

(2006) 03 MAD CK 0009

In the Madras High Court

Case No : Criminal R.C. No. 853 of 2004

T.K. Thiruvengadam and Sons and T. Selvam

APPELLANT

Vs

Nachi Exports

RESPONDENT

Date of Decision : 14-03-2006

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 113, 138

Citation : (2006) 03 MAD CK 0009

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : R. Vijayaraghavan, for the Appellant; G. Anand, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—The revision petitioners are A1 and A2 in C.C. No. 4851 of 1996 on the file of XVIII Metropolitan

Magistrate Court, Saidapet, Chennai-15. They were found guilty for the offence punishable u/s 138 of the Negotiable Instruments Act imposing

fine of Rs.5,000/- to the first accused payable by the second accused, in default to undergo three months simple imprisonment and convicting and

sentencing the second accused to undergo one year simple imprisonment. It is further directed to pay a sum of Rs. 11,00,000/- as compensation to

the de facto complainant, as per the judgment dated 07.08.2003. In CrI. A. No. 262 of 2003 on the file of III Additional Sessions Court, Chennai,

the above conviction and sentence were confirmed setting aside the order of compensation of Rs. 11,00,000/-, as per the judgment dated

29.1.2004.

2. The case of the complainant/respondent is that they are carrying on business in exporting cashew kernels and they used to place orders against

the export orders on local manufacturing and processing companies for the same. One such company is the first accused. The complainant used to give advance payment for procurement and processing of cashew nut by way of demand draft in the course of business. During such course of business, the revision petitioners, who are A1 and A2 got orders from the complainant for procurement and processing of cashew nut, for which the complainant had advanced Rs. 14 lakhs, of which Rs. 10 lakhs had been given to the first accused by way of demand draft bearing No.012771 dated 5.2.96. The first accused was unable to procure and process the required raw nuts at Panruti in time to the complainant, during this transaction and so the second accused, being a partner, had issued a cheque in favour of the complainant bearing No.433203 dated 25.3.1996 for Rs. 10 lakhs. The complainant had presented the cheque in the bank on 31.3.1996 and the same was dishonoured due to insufficiency of funds and the same was intimated to the complainant by its bank on 19.4.1996. Then, the second accused requested the complainant to present the cheque once again in the end of June and when the cheque was presented, it was dishonoured due to insufficiency of funds. After the repeated dishonoured of cheque, the complainant had sent a registered lawyer's notice dated 9.7.1996 to the accused. But the accused had not made payment. Hence, the complainant herein has filed a private complaint against the accused for an alleged offence u/s 138 of the Negotiable Instruments Act.

3. The complainant examined himself as P.W. 1 and marked Exs.P-1 to P-21. The bank managers have been examined as P.Ws. 2 and P.W. 3

and the Andhra Bank Officer has been examined as P.W. 4. The A2 examined himself as D.W.1 and marked Exs.D-1 to D-5.

4. Considering the evidence let in on the prosecution side, viz., P.Ws.1 to 4 and Exs.P-1 to P-21 marked on the side of the prosecution, the

Judicial Magistrate found both the accused guilty and convicted and sentenced the revision petitioners as set out above for the offence u/s 138 of

the Negotiable Instruments Act. Against the order of the learned Magistrate, the revision petitioners/A1 and A2 preferred an appeal before the III

Additional Judge, City Civil Court, Chennai in Criminal Appeal No.262 of 2003 and after due enquiry, the learned Judge was pleased to confirm

the order of trial Court in respect of the conviction and sentence and set aside the order of trial court in respect of payment of compensation. Such

conviction and sentence as confirmed by the first appellate Court is now under challenge in this revision.

5. Heard the learned counsel appearing for the revision petitioners/A1 and A2 and the learned counsel for the respondent.

6. The learned counsel for the revision petitioners/A1 and A2 submitted that the Crl.R.C. No. 502 of 2004 filed by the respondent herein against

the refusal of the grant of compensation by the appellate Judge was dismissed by this Court on 3.12.2004.

7. Learned counsel for the revision petitioners/A1 and A2 mainly argued that a Civil Suit in C.S. No. 200 of 1999 has been filed by the de facto

complainant against A1 and A2 and others to recover the amount of Rs. 14,00,000/- towards non-supply of cashew nuts. The second accused

issued a cheque bearing No.433203 dated 25.3.1996 for Rs. 10,00,000/- and the cheque was dishonoured when presented in the bank. This

Court in C.S. No. 200 of 1999 held that the amount payable is only Rs. 8,10,000/- after giving credit to the tune of Rs. 5,10,000/- towards the

supply of cashew nut kernels by the first revision petitioner to the respondent. Apart from that, the first revision petitioner through Ex.D-5 has

supplied 150 Tins of Cashew nuts Kernels and taking the value fixed by this Court in C.S. No. 200 of 1999, the value of 150 Tins works out to

Rs. 3,00,000/-. The respondent has further realized a sum of Rs. 3,01,000/- from the revision petitioners by way of execution proceedings in E.P.

No. 45 of 2001 and a sum of Rs. 2,00,000/- by sale of two properties of the petitioners at Panturi in E.P. No. 30 of 2004. Thus, the said amount

paid by them would come to Rs. 13,11,000/-, which is more than the cheque amount of Ex.P-4. Therefore, the revision petitioners prayed that in

view of the payments made by the revision petitioners, this Court may take lenient view in imposing punishment to A1 and A2.

8. Learned counsel for the respondent submitted that the cheque for Rs. 10 lakhs (Ex.P-5) was issued not by way of security, but towards liability

in the business transaction. Learned counsel for the respondent further submitted that admittedly A1 and A2 issued the cheque for Rs. 10 lakhs,

but when the cheque was presented for collection, it was returned as insufficient funds which would clearly show that an offence u/s 138 of the

Negotiable Instruments Act has been made out and accordingly, the trial Court as well as the First Appellate Court found the accused guilty and

convicted and sentenced as stated above. Therefore, the orders of both the Courts below do not warrant any interference.

9. It is admitted that A2 issued the cheque Ex.P-5 dated 25.3.1996 for Rs. 10 lakhs on behalf of the partnership firm A1 towards non-supply of

cashew kernels as agreed by him. The cheque was presented for collection in bank twice and was returned as insufficiency of funds on both

occasions, viz., on 19.4.1996 and 9.7.1996 respectively. The respondent/de facto complainant after causing lawyer notice Ex.P-8 dated 8.6.1997

filed the complaint, which was taken on file in C.C. No. 4851 of 1996 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai-15.

10. During the pendency of the said case, the de facto complainant also filed suit C.S. No. 200 of 1999 in this Court to recover a sum of Rs.

14,50,000/- towards the amount received, viz., Rs. 10,00,000/- by way of demand draft on 5.2.1996 for supply of cashew kernels, which the

revision petitioners failed to supply and to recover the said amount with interest at 18% per annum, viz., Rs. 4,50,000/- and totally Rs.

14,50,000/-. The suit was decreed in favour of the de facto complainant after contest as per judgment dated 20.3.2001 for sum of Rs. 8,10,000/-

after giving credit to a sum of Rs. 5,10,000/- towards supply of cashew kernels by the revision petitioners.

11. It is now submitted by the learned counsel for the revision petitioners that they also supplied cashew nuts under Ex.D-5, viz., 150 tins of

cashew nuts and by taking the value fixed by the Court in C.S. No. 200 of 1999, the value of the said 150 tins of cashew nuts was said to be Rs.

3,00,000/- and that the de facto complainant also realised Rs. 3,01,000/- in E.P. No. 45 of 2001 and also a sum of Rs. 2,00,000/- by sale of two

properties of the revision petitioners at Panruti in E.P. No. 30 of 2004 and therefore, according to the learned counsel, the revision petitioners paid

more than the cheque amount.

12. It is not known, what for E.P. No. 45 of 2001 and E.P. No. 30 of 2004, were filed and whether to recover the amount as decreed by this

Court in C.S. No. 200 of 1999 and it is also not known as to whether the revision petitioners supplied 150 tins of cashew nuts kernels, which

according to the learned counsel for the revision petitioners, would work out to Rs. 3,00,000/- adopting the value fixed by this Court for such

supply of cashew nuts in C.S. No. 200 of 1999.

13. Further, the fact de facto complainant had advanced a sum of Rs. 10,00,000/- by way of demand draft bearing No.012771 dated 5.2.1996 in

favour of the revision petitioners for supply of cashew kernels. For non-supply of cashew kernels as agreed by the revision petitioners/A1 and A2,

A2 issued cheque bearing No.433203 dated 25.3.1996 (Ex.P-5) for Rs. 10 lakhs. Therefore, on the date of issue of cheque Ex.P-5 dated

25.3.1996 there was a liability to the tune of Rs. 10 lakhs payable by the revision petitioners to the de facto complainant. However, the revision

petitioner issued cheque Ex.P-5 dated 25.3.1996 for Rs. 10 lakhs fully aware of the fact there was no amount in his account, because of which,

the cheque presented for collection on both occasions were returned on 19.4.1996 and 9.7.1996 respectively, which made the de facto

complainant to file the complaint after causing lawyer notice dated 9.7.1996.

14. Therefore, it is clear from the evidence available on record that the offence u/s 138 of Negotiable Instruments Act is made out, in that the

cheque Ex.P-5 issued had been returned as insufficiency of funds and so, the presumption is to be drawn u/s 113 of the Negotiable Instruments

Act and accordingly considering all these aspects, the trial Court rightly found both the accused guilty for the offence u/s 138 of the Negotiable

Instruments Act and accordingly convicted and sentenced as set out above, which is rightly confirmed by the first appellate Court. Such order does

not call for any interference.

15. In the result, this Criminal Revision Case is dismissed. The Judgment dated 29.01.2004 made in C.A. No. 262 of 2003 on the file of the III

Additional Judge, City Civil Court, Chennai confirming the sentence and fine as ordered by the XVIII Metropolitan Magistrate, Saidapet, in C.C.

No. 4851 of 196 dated 7.8.2003 is affirmed.