(2010) 08 DEL CK 0321

In the Delhi High Court

Case No : Criminal Revision Petition 355 of 2009

Laxmi Cable Co. and Another APPELLANT

Vs

The State and Another RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : AIR 2011 Delhi 308

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Siddharth Luthra and K.S. Negi, for the Appellant; Pawan Behl, APP and Vijay Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The petitioners having failed in the appeals filed by them against their convictions and punishments awarded to them by the Additional Chief Metropolitan Magistrate u/s 138 of the Negotiable Instruments Act, 1881 in two separate complaint cases have now approached this Court by filing this petition u/s 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973.

2. The relevant facts may, at the outset, be noticed. Petitioner No. 1 is a partnership firm and petitioner No. 2 is one of its partners. The respondent No. 2 herein, Rajesh Jain, had filed two criminal complaints (being complaint cases No. 76/2006 & 77/2006) against the petitioners for the commission of offence punishable u/s 138 of the Negotiable Instruments Act, 1881 on the allegations that he had business dealings with them for about 20 years during which period he had been supplying cable wires to them and had also been doing job work for them on credit basis. During the course of business dealings between them a sum of Rs. 1.5 crore became payable by the accused to the complainant which liability the petitioner No. 2 acknowledged also in writing by executing a promissory note. Thereafter, towards part discharge of that liability the

petitioners had issued two cheques dated 15th November, 2005 and 30th November, 2005 for Rs. 15 lacs each in favour of the complainant and one cheque for Rs. 9lacs but all the three cheques were dishonoured by the petitioners'' bank on account of funds being insufficient in their account and the petitioners had failed to make the payment of the three dishonoured cheques despite having been served with the statutory demand notice.

3. In respect of the two cheques for Rs. 15 lacs each complaint case No. 76/2006 was filed while a separate complaint was filed in respect of the cheque for Rs. 9 lacs and the same was complaint case No. 77/2006. Both the complaints resulted in the conviction of the petitioners vide common judgment dated 30th October, 2007. Sentence of simple imprisonment of six months was imposed upon petitioner No. 2 herein and compensation of Rs. 45 lacs with a default stipulation of further simple imprisonment of three months was also awarded vide order dated 13th November,2007 passed by the learned Additional Chief Metropolitan Magistrate in complaint case No. 76/2006 and in the complaint case No. 77/2006 petitioner No. 2 herein was awarded simple imprisonment of three months and was also directed to pay compensation of Rs. 14 lacs to the complainant and in default to undergo further simple imprisonment of three months and then the compensation was ordered to be recovered as arrear of land revenue. Costs of Rs. 7,500/- were also imposed upon the accused in both the cases.

4. The trial Court vide the impugned judgment had also disposed of three other complaints also filed against the petitioners herein by three other persons claiming themselves to be the proprietors of different firms, which as per the petitioners were in fact the relatives of respondent No. 2 herein who was the complainant in the two complaints in which the petitioners stand convicted, and in those three cases the accused-petitioners were acquitted. The accused-petitioners had filed two separate appeals and the same were disposed of vide common judgment dated 29th May, 2009 by the learned Additional Sessions Judge. Those judgments have now however been challenged by the accused by way of one revision petition.

5. The accused-petitioners had admitted that they had issued the three dishonoured cheques but their defence was that they had placed an order for supply of 17,500 kgs. of copper wire with the complainant on 7th November, 2005 and while placing the order he had delivered two cheques in question without writing payee''s name as was requested by the complainant, as an advance payment with an understanding that those cheques would be presented to the bank only after the supply of 17,500 kgs. of copper wire had been made by the complainant but the complainant had supplied to them only 2775.6 kgs. of wire of the value of Rs. 5,92,000/- and had refused to supply the balance material on the ground that the rates of the material had gone up and had misused the blank cheques.

6. The learned trial Judge, however, on appreciation of the evidence adduced by the parties rejected the defence and held that the accused had failed to rebut the

statutory presumption and consequently the petitioners were convicted and their conviction was maintained by the appellate Court also.

7. Mr. Siddharth Luthra, learned senior Counsel for the accused- petitioners had contended, while accepting the legal position that ordinarily there is not much scope for interference by the High Court in the concurrent findings of guilt rendered by the Court of original jurisdiction as well as the appellate Court, that the petitioners had succeeded in rebutting the statutory presumptions available to the complainant under Sections 118 and 139 of the Negotiable Instruments Act since the complainant could not produce any documentary proof of supply of material to the accused. It was argued that in case the complainant had actually supplied the material for which the accused had placed order with him he should have produced receipt for that supply signed by the accused but no such document was produced and in fact he admitted in cross-examination that he had not maintained any records regarding the transactions with the accused which circumstance probabalised the defence of the accused that actually no material was supplied to them by the complainant and the cheques in question having been given only as an advance their getting dishonoured did not constitute any offence. It was also contended that the burden which an accused is supposed to discharge in cases where there is some kind of statutory presumption in favour of a complainant like the ones under Sections 118 and 139 of the Negotiable Instruments Act is not quite heavy and the same can be discharged even on the basis of preponderance of probabilities. In support of these submissions Mr. Luthra placed reliance upon the judgments of the Supreme Court in Kumar Exports Vs. Sharma Carpets, , Sh. Vishnu Dutt Sharma Vs. Smt. Daya Sapra, , Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, and Hiten P. Dalal Vs. Bratindranath Banerjee, . In the end, a submission was also made by Mr. Luthra, though the same appeared to be half-hearted one, on the point of stipulation of imprisonment in case of non-payment of the compensation awarded by the trial Court and affirmed by the appellate Court. Mr. Luthra relying upon two decisions of the Supreme Court in Ahammedkutty v. Abdullakoya (2009) 6 SCC 660 and Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another, had submitted that the trial Court could not have ordered that in case of non-payment of the compensation amount of 45 lacs of rupees accused Davender Kumar Sehgal, petitioner No. 2 herein, shall have to undergo further simple imprisonment for three months.

8. On the other hand, Mr. Vijay Gupta, learned Counsel for respondent No. 2 - complainant submitted that this revision petition deserved to be rejected since there was little scope for interference by this Court in the concurrent findings of the two Courts below both of which on an appreciation of evidence adduced by the parties have held that the accused, petitioners herein, had failed to rebut the mandatory statutory presumptions available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act to the effect that the cheques in question admittedly having been issued by the accused it had to be presumed that the same were issued towards discharge of a debt or other

liability. Even otherwise, Mr. Gupta contended, the accused-petitioners had failed to show that the cheques in question were given only as an advance for supply of the material placed in November, 2005 with the complainant, as was their defence, and further that that defence was in any case belied by a written admission of the past liability made by petitioner No. 2 and the Courts below having rejected the accused''s plea that the same had been obtained from him under duress the non-production of any documentary proof regarding supply of material by the complainant to the accused from time to time on credit basis became totally insignificant and rightly the Courts below did not attach any importance to that circumstance. Mr. Gupta also cited two judgments of the Supreme Court in Jagannath Choudhary and Others Vs. Ramayan Singh and Another, and State of Karnataka Vs. Appa Balu Ingale and others, in support of his afore submissions.

9. After having gone through the trial Court''s records and the judgments of the two Courts below and giving due considerations to the submissions made by the learned Counsel for the accused-petitioners and the complainant-respondent No. 2 this Court has no hesitation in coming to the conclusion that there is no scope whatsoever to interfere in the decisions of the trial Court and the appellate Court either in respect of the convictions of the accused or the sentences awarded to them. As has been noticed already, the accused - petitioners had admitted that the three dishonoured cheques in question had been given by them to the complainant. Although it was their plea that in those cheques the name of the payee had not been mentioned but that plea could not be accepted for want of satisfactory evidence to that effect. There is no doubt that the complainant had not filed any documentary proof in respect of his business dealings with the accused - petitioners for over 20 years, as had been claimed by him in the complaint, but because of that it cannot be said that there was no liability whatsoever towards the complainant from the side of the petitioners and because of non-production of documentary proof of supply of material by the complainant to the accused - petitioners it could be held that the petitioners had succeeded in discharging the onus of rebutting the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act. If the complainant had based his case only upon the statutory presumptions the position might have been somewhat different and the non-production of any documentary proof of supply of material by the complainant to the petitioners of the value of crores of rupees might have been of some significance but that is not the case. The complainant had also relied upon a written acknowledgement of liability of Rs. 1.5 crores made by petitioner No. 2 Davinder Kumar Sehgal and that acknowledgement in writing has been exhibited during the trial as Ex. CW-1/7. During his cross-examination the petitioner No. 2 admitted having executed that document but claimed that he had signed that document under duress. The learned trial Court has rejected the plea of duress raised by petitioner No. 2 for the first time during his cross-examination for cogent reasons and that finding has been upheld by the appellate Court also. Therefore, this Court has no reason

to come to a contrary conclusion. In fact, nothing was argued on behalf of the petitioners in respect of the findings of the Court below on the plea of duress taken by the petitioners. In view of the clear admission of liability vide Ex. CW-1/7 the statutory presumption that the three dishonoured cheques had been issued by the petitioners towards discharge of their existing liability towards the complainant cannot be said to have been rebutted at all.

10. Coming now to the argument regarding stipulation of three months imprisonment in case of non-payment of the compensation amount by petitioner No. 2 this Court is of the view that the challenge to that part of the decision of the trial Court has been made by the learned senior Counsel for the petitioners without noticing the latest decision of the Supreme Court in Vijayan Vs. Sadanandan K. and Another, wherein after taking note of its earlier judgments in Ahammedkutty''s case (supra) and Dilip S. Dahanukar''s case (supra) relied upon by the petitioners in the present case, the Supreme Court had come to the conclusion that a direction can be issued that in case of non-payment of the compensation awarded by the Court the accused can be sent to jail. That decision has been followed by the Supreme Court in a recent judgment also in K.A. Abbas H.S.A. Vs. Sabu Joseph and Another, . In view of these two pronouncements of the Supreme Court no fault can be found with the direction of the trial Court that in case of non-payment of compensation the petitioner No. 2 shall suffer simple imprisonment for a period of three months.

11. For the afore-said reasons, this revision fails and is hereby dismissed.