

(2016) 08 MAD CK 0039

In the Madras High Court

Case No : Criminal R.C. No. 1241 of 2015 and MP. Nos. 1 and 3 of 2015

M/s. Malliah Tea Factory (P) Ltd.

APPELLANT

Vs

S. Jawahar

RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, Section 139

Citation : (2017) ACD 511 : (2016) 3 DCR 737 : (2017) 1 NIJ 302

Hon'ble Judges : Mr. G. Chockalingam, J.

Bench : Single Bench

Advocate : M/s. A. Bobblie, Advocate, for the Petitioners; M/s. J. Bharathiraja, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. G. Chockalingam, J. - The criminal revision petition is directed against the judgment passed by the learned District and Sessions Judge, Nilgiris at Udthagamandalam in CA. No.2 of 2012 dated 08.09.2015 confirming the order of the learned Fast Track Magistrate, Coonoor made in CC. No.11 of 2011 dated 10.02.2012.

2. The brief facts leading to the present revision is as follows :-

The respondent is the complainant. The respondent/Jawahar preferred a private complaint under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, Coonoor, the same was taken on file as CC. No.63 of 2000, subsequently, the case was transferred to the file of Fast Track Magistrate, Coonoor and renumbered as CC.No.11 of 2011. The trial Court after examining the parties and after analysing the entire evidence and documents produced on either side, found A1 and A2 guilty under Section 138 of the Negotiable Instruments Act and directed to pay a sum of Rs.2,00,000/- towards compensation to the complainant, A2 is convicted for the offence under Section 255(2) Cr.PC and sentenced him to undergo RI for one year for the offence under

Section 138 of NI Act and A3 is found not guilty under section 138 of NI Act and he is acquitted under Section 255(1) Cr.PC. Aggrieved over the said order, A1 and A2 preferred criminal appeal before the District and Sessions Judge, The Nilgiris at Udhagamandalam, in CA.No.2 of 2012. The first appellate Court after analysing the entire evidence and documents produced on either side dismissed the appeal on 08.09.2015, against the said judgment the petitioners/A1 and A2 preferred the present revision before this Court.

3. The learned counsel for the petitioners contended that the trial Court and the lower appellate Court without appreciating the evidence erroneously passed the judgments which are liable to be set aside, the Courts below failed to see that the cheque was not issued for the discharge of any legally enforceable debt or liability to the respondent herein, which was issued for security purpose to one Mr. Padmanaban, there is no existence of transaction between the complainant and the revision petitioners. There is no evidence to show that the petitioners have borrowed or liable to pay the amount to the complainant and the cheque in question was not issued to the complainant and hence the ingredients under section 138 of Negotiable Instruments Act was not proved on the side of the complainant. The Courts below convicted the accused and the judgments of the Court below has to be set aside and the learned counsel prays the revision may be allowed and set aside the conviction and sentence passed by the Fast Track Magistrate, Coonoor which was confirmed by the District and Sessions Judge, The Nilgiris at Udhagamandalam.

4. The learned counsel for the respondent after appreciating the entire evidence adduced before the trial Court, the trial passed an order of conviction against the accused, the first appellate Court also after considering the same comes to the conclusion that the offence under Section 138 of the Negotiable Instruments Act was clearly proved and found guilty and confirmed the order of the trial Court and prays this Court to dismiss the revision petition filed by the petitioners.

5. Heard the rival submissions made on both sides and perused the records.

6. The revisions petitioners has not denied the signature in the cheque, but they have stated that the cheque was issued in favour of one Padmanaban and there is no existence of any transaction between the petitioners and the complainant. It is admitted on the side of the petitioners that cheque was presented by the complainant for encashment through his bankers, the same was dishonoured with an endorsement "Exceeds Arrangement", the complainant issued statutory notice to the petitioners. The learned counsel contended that the cheque was not issued for the transaction between the parties, as there is no existence of any transaction between the petitioners and the complainant. The revision petitioners has not entered into the box and not adduced any oral evidence to prove their suggestions made during the cross examination of PW1 and to purforth there was no transaction between the petitioners and the complainant, the cheque was issued to one Padmanaban, the petitioners/accused failed to prove the above said facts before the trial Court. The trial Court after considering the evidence of

PW1 and cross examination of DW1 clearly found and accepted the evidence of PW1 and rejected the contentions putforth on the side of the accused and finally comes to the conclusion with the evidence of PW1 and the documents marked as Exs.P1 to P8 which clearly proved the case beyond reasonable doubt. Even during the trial also the revision petitioners/accused was not able to adduce any documents to show that the revision petitioners has not borrowed any amount and there is no existence of transaction between the accused and the complainant.

7. In view of above circumstances, the findings of the learned Fast Track Magistrate, Coonoor made in CC. No.11 of 2011 dated 10.02.2012 as confirmed by the learned District and Sessions Judge, The Nilgiris at Udhagamandalam made in CA. No.2 of 2012 dated 08.09.2015, deserves merits and acceptance and this court finds no illegality or infirmity in the order passed by the Courts below and the same does not warrant any interference by this court.

8. In the result, the criminal revision petition stands dismissed. Consequently, connected miscellaneous petitions are closed.