(2013) 05 MAD CK 0008

In the Madras High Court

Case No : Criminal R.C. No. 982 of 2011 and M.P. No''s. 1 and 2 of 2011

Jayanth Bhattacharjee APPELLANT

Vs

Lalit Steel Suppliers RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1), 255(i), 357(1)(b)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1), 141(2)

Citation : (2013) 3 MLJ(Cri) 365

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : P. Kumaresan, for the Appellant; V. Sairam for R. Amizhdhu, for the Respondent

Judgement

C.S. Karnan, J.—The brief facts of the case are as follows:

The respondent herein/complainant had filed a case in S.T.C. No. 1460 of 2007, on the file of Special Metropolitan Magistrate, Chennai, against the revision petitioners/second accused and nine others stating that the complainant is the dealer and supplier of iron and steel. The first accused is a company incorporated under the Companies Act and is represented by the second accused, who is looking after the affairs of the company at Chennai. The accused 2 to 5 are the Directors of the 1st accused company, as such, they are incharge and responsible for the day to day affairs of the first accused company. As per the instructions of the accused 2 to 5, this complainant had supplied the material as per the orders placed by the accused 2, 6, 9 and 10. The accused 7 and 8 are the persons who had coordinated the business transaction on behalf of the first accused company. The second accused with the consultation of the accused 6, 9 and 10 placed orders on various dates for supply of goods.

In pursuance of such an order, the goods were supplied on various dates, i.e., 17.7.2001, 2.2.2002, and 5.2.2002, as per delivery challan and invoice was raised for a sum Rs. 2,29,358/-, Rs. 2,49,228/-, Rs. 1,84,016/-, aggregating to a sum of Rs. 6,62,602/-. The cheques were issued by the second accused on behalf of the first accused company and signed by the accused 9 and 10, as authorized signatories. The cheques were presented to the complainant''s bank for collection and the same was returned on 28.10.2003, with an endorsement "exceeds arrangements". Hence, the complainant sent a legal notice on 31.10.2003 and the same was received by some of the accused and some of the accused did not receive the notice. Even after the receipt of the legal notice, the accused neither paid the cheque amount nor sent any reply. Hence, the case has been filed u/s 138 read with 141 of the Negotiable Instruments Act, against the accused.

2. The accused pleaded not guilty and hence, the case was proceeded with. On the side of the complainant, one witness was examined as P.W.1 and 15 documents were marked as Exhibits P-1 to P-15, viz., Ex. P1-registration certificate of complainant firm dated 12.7.1990, Exhibit P-2-partnership deed dated 11.6.1995, Exhibit P-3-invoice dated 2.8.2001, Exhibit P-4-delivery challan dated 2.8.2001, Exhibit P-5-covering letter dated 13.9.2001, Exhibit P-6-Dena bank cheque No. 658950 for a sum of Rs. 1,67,328/-, dated 25.5.2003, Exhibit P-7-Dena Bank cheque No. 658943 for a sum of Rs. 2,46,339/-, dated 25.5.2003, Exhibit P-8-Dena Bank cheque No. 658949 for a sum of Rs. 4,83,298/- dated 25.5.2003, Exhibit P-9-return memos dated 28.10.2003, Exhibit P-10-debit advice dated 29.10.2003, Exhibit P-11-legal notice by complainant counsel dated 31.10.2003, Exhibit P-12-acknowledgment cards, Exhibit P-13-returned cover from R. Krishnan, Exhibit P-14-Minutes of Meeting between complainant company and A-1 Company, Exhibit P-15-copy of the Annual return from A-1 company dated 7.8.2001. On the side of the defence, 9 witnesses were examined, viz., D.W.1-R.V. Raghavan, D.W.2-M.K. Jothi, D.W.3-Senthil Kumar, D.W.4-Jayant Bhattacharjee, D.W.5-G. Ramesh, D.W.6-Rajkumar Menon, D.W.7-Jothi Nathan, D.W.8-Francis Xavier and D.W.9-Saikat Basu and 24 documents were marked as Exhibits D-1 to D-24, viz., Exhibit D-1 -reply notice by A-2 counsel, Exhibit D-2-reply notice by A5 counsel, Exhibit D-3-certified copy of 18(1) settlement, Exhibit D-4-copy of resignation letter of A-2 sent to A-1 company, Kolkatta, dated 12.9.2003, Exhibit D-5-statement of account by Dena Bank for the period from 1.1.2002 to 14.4.2008, Exhibit D-6-letter to Provident Fund Office dated 19.6.2008, Exhibit D-7-certified copy of complaint before the Magistrate at Kolkatta, Exhibit D-8-letter by counsel of A-1 Company to A-2, Exhibit D-9-letter by A1 company to ROC dated 10.6.2008, Exhibit D-10-General Power of Attorney dated 27.7.1999, Exhibit D-11-salary slip of accused G. Ramesh, Exhibit D-12-reliving order of accused G. Ramesh, dated 11.9.2003, Exhibit D-13-Memorandum and Articles of Association of A-1 company, Exhibit D-14-relieving order of M. Rajkumar Menon, Exhibit D-15-report by the Commercial Tax Officer regarding A-1 company dated 31.7.2008, Exhibit D-16-letter from Jayant Bhattacharjee to Central Excise, dated 12.9.2003, Exhibit D-17-show cause notice by central excise dated 5.11.2003, Exhibit D-18-copy of resignation letter of A-2 sent to A-1 company, Kolkatta, dated 12.9.2003, Exhibit

D-19-letter from counsel of A-2 to A-2, dated 1.8.2008, Exhibit D-20-letter by counsel of A-2 to ROC, Kolkatta, dated 21.7.2008, Exhibit D-21 -letter by A.M. Singh to counsel of A-2 dated 22.7.2008, Exhibit D-22-certified copy of order in Crl. R.C. No. 109 of 2006 against M.P. No. 1442 of 2006 in C.C. No. 12103 of 2003, dated 29.1.2007, Exhibit D-23-document showing the Directorship of Saikat Basu, Exhibit D-24-letter from Deputy Registrar of Companies AM Singh to A2 counsel, dated 8.8.2008.

3. P.W.1 had adduced evidence that when the cheques had been presented in the bank, it was returned on 28.10.2003 with an endorsement "Exceeds Arrangement". Subsequently, the legal notice has been issued through his lawyer on 31.10.2003. In order to prove the contention, he had marked returned cheque, return memo, debit advice, legal notice, acknowledgment card. P.W.1 had further stated that his company was registered under the Companies Act and that the accused company was also registered under the Companies Act. Accused 2 to 5 are Directors of the Company and they are incharge and responsible for the day to day affairs of the first accused company. The orders were placed by the accused 6, 9 and 10 and the accused 7 and 8 coordinated the business transaction. P.W.1 further stated that his Company had supplied material on various dates on credit basis. In order to discharge the legally enforceable debt, the cheques have been issued by the accused. To substantiate the said transactions, he had marked the delivery challan and invoice.

4. The second accused, Jayanth Bhattacharjee had adduced evidence that the accused company was run by its owner and Managing Director, M.K. Bajoria. He further stated that he has not given any instructions or placed orders with the complainant. No materials were supplied as alleged. He further stated that he is not connected with the said case and the cheques were given as security and no concurrence was taken from him prior to the presentation of the cheques. He further stated that taking advantage of the industrial unrest, resulting in closure of the company in the month of September 2003, the complainant, without obtaining the concurrence, presented the unfilled cheques which were given as security. He further stated that he has resigned from the Company on 12.9.2003 and informed the same to the Company and concerned Government Departments and the complainant company is also aware of the same.

5. The third accused had adduced evidence that he is based at Kolkatta and has nothing to do with the day to day affairs of the accused company and he is unaware of the payments made and he is not responsible for placing orders with the complainant, receipt of materials or issue of cheque. He further submitted that he has not given his consent or connived or been negligent. Further, the cheque book was issued by Dena Bank only on 20.2.2003. The fifth accused had adduced evidence that he has nothing to do with the day to day affairs of A-1 Company and the Executive Director A-2 is a person who is solely in charge of the accused company. He further stated that he is unaware of the transactions between the complainant and the accused Nos. 1 and 2 since he is based at

Kolkatta. He also further stated that he had issued a reply notice to the complainant. He further stated that the cheques were misused by the second accused and other staff of the company. The seventh accused has stated that he never coordinated the business transaction of the A-1 company and it was in the sole exclusive charge of the second accused.

6. The 10th accused in his affidavit contends that the authorized signatory keeps changing as per the resolution of the Board of Directors. He submitted that they are only paid employees under the control of Chief Executive Officer and the Executive Director, without any individual power. He further stated that he had resigned on 12.9.2003 and was relieved by the Chief Executive Officer on the same day. He further contends that the beneficiary of the whole transaction was the A-1 Company as the material supplied still lies in the factory premises. The sixth accused also spoke on the same lines of the 10th accused. The ninth accused also spoke on the same line of the tenth accused. He further stated that he was not an employee at the time of presenting the cheque.

7. On considering the contention of P.W.1 and the exhibits marked by him and accused witnesses and on perusing the documents marked by the accused, the learned Magistrate held that the case has been proved beyond doubt against the accused company. The learned Magistrate held that the accused, A-2 is deemed to be guilty u/s 138 read with Section 141(1) of the Negotiable Instruments Act; the third accused is deemed to be guilty and convicted u/s 138 read with 141(2) of the Negotiable Instruments Act; the fifth accused is deemed to be guilty and convicted u/s 138 read with 141(2) of the Negotiable Instruments Act; the sixth accused is not deemed to be guilty and is acquitted u/s 255(1) of Cr.P.C., the seventh accused is found deemed to be guilty and convicted u/s 138 read with 141(2) of the Negotiable Instruments Act and the accused 9 and 10 are not deemed to be guilty and they are acquitted u/s 255(i) of Cr.P.C.

8. The learned Special Metropolitan Magistrate, XIV Small Causes Court, Chennai, has by its order dated 30.9.2008 made in S.T.C. No. 1460 of 2007, imposed the punishment and sentence as follows:

The A-1 Company represented by Mr. M.K. Bajoria, one of the promoters and first Director of the company was imposed to pay a fine of Rs. 1,35,000/-, out of which Rs. 1,000/- was the fine and the remaining amount of Rs. 1,34,000/- was to be paid as compensation to the complainant u/s 357(1)(b) of Cr.P.C. in default to undergo simple imprisonment for one year. The second accused was sentenced to pay a fine of Rs. 1,35,000/-, out of which Rs. 1,000/- was to be paid as fine and the remaining amount of Rs. 1,34,000/- was to be paid as compensation to the complainant u/s 357(1)(b) of Cr.P.C. in default to undergo simple imprisonment for one year. The third accused was sentenced to pay a fine of Rs. 1,35,000/-, out of which Rs. 1,000/- was to be paid as fine and the remaining amount of Rs. 1,34,000/- was to be paid as compensation to the complainant u/s 357(1)(b) of Cr.P.C., in default to undergo simple imprisonment for one year. The fifth accused was sentenced to pay a fine of Rs. 1,35,000/-, out of which Rs. 1,000/- was to be paid as fine and the remaining amount of Rs. 1,34,000/- was to be paid as compensation to the complainant u/s 357(1)(b) of Cr.P.C., in default to undergo simple imprisonment for one year. The seventh accused was sentenced to pay a fine of Rs. 1,35,000/-, out of which Rs. 1,000/- was to be paid as fine and the remaining amount of Rs. 1,34,000/- was to be paid as compensation to the complainant u/s 357(1)(b) of Cr.P.C., in default to undergo simple imprisonment for one year.

9. Against the said conviction and sentence and the imposition of fine, the second accused has filed an appeal in C.A. No. 285 of 2008, on the file of IV Additional Sessions Judge, Chennai. The learned judge, after hearing the arguments of the learned counsels on either side and on perusing the impugned judgment of the trial Court, had dismissed the appeal, pointing out that as per the Minutes of Meeting between the Insurance Company and A-1 Company, it was agreed that the A-1 should pay cheque amount in order to discharge the legal liability. Therefore, the learned judge on holding that the cheque had been issued on behalf of the first accused company, by all the concerned accused, in order to discharge the legal liability of the first accused company, dismissed the appeal.

10. Against the dismissal of the said appeal, the revision has been filed by the second accused.

11. The learned counsel for the revision petitioner/accused has contended that the accused was not incharge of the affairs of the first accused company as on the date of commission of the offence. The Courts below have failed to appreciate that the cheque concerned was issued in the month of May 2003 and this accused resigned his job on 12.9.2003 and thereafter, he had nothing to do with the company in whatever capacity and that the cheques were presented for encashment and returned unpaid, the statutory notice was issued and the failure to pay the same covered under the cheque was committed after the resignation of the petitioner from the company concerned. As such, he had nothing to do with the company concerned as on the date of commission of offence, viz., the date on which the company failed to pay the sum covered by the cheque concerned after lapse of 15 days period from the receipt of statutory notice. The learned counsel has further submitted that the accused had never given any instructions or placed orders with the complainant. The cheques were given as security and at that time, the complainant had promised not to use the cheques against the accused. The first accused company was also closed in the month of September 2003 due to certain problems. This accused resigned from this company on 12.9.2003 and this was informed to the first accused company and the concerned Government Departments. The complainant company is also well aware of the same. The learned counsel has further submitted that the first accused company was run by the third accused viz., Mr. M.K. Bajoria as owner and Managing Director of the Company. On the date of commission of offence, the revision petitioner had no control over the affairs of the company and he

could not have done anything to see that the cheques are honoured when presented or that the amount covered by the cheques is paid within 15 days from the date of receipt of the statutory notice. It was also contended that the resignation letter which was marked before the trial Court was also not considered by the Courts below. The complainant company also filed a case before the Magistrate Court at Kolkatta. The accused had resigned from the company and the same was confirmed in the writ appeal proceedings on the file of this Court, which had been marked. The resignation has been accepted by the accused company and the revision petitioner was prohibited from involving in the affairs of the accused company. The learned counsel has further contended that as the statutory notice was addressed to the petitioner''s residential address, it has been clearly proved that the revision petitioner had resigned from the company. Hence, the learned counsel entreats the Court to allow the above revision.

12. The learned counsel for the complainant has contended that the accused company had purchased goods on various dates on credit basis. In order to pay the said amount due for the goods, the accused company had issued cheques, duly authorized by the accused persons. In order to prove the said transaction, Exhibit P-14, showing the Minutes of the Meeting between the complainant company and the first accused company had been marked. The learned counsel has further submitted that thereafter, supporting documents, invoice challan and covering letter had been marked. The learned counsel has further submitted that as per the accused company''s register all the accused are necessary parties. The revision petitioner herein is an Executive Director of the accused company and he also participated in the Minutes of the Meeting between the complainant and the accused company. The revision petitioner had signed in the said Minutes of Meeting Book in the capacity of the Chief Executive Officer and Executive Director. The learned counsel has further contended that the third accused herein filed a complaint against the revision petitioner herein who had been ranked as Executive Director of the first accused company. Actually, the matter has been settled between the complainant and the other accused, who have been found guilty as per trial Court''s order. The learned counsel has further contended that the issuance of cheque had not been denied. The complainant after observing all legal formalities had levelled the case against the accused.

Therefore, there is no lacuna in the said impugned order. The learned counsel has further submitted that the said transaction took place in the year 2002, hence, the learned counsel has prayed to dismiss the above revision.

13. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned judgments of the Courts below, this Court does not find any discrepancy in the said judgments. However, the quantum of compensation of a sum of Rs. 1,35,000/- and the default clause making the accused to undergo one year simple imprisonment is on the higher side. Hence, this Court modifies the compensation payable by the

revision petitioner herein/accused as Rs. 67,500/- and in default of payment of such compensation, the revision petitioner herein/accused has to undergo two months simple imprisonment.

14. Now, this Court directs the learned Special Metropolitan Magistrate, XIV Small Causes Court, Chennai to issue bailable warrant at once and secure the revision petitioner herein/accused forthwith in order to undergo simple imprisonment for two months as per this Court''s findings. If the revision petitioner herein/accused deposits the said compensation amount into the credit of S.T.C. No. 1460 of 2007, on the file of Special Metropolitan Magistrate, XIV Small Causes Court, Chennai before being remanded into judicial custody, then he would be set free and the period of two months simple imprisonment imposed on the accused would not be executed. If the revision petitioner deposits the said compensation amount before the trial Court, then the complainant is at liberty to withdraw the said amount after filing a Memo along with a copy of this order. This modified order has been passed by this Court, after invoking the discretionary power vested with it. In the result, the above revision is partly allowed. Consequently, the judgment and conviction passed in C.A. No. 285 of 2008, on the file of IV Additional Sessions Court, Chennai, dated 25.3.2011, confirming the conviction and sentence passed in S.T.C. No. 1460 of 2007, on the file of Special Metropolitan Magistrate, XIV Small Causes Court, Chennai, dated 30.9.2008 is modified. Consequently, connected miscellaneous petitions are closed. Accordingly ordered.