 r/w 401 Cr.P.C. to call for the records and set aside the judgment dated 09.06.2023 in C.A. No. 178 of 2022 on the file of the XXII Additional Sessions Judge, Chennai, confirming the conviction passed in C.C. No. 1966 of 2018 by judgment dated 25.07.2022 passed by the Fast Track Court, V Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner :: Mr.V.K. Sathiamurthy



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For Respondent :: Mr.G. Saibaba

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ORDER

The petitioner/accused is carrying on business in the name and style of “SAKTHI CONSTRUCTIONS” in Chennai. The respondent/complainant is carrying on business in the name and style of “K.N.R. Traders”. The petitioner/accused had approached the respondent/complainant for supply of steel and cement hardwares, iron scrapes and other similar products and had made purchases on various dates covered by credit bills Exs. P1 to P6 and P11 and in discharge of the said liability, two cheques, Exs.P7 and P8 were said to have been issued by the petitioner. On presentation of the cheques, they got dishonoured. In spite of respondent/complainant’s repeated demands to discharge the liability, there was no response from the petitioner/accused resulting in the complainant issuing a legal notice dated 23.12.2017 asking the petitioner/accused to repay the cheque amount. In the absence of any reply to the said notice, the respondent filed a complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act. The Trial Court, on consideration of the materials on record, found the petitioner/accused guilty and convicted him for the said



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offence and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of one month's simple imprisonment. The petitioner was also ordered to pay a sum of Rs. 9,99,032/- to the respondent/complainant as compensation under Section 357 Cr.P.C. within a period of two months from the date of the judgment and in default to undergo two months simple imprisonment. Aggrieved by the said conviction and sentence, the petitioner preferred an appeal in C.A. No. 178 of 2022 before the XXII Additional City Civil Court, Allikulam, Chennai and by judgment dated 09.06.2023, the appeal came to be dismissed as against which the present revision has been filed.

2. The contention of the learned counsel for the petitioner is that Exs.P1 to P6 and P11 were not signed by the petitioner acknowledging the supply of goods. No transporter had been examined to prove that the goods were supplied to the petitioner. According to the learned counsel, the cheques which were given as security have been misused and a false case has been filed against the petitioner. Further, the respondent/complainant had not produced any income tax returns to show that he had supplied



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goods to the petitioner and loans were outstanding. These factors have not been considered both by the Trial Court as well as by the Lower Appellate Court. Further, the learned counsel would submit that the Trial Court had convicted and sentenced the petitioner for the offence under Section 138 of Negotiable Instruments Act to undergo six months simple imprisonment and also to pay a fine of Rs.5000/- besides ordering the petitioner to pay compensation to the respondent/complaint. This according to the learned counsel for the petitioner is not proper as all the three, namely, imprisonment, fine and compensation cannot be imposed on the petitioner. Hence, he prayed for allowing the revision.

3. Learned counsel for the respondent/complainant submitted that the respondent/complainant is carrying on business in the name and style “K.N.R. Traders” dealing with steel, cement, hardwares, iron scraps and other similar products. The petitioner, who is involved in construction business had purchased steel and cement from the respondent/complainant on various dates covered by credit bills Exs.P1 to P6 and P11. These goods have been supplied to the petitioner and in acknowledgement of the same,



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cheques, Exs.P7 and P8 had been issued. However, when the cheques were presented, they got dishonoured and after following statutory procedure, the complaint came to be filed. During the trial, the respondent/complainant examined himself as P.W.1 and marked Exs.P1 to P15, On the side of the defence, neither any witness was examined nor documents were marked. Before the Trial Court, on the basis of materials produced, since the petitioner did not dispute his signature in the cheques and also the issuance of the cheques, statutory presumption was drawn against the petitioner under Sections 118 and 139 of Negotiable Instruments Act. Further, the supply of goods covered by credit bills was proved. Even in the cross-examination, the petitioner did not dispute the supply of goods but only raised a defence that supply of goods was by means of a vehicle and no transporter was examined to prove the supply of goods. According to the learned counsel for the respondent/complainant, if at all, the petitioner had such an objection, it is for him to examine the transporter of goods in order to disprove the claim of the respondent/complainant. Considering all these aspects, the Trial Court had rightly convicted the petitioner and the Lower Appellate Court had also confirmed the same. Hence, the learned counsel for



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the respondent/complainant would pray for dismissal of the revision.

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4. Considered the submissions made on either side and perused the materials on record.

5. The petitioner/accused, having suffered a concurrent finding, cannot now make factual submissions and take a technical plea. In this case, no such plea made or raised earlier. Considering the submissions made, it is seen that the issuance of cheques Exs.P7 and P8 were to cover the credit bills marked as Exs.P1 to P7 and P11 and they were filed to support the petitioner's contention that goods were supplied on credit basis. In discharge of the said liability, cheques were issued, which on being presented got dishonoured. Thereafter, following the statutory procedure, the complaint came to be filed. The only defence taken by the petitioner is that the cheques, which had been earlier given as security, had been misused. However, there is no proof or material to substantiate earlier transaction cheques presently misused and the cheques had become stale. Further, as far as transportation of goods is concerned, it is for the petitioner, who



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raised such a defence to have examined the transporter to disprove the supply of goods. Nothing of that sort done in this case and this Court finds no reason to interfere with the judgment of conviction rendered by the Trial Court, which stands confirmed by the Lower Appellate Court. However, the only mistake committed by both the Courts below is that sentencing the petitioner to undergo six months simple imprisonment, pay fine of Rs.5000/- and also ordering compensation to be paid to the respondent/complainant.

6. Hence, this Court confirms the sentence of six months simple imprisonment of the petitioner and the compensation amount ordered to be paid by the petitioner alone. As regards the imposition of fine amount of Rs.5000/- is concerned, it is hereby is set aside. The Trial Court is directed to issue conviction warrant and get it executed through the jurisdiction Police to secure the petitioner for undergoing the period of sentence imposed and to recover the compensation amount.

M. NIRMALKUMAR,J.

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7. The criminal revision petition stands dismissed with the above



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modification. Connected criminal miscellaneous petitions are closed.

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To

1. The Court of V MM,
Fast Track Court, Saidapet,
Chennai.
2. The XXII Additional Sessions Court,
Chennai.
3. The Public Prosecutor, High Court, Madras.

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