



Crl.R.C.No.1163 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM

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

Crl.R.C.No.1163 of 2019

K.Kaliraj

... Petitioner

Vs.

1. The State,
Rep. by Public Prosecutor

2. L.T.M.Arul Mozhi Varman,
S/o.L.T.Muthu Mayan,
Proprietor,
M/s.Sri Mookambigai Engineering Enterprises,
Door No.57-A, B, V.K.Road,
Thanneer Pandal, Peelamedu,
Coimbatore - 641 004.

... Respondents

Prayer : Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment passed in C.A.No.242 of 2017, dated 31.08.2018 by the I Additional District and Sessions Judge, Coimbatore, modifying the sentence imposed by the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, in C.C.No.136 of 2014, dated 21.07.2017.



Crl.R.C.No.1163 of 2019

WEB COPY

For Petitioner : Mr.S.B.Viswanathan

For Respondents : Mr.S.Raj Kumar,
Additional Public Prosecutor for R1
Mr.G.Dilip Kumar for R2

ORDER

Challenging the Judgment and Orders, dated 31.08.2018 passed in C.A.No.242 of 2017 by the learned I Additional District and Sessions Judge, Coimbatore, the present Criminal Revision is filed by the petitioner/3rd Accused.

2. The first Accused is a firm by name, M/s.Mallikarjuna Foundry in which the Accused 2 and 3 are partners. The second Respondent is the complainant.

3. For the sake of convenience, the parties are referred to as per the ranking in the trial Court.



Crl.R.C.No.1163 of 2019

WEB COPY

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

- i. The accused 1 to 3 had business transaction with the complainant and purchased Iron materials. During the course of transaction, the accused were due and liable to pay a sum of Rs.4,17,606/- as on 23.04.2013.
- ii. When the complainant demanded the accused to repay the said amount, the accused did not pay any amount and after much persuasion, the 2nd and 3rd accused handed over a post dated cheque bearing No.001133, (Ex.P2) drawn on City Union Bank, Kovai Ramanathapuram Branch, Coimbatore to the complainant, dated 29.05.2013.
- iii. When the cheque was presented for collection on 25.07.2013 by the complainant through his banker viz., Lakshmi Vilas Bank, main branch, Kovai, the same was returned with an endorsement 'insufficient funds' as is seen from the Cheque Return Memo (Ex.P3).



CrI.R.C.No.1163 of 2019

WEB COPY

- iv. Thereafter, the complainant issued a statutory notice on 06.08.2013 (Ex.P4) to the accused, demanding the latter to pay the amount due under the cheque within fifteen days from the date of receipt of the notice.
- v. The revision petitioner / 3rd accused sent a reply notice on 19.08.2013 (Ex.D1) which according to the complainant contained false allegations.
- vi. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., against the accused for an offence under Section 138 of the Negotiable Instruments Act in C.C.No.136/2014 before the Judicial Magistrate (Fast Track) Court at Magisterial Level- II, Coimbatore.
- vii. The learned Judicial 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. On appearance of the accused, copies of the case records were furnished to them under Section 207 Cr.P.C., The substance of accusations made in



Crl.R.C.No.1163 of 2019

the complaint were put to the accused and since the accused pleaded not guilty, the case was posted for trial.

viii. The complainant examined himself as P.W1 and one Sukumar as P.W.2 and marked Ex.P1 to Ex.P12.

ix. Thereafter the accused were questioned under Section 313 (i) (b) Cr.P.C, with regard to the incriminating circumstances appearing in evidence against them and they denied of having committed any offence. The 3rd accused (Revision petitioner herein) examined himself as D.W.1 and one Senthilkumar as D.W.2 and marked Ex.D1 to Ex.D3.

x. After full trial, the trial Court Judge, vide his Judgment dated 21.07.2017 convicted the accused under Sections 138 and 141 of the Negotiable Instruments Act and sentenced them as detailed under:

<i>S.No.</i>	<i>Accused</i>	<i>sentence</i>	<i>Compensation</i>
1	A2	Simple Imprisonment for a period of one year.	to pay compensation of Rs.4,17,600/- by A2 and A3 on behalf of A1 firm, in default to undergo Simple Imprisonment for a period of six months.
2	A3	Simple Imprisonment for a period of one year.	



CrI.R.C.No.1163 of 2019

WEB COPY

- xi. Aggrieved over the same, the revision petitioner / 3rd accused filed an appeal in C.A.No.242/2017 before the I Additional District and Sessions Court, Coimbatore.
- xii. The learned I Additional District and Sessions Judge, Coimbatore, vide his Judgment dated 31.08.2018 partly allowed the appeal by confirming the conviction. The sentence was modified and the accused 2 and 3 were sentenced to undergo simple imprisonment for a period of three months.
- xiii. Aggrieved over the same, the present revision is filed by the 3rd Accused.

5. At the outset it may be observed that the Accused 2 and 3 admitted their signature on the cheque (Ex.P2), dated 29.05.2013. Once the signature is admitted, there is a presumption under Section 118 and 138 of the Negotiable Instruments Act, unless the contrary is proved by the accused.



Crl.R.C.No.1163 of 2019

WEB COPY

6. Mr.S.B.Viswanathan, learned counsel for the Revision petitioner / 3rd Accused contended that the present revision petitioner is one of the partners of the first Accused firm on the date of issuance of the cheque and subsequent to the filing of the private complaint and after issuance of the cheque, he retired from the partnership firm. He had also issued a reply notice to the complainant (Ex.D1) in this regard and however both the Courts below without considering this aspect, had convicted the revision petitioner also for the offence punishable under Section 138 of the Negotiable Instruments Act.

7. It is relevant to point out that the above plea was taken before the trial Court Judge and the appellate Court Judge and the trial Court Judge in his Judgment dated 21.08.2017 in C.C.No.136/2014 had observed thus:

"The 3rd accused being a joint signatory to the cheque as partner and having signed the cheque cannot content that he is not vicariously liable. It is the evidence of P.W.1 on the date of transaction the accused No.2 and 3 are partners and they have issued the cheque by signing the



same as partners. The production of the partnership deed also disclose that both the partners are entitled to sign the cheques on behalf of the firm. The active participation of the 3rd accused in the business of the 1st accused was proved by the bare fact that on the date of purchase of materials and issuance of cheque the accused No.2 and 3 have signed the same on behalf of the firm. Therefore, the transaction by the complainant with the 1st accused firm is within the knowledge of Accused No.2 and 3. The role of a partner in a firm is a question of fact depending upon the facts of the case. There is no universal rule that a partner of a firm is incharge of every day affairs. The basic averment is sufficient to initiate the prosecution. However, the complainant at the stage of trial has to lead evidence and prove that the accused is responsible for the business of the company. The complainant has proved the participation of the 3rd accused in the business of the first accused. The complainant has satisfactorily proved the liability of the accused No.1 to 3 under Section 138 of NI Act."

8. In the Judgment of the appellate Court, it is held that on the date of issuance of the cheque, the present Revision Petitioner is one of the partners of the firm and had signed the cheque (Ex.P2). When the



Crl.R.C.No.1163 of 2019

WEB COPY

cheque was presented for collection also, the Revision petitioner was one of the partners and therefore he cannot be absolved of his liability to pay the cheque amount.

9. Both the Courts below had, by their well reasoned orders convicted and sentenced the accused for the offence under Section 138 of the Negotiable Instruments Act and by no stretch of imagination, the observations made by both the Courts below can be termed as perverse. It is also appropriate to note that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate Court, unless the findings are shown to be perverse.

10. In the result,

- i. the Criminal Revision Case is dismissed.
- ii. the Judgment dated 31.08.2018 in C.A.No.242 of 2017 passed by I Additional District and Sessions Judge, Coimbatore is confirmed.
- iii. The Revision Petitioner / 3rd accused is directed to surrender before the trial Court viz., the Judicial Magistrate, Fast Track



WEB COPY



Crl.R.C.No.1163 of 2019

Court at Magisterial Level - II, Coimbatore, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

02.04.2024

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

To

- 1.The I Additional District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate, Fast Track Court
at Magisterial Level - II, Coimbatore.

R. HEMALATHA, J.



WEB COPY



Crl.R.C.No.1163 of 2019

vum

Crl.R.C.No.1163 of 2019

02.04.2024