

(2013) 07 MAD CK 0401

In the Madras High Court

Case No : Criminal RC. No. 1841 of 2004

M/s. Vijayalakshmi Yarn Agencies and R. Kulandaivelu

APPELLANT

Vs

M/s. Thuran Spinning Mills Ltd.

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 07 MAD CK 0401

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

Bench : Single Bench

Advocate : P.M. Duraiswamy, for the Appellant;

Judgement

C.S. Karnan, J.—The Respondent herein/complainant had filed C.C. No. 73 of 2001, on the file of Judicial Magistrate No. 1, Tiruppur, against the revision petitioner herein/accused u/s 138 of Negotiable Instruments Act, stating that the 1st accused is the partnership firm and the 2nd and 3rd accused, who are husband and wife are partners of the firm. It was submitted that both of them had purchased yarn from the complainant's firm and as such, the accused have to pay a sum of Rs. 10,53,284/- outstanding. Hence, in order to discharge the said loan, the accused had issued cheque for a sum of Rs. 5,26,642/- in order to discharge a portion of the legally enforceable debt. The said cheque was dishonoured. Hence, the above case has been filed against the accused. On the side of the complainant, three witnesses were examined and 22 documents were marked, namely, Resolution of complainant's Company; General power of attorney; Statement of accounts; Cheques which were dishonoured; Bank invoice; Acknowledgment Cards; Advocate notice; Reply notice; Invoice regarding supply of goods; Receipt of yarn confirmation letter; agreement; Bank statement of accused; Copy of the ledger; Bank statement of the complainant; etc. On the side of the respondent, the 2nd accused was examined as RW 1 and another witness was examined as RW 2. The respondent had marked 6 documents namely three receipts issued by Tamilselvan to the accused;

Complaint Copy, which had been lodged before the Tiruppur Police Station and Copy of receipt issued by police station. PW 1 had adduced evidence that the complainant's company is a partnership firm and he is the Manager of the company. The 1st accused is a partnership Company and the 2nd and 3rd accused are its partners. The accused are running a spinning mill and they have purchased yarns from the complainant's Company on 18.09.2000 and 20.09.2000 under two invoices for a sum of Rs. 10,53,284/-. PW 1 further stated that the accused had issued cheque for a sum of Rs. 5,26,642/- dated 27.11.2000, which had been presented for encashment and the same was returned. PW 1, in support of his evidence had marked the above mentioned documents in order to prove that he had observed all legal formalities.

2. PW 2, Manager, attached to the Hind Sind Bank had adduced evidence regarding dishonour of cheque. PW 3, Bank Manager, attached to Vaishya Bank had also adduced evidence on similar lines of PW 2. The accused after receiving copy of the complaint, had pleaded not guilty and hence, the case had been proceeded with. RW 1, the 2nd accused, Kulandaivelu had adduced evidence that he and the 3rd accused are partners of the 1st accused firm. He deposed that the said cheque had been issued as security for yarn purchase business and that the said cheque was presented without intimation to him. He deposed that he had paid the entire cheque amount in 3 installments for which one Tamilselvan had issued acknowledgment in his letter pad.

3. RW 2, accountant had adduced evidence that he was the accountant in the 1st accused firm and he had never seen the complainant. He deposed that there was no transactions with the complainant's firm, but the accused firm had transactions with one Govindasamy, Director of the said complainant's firm. On considering the evidence of both sides and on perusing the documents marked by them, the learned Magistrate had come to a conclusion that all the accused are guilty of offence u/s 138 of Negotiable Instruments Act. Further, each of the 2nd and 3rd accused were sentenced to undergo one year Rigorous Imprisonment. Further the learned Magistrate had ordered the accused to pay compensation of a sum of Rs. 5,26,642/- to the complainant.

4. Against the said conviction and sentence and compensation, the accused has filed the appeal in C.C. No. 382 of 2002, on the file of Additional District and Sessions Judge Cum Fast Track Court No. III, Coimbatore. The learned Judge, after hearing the arguments advanced by the learned counsel on either side and on perusing the trial Courts judgment, dismissed the above appeal. Hence, the above revision has been filed by the accused 1 and 2. The learned counsel for the revision petitioners argued that the sentence of one year Rigorous Imprisonment imposed by the Magistrate is not sustainable under law. The accused had remitted a sum of Rs. 8,00,000/- out of the total liability of Rs. 10,53,284/-. In order to prove the same, exhibit D1 to D3 and D6 were marked. This amount had also been collected from the accused in the presence of one Tamilselvan, who was the arbitrator and who had issued acknowledgment in his

letter pad. The same had been established before the trial Court and it was pointed out before the 1st appellate Court. The learned counsel further submitted that the said transaction was with one Govindasamy, who is the Director of the Company. Therefore, the partnership firm i.e. the complainant's Company had no locus standi to initiate the said case. The accused had paid the entire amount but even then the complainant's Company had harassed them and hence the accused had lodged a criminal complaint.

5. It is seen that the Court notice had been served on the complainant and that in spite of this no one had appeared on behalf of complainant. Hence, this Court is inclined to pass final orders as the revision is pending for 8 years. On considering the facts and circumstances of the case and arguments advanced by the learned counsel for the revision petitioners and on perusing the impugned judgment of the Courts below, this Court does not find any discrepancy in the conclusions arrived at in finding the accused guilty of offence u/s 138 of Negotiable Instruments Act. However, the sentence of Rigorous Imprisonment for one year imposed on the accused is harsh. Therefore, this Court modifies the sentence from one year Rigorous Imprisonment to three months Simple Imprisonment. The compensation amount, which had been awarded by the Tribunal of a sum of Rs. 5,26,642/- is modified as Rs. 3,00,000/- in the circumstances prevailing in the case.

6. Now, the 2nd accused shall pay a sum of Rs. 3,00,000/- as compensation to the complainant or undergo Simple Imprisonment for three months. Therefore, this Court directs the learned Judicial Magistrate No. 1, Tiruppur to issue bailable warrant on the 2nd accused namely, R. Kulandaivelu and secure him into the judicial custody forthwith. If the accused deposits the said compensation amount into the credit of C.C. No. 73 of 2001, on the file of Judicial Magistrate No. I, Tiruppur, before being remanded into judicial custody, the accused would be set at liberty and the sentence of three months Simple Imprisonment will not be executed. If the accused deposits the said compensation amount, the complainant is at liberty to withdraw the said amount from the trial Court, after filing a memo, along with a copy of this order. This order has been passed by this Court, after invoking the discretionary power vested with it. In the result, the above revision is partly allowed with the above modifications. Consequently, the judgment and conviction passed in C.A. No. 382 of 2002, on the file of Additional District and Sessions Court Cum Fast Track Court No. III, Coimbatore, dated 02.11.2004, confirming the conviction and sentence passed in C.C. No. 73 of 2001, on the file of Judicial Magistrate No. 1, Tiruppur, dated 01.11.2002, is modified. There is no order as to costs.