
(2015) 06 MAD CK 0517

In the Madras High Court

Case No : Criminal Revision Case No. 1314 of 2008 and M.P. No. 1 of 2008

G.K. Yarns and Others

APPELLANT

Vs

Pallipalayam Spinners (P) Ltd. and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 06 MAD CK 0517

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : V. Elangovan, for the Appellant

Final Decision : Partly Allowed

Judgement

B. Rajendran, J—The petitioners herein are arrayed as A1 to A3 in STC No. 1959 of 2006 on the file of learned Judicial Magistrate, No. I, Tiruppur under Section 138 of the Negotiable Instruments Act based on the private complaint filed by the first respondent and that the petitioners 2 and 3 were sentenced to undergo one year rigorous imprisonment and also to pay compensation of Rs. 45,000/- each as contemplated under Section 357(3) of Cr.P.C. Aggrieved by the said conviction and sentence, the petitioners have filed Crl. A. No. 556 of 2007 on the file of the learned Additional District and Sessions Judge, Fast Track Court No. 4, Tiruppur. By judgment dated 26.08.2008, the first appellate Court confirmed the order passed by the trial court. As against the same, the petitioners have come forward with the present Criminal Revision Case.

2. The case of the complainant in brief is as follows:

The complainant is a private limited company engaged in the business of Tant/feature of yarns and the first accused is a partnership firm and the accused Nos. 2 and 3 are its partners. As per the request made by the petitioners/accused firm, the complainant/first respondent supplied yarn to the tune of Rs. 88,320/-

and in order to discharge its liability, the petitioners/accused Nos. 2 and 3 issued a cheque on behalf of the first accused. However, when the same was presented for payment, it was returned with the endorsement "funds insufficient". Hence, the complaint.

3. Learned counsel appearing for the petitioners would submit that though both the Courts below have failed to take into consideration the fact that there is no evidence to prove that the petitioners have committed the offence and that the complainant has misused the cheque issued to them, he would pray that the petitioners are restricting their arguments only on the sentence imposed and not on the merits of the matter. He would further submit that already the petitioners 2 and 3 at the time of seeking suspension of sentence as directed by this Court had deposited a sum of Rs. 15,000/- each to the credit of the STC No. 1959 of 2006 on the file of the learned Judicial Magistrate No. I, Tiruppur. The petitioners 2 and 3 would also state that they are the only bread winners in their family and if they are directed to undergo the period of one year rigorous imprisonment as ordered by the Courts below, they will not be able to maintain their family. Accordingly, they prayed for leniency in the sentence awarded.

4. Though notice has been served on the first respondent/complainant as early as in the year 2008, still service is awaited. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in K.S. Panduranga Vs. State of Karnataka, (2013) 3 AD 414 : AIR 2013 SC 2164 : (2013) 116 CLT 669 : (2013) CriLJ 1665 : (2013) 3 CTC 631 : (2013) 3 JT 514 : (2013) 2 RCR(Criminal) 219 : (2013) 3 SCALE 152 : (2013) 3 SCC 721 : (2013) 1 SCC(L&S) 791 : (2013) AIRSCW 1382 .

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal side) appearing on behalf of the second respondent. Perused the records.

6. On a perusal of the judgments, it is seen that the Courts below after analysing the oral and documentary evidence available on record came to the conclusion that the complainant has proved the execution of the cheque, its dishonour and the commission of offence by the petitioners beyond reasonable doubt. Therefore, I do not find any reason to interfere with the conviction ordered by the Courts below.

7. At this juncture, since it is submitted by the petitioners that they are the only breadwinners in their family and if the sentence imposed by the Courts below is confirmed they have to undergo one year rigorous imprisonment and that they may not be able to look after their family, I am inclined to modify the sentence awarded by the Courts below into payment of double the cheque amount as compensation. It is also further submitted that at the time of seeking suspension of sentence, the petitioners have already deposited a sum of Rs. 30,000/- to the credit of STC No. 1959 of 2006.

8. Considering the submission made by the learned counsel for the petitioners

and also taking into account the fact that the petitioners have already deposited a sum of Rs. 30,000/-; that the respondent/complainant has not appeared before this Court; that the matter is pending for the past seven years, I am inclined to modify the sentence awarded by the Courts below into one of payment of double the cheque amount as compensation. Accordingly, the following order is passed:

"The sentence to undergo one year rigorous imprisonment awarded to petitioners 2 and 3 by the Courts below is set aside. Instead the petitioners are directed to pay double the cheque amount as compensation, viz., Rs. 1,76,640/- [Rupees one lakh seventy six thousand six hundred and forty only]. Since it is submitted that already a sum of Rs. 30,000/- has been deposited by the petitioners, they are directed to deposit the balance amount of Rs. 1,46,640/- [Rupees one lakh forty six thousand six hundred and forty only] within a period of three months from the date of receipt of a copy of this order to the credit of STC No. 1959 of 2006 on the file of the learned Judicial Magistrate No. 1, Tiruppur. On such deposit being made, the learned Magistrate is directed to disburse the compensation amount to the respondent/complainant on proper identification. It is also made clear that if the petitioners/accused fail to deposit the compensation amount as ordered by this Court, within the stipulated time, they have to undergo rigorous imprisonment for a period of one year as ordered by the trial court and confirmed by the first appellate court. In such event, the trial court shall take appropriate steps as are necessary to secure the presence of the petitioners/accused to undergo the sentence of one year rigorous imprisonment imposed by the Courts below."

9. With the above modification, the Criminal Revision Case is partly allowed. Consequently, the connected miscellaneous petition is closed.