
(2013) 07 MAD CK 0094
In the Madras High Court
Case No : Criminal R.C. No. 1839 of 2004

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 0094

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. 328 of 2001, on the file of Judicial Magistrate No. 1, Tiruppur,

against the revision petitioner herein/accused stating that the accused had issued a cheque for a sum of Rs. 5,26,642/- and the same was

dishonoured on presentation. Hence, the case has been filed against the accused. The accused had pleaded not guilty after receiving copy of the

complaint and hence the case was proceeded with. On the side of the complainant, two witnesses were examined and 16 documents were

marked, namely, Copy of resolution of the complainant's Company, General power of attorney, Statement of accounts, Invoice, Order of

confirmation letter, Delivery note, Cheques which were dishonoured, Bank memos, Advocate Notice, Acknowledgment Cards and Bank

statements, etc. On the side of the respondent, RW 1 was examined and two documents were marked, namely, Copy of Advocate notice and

Reply notice. PW 1, had adduced evidence that he is the power agent of the complainant's Company and that the accused had issued cheque

dated 29.09.2000 for a sum of Rs. 5,26,642/- in favour of the complainant's firm. The same was presented on 10.03.2001 and it was returned

with an endorsement of ""insufficiency of funds"". PW 1 further stated that the accused had issued the cheque in order to discharge the legally

enforceable debt for a sum of Rs. 5,26,642/-. This amount was incurred for the purchase of yarn from the complainant's firm. PW 1 further stated

that he had issued a legal notice to the accused and even after receipt of the said notice, the cheque amount had not been paid. Supporting his

evidence, he had marked the above mentioned documents.

2. PW 2, had adduced evidence regarding dishonour of cheque. RW 1, one Gurusamy had adduced evidence that he was the accountant in the

accused firm. The accused firm had purchased yarn from the complainant's firm on credit basis and subsequently, the complainant had received

the amount on 28.09.2000. The directors of the company namely Govindasamy and Tamilselvan and 10 others kidnapped the accused and

thereafter, the accused was set free from the illegal custody of the complainant. In this regard, a complaint had been lodged before the Tiruppur

North Police Station. Supporting his evidence, he had marked the above mentioned documents.

3. On considering the evidence of both sides and on hearing the arguments of the learned counsel, the learned Magistrate had come to the

conclusion that the accused namely Kulandaivelu had committed offence u/s 138 of Negotiable Instruments Act and hence the learned Magistrate

sentenced him to undergo one year Rigorous Imprisonment and also directed him to pay compensation of a sum of Rs. 5,26,642/-, failing which

the accused had to undergo another three months Simple Imprisonment.

4. Against the said conviction and sentence, the accused filed an appeal in C.A. No. 377 of 2002, on the file of Additional District and Sessions

Court Cum Fast Track Court No. III, Coimbatore. The learned Judge, after hearing the arguments of the learned counsel on either side and on

perusing the trial Courts judgment, dismissed the above appeal and confirmed the order of conviction and sentence of trial Court. Against the said

dismissal of the above appeal, the revision has been filed. The very competent counsel argued that the legal notice has not been served on the

accused. Therefore, the legal formalities had not been adhered to by the

complainant to level the complaint against the accused u/s 138 of

Negotiable Instruments Act. As such, the complaint is not maintainable before the trial Court. The complainant's averments that the accused

Company had purchased yarn to the tune of Rs. 10,53,284/- on 18.09.2000 but the said amount had been settled making payments on

28.09.2000, 04.10.2000 and 11.10.2000 to the tune of Rs. 8,00,000/- in total. As such, the major portion of the loan amount had been settled.

For business transaction, two blank cheques had been issued each for a sum of Rs. 5,26,642/- for security purposes and the same were misused

by the complainant in order to extort money from the accused.

5. The above revision is pending for more than 8 years and therefore, this Court is constrained to pass final order on the basis of available records.

On considering the facts and circumstances of the case and arguments advanced by the learned counsel for the petitioner, this Court does not find

any shortcomings in the conclusions arrived at regarding guilt of accused u/s 138 of Negotiable Instruments Act. However, the sentence of

Rigorous Imprisonment for one year imposed on the accused is harsh and therefore, this Court reduces the sentence from one year Rigorous

Imprisonment to three months Simple Imprisonment. Further, the compensation amount of a sum of Rs. 5,26,642/- is modified by this Court as Rs.

2,50,000/- as it is found to be appropriate in the circumstances of the case. Now, the accused has to either pay the modified compensation

amount of a sum of Rs. 2,50,000/- or to undergo Simple Imprisonment for three months. Now, this Court directs the learned Judicial Magistrate

No. 1, Tiruppur to issue bailable warrant and secure the accused, at once, into judicial custody in order to undergo three months Simple

Imprisonment. If the accused deposits the said compensation amount before being remanded into judicial custody, the accused would be set at

liberty and the three months Simple Imprisonment imposed on him would not be executed. If the accused, deposits the said compensation amount

into the credit of C.C. No. 328 of 2001, on the file of Judicial Magistrate No. I, Tiruppur, the complainant is at liberty to withdraw the said

amount, 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. Consequently,

the conviction and sentence passed in C.A. No. 377 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. 328 of 2001, on the file of Judicial Magistrate No. 1, Tiruppur, dated 01.11.2002, is modified. There is no order as to costs.