
(2003) 02 MAD CK 0020

In the Madras High Court

Case No : Criminal R.C. No"s. 1189 and 1190 of 1999

Penquin Leathers

APPELLANT

Vs

Arunachalam, Proprietor, Pioneer Leathers

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 2 BC 464 : (2003) 2 CTC 45 : (2003) 3 RCR(Criminal) 111

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : Paul and Paul, for the Appellant;

Final Decision : Allowed

Judgement

A. Packiaraj, J.—These revisions have been filed by the complainant M/s. Penguin Leathers for enhancing the punishment given to the

accused by the Judicial Magistrate, Tambaram, in C.C.Nos.354 & 355 of 1998.

2. Though notice was served on the respondent, he has neither appeared in person nor is he represented by any counsel. Hence, I am constrained

to go through the records, hear the petitioner and pass the following order.

3. It may not be necessary for me to narrate in detail the facts of the case, since the Magistrate has believed the evidence and found the accused

guilty in C.C.No.354 of 1998 and imposed punishment till the rising of the Court and fine of Rs.3,000 and in default to undergo simple

imprisonment for a period of five weeks and in C.C.No.355 of 1998, the accused was imposed one week simple imprisonment with a fine of

Rs.4,000 and in default, to undergo simple imprisonment for a period of two months. Aggrieved by the same, the present revisions have been filed.

4. The complainant supplied leather goods worth about Rs.1,25,000,for which the accused gave two cheques one for Rs.50,000 and the other for Rs.75,000 dated 18.4.1998 and 30.4.1998 respectively in one case and in the other case for a sum of Rs. 1,75,000, he gave three cheques for Rs.50,000, Rs.75,000, and Rs,50,000 dated 2.3.1998, 17.3.1998 and 30.3.1998 respectively and when the same were presented in the bank, they were returned on the ground ""funds insufficient"". Hence, after complying with all the formalities as contemplated u/s 138 of the Negotiable Instruments Act, the complaints were filed.

5. P.W.I was examined on the side of the petitioner. The case of defence was that the leather goods were in fact returned to the complainant.

However, it appears only to be a suggestion and it has not been established. The learned Magistrate has believed the evidence of P.W. 1 and

convicted the accused rightly. In so far as the sentence is concerned, he has not given any reasons for imposing such sentence. Though it is well

within his powers, the sentence imposed as such may not in clear terms be stated as illegal. Nevertheless, considering the cheque amount, the

punishment has to be proportionate, as held by the Supreme Court in Suganthi Suresh Kumar Vs. Jagdeeshan, : wherein the accused was

sentenced to undergo imprisonment till rising of the Court and pay a fine of Rs.5,000 for the offence u/s 138 of the Negotiable Instruments Act.

The total amount covered by the cheques was Rs.4,50,000. Their Lordships held in the said case that though the complainant had subsequently

filed a civil suit and attached all the properties of the respondent, that should not be ground for lessening the gravity of the offence or to impose a

minor sentence and accordingly remitted the matter back to the trial Court for awarding appropriate sentence.

6. In the present case, the complainant has not even filed a civil case against the respondent and the position is still worse. Therefore, I am

constrained to set aside the judgment of the trial Court and remit the matter back to the trial Court to decide on the question of appropriate

sentence after hearing both the complainant and the accused and also going through the records, if any, and thereafter to pass appropriate orders

within a period of two months from the date of receipt of copy of this order.

7. Though I am conscious of the fact that this Court has the power to enhance

the punishment straightaway, I am not inclined to do so, with a view to afford an opportunity to both the parties to arrive at an amicable settlement, which the trial Court shall take into account, if any, and thereafter pass orders appropriately, or otherwise, in the light of the above observation on the line of the decision of the Supreme Court cited supra.

8. In the result, these Criminal Revision Cases are allowed and the matters are remanded to the Judicial Magistrate, Tambaram, for fresh disposal.