

(2010) 04 MAD CK 0350

Madras High Court (Madurai Bench)

Case No: Criminal R.C. No's. 900 to 902 of 2007 and 480 to 482 of 2008

Rattanlal B. Kundnani

APPELLANT

Vs

Kanara Fireworks Industries and
The State of Tamil Nadu

RESPONDENT

Date of Decision: April 29, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 281, 282, 313
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: G.R. Swaminathan, in Criminal R.C. Nos. 480 to 482 of 2008 and N. Dillip Kumar, in Criminal R.C. Nos. 900 to 902 of 2007, for the Appellant; G.R. Swaminathan in Crl. R.C. Nos. 900 to 902 of 2007, N. Dillip Kumar, for R1 in Crl. R.C. Nos. 480 to 482 of 2008 and R.N. Anbunithi, Government Advocate for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.T. Selvam, J.

Criminal Revision petitions in Cr. R.C. Nos. 480 to 482 of 2008 arise against the judgment of Principal District cum Sessions Judge, Virudhunagar District at Srivilliputhur in Crl.A. Nos. 195, 196 and 197 of 2007 dated 25.04.2008 confirming the conviction and sentence passed by learned Judicial Magistrate, Sivakasi in C.C. No. 73, 74 and 75 of 2003 on 29.08.2007. Crl. R.C. Nos. 900 to 902 of 2007 seek enhancement of sentence passed by the learned Judicial Magistrate, Sivakasi in C.C. No. 73, 74 and 75 of 2003.

2. The revision Petitioners in Crl. R.C. Nos. 480 to 482 of 2008 stood trial for offences u/s 138 of Negotiable Instruments Act in C.C. Nos. 73, 74 and 75 of 2003 on the file of Judicial Magistrate, Sivakasi. C.C. No. 73/2003 was in respect of the cheque in a

sum of Rs. 21 lakhs, C.C. No. 74/2003 was in respect of the cheque in a sum of Rs. 8.2 lakhs and C.C. No. 75/2003 was in respect of the cheque in a sum of Rs. 19 lakhs. The three cheques were dated 04.12.2002, 30.11.2002 and 09.12.2002. The complainant/ revision Petitioner presented the cheques for payment. The same were dishonoured on 16.12.2002. Statutory notices were issued on 18.12.2002 and complaints were preferred on 23.01.2003. The complainant, engaged in the business of fire works informed of business transactions with the accused and issue of cheques towards repayment of dues there under. The trial court, on appreciation of the material before it, arrived at a finding of conviction and awarded a sentence of one year S.I. and a fine of Rs. 5000/-(i/d) three months S.I. in each of the cases. Against the finding of the trial court, the accused moved appeals in C.A. Nos. 195 to 197 of 2007 before the Principal District cum Sessions Judge at Srivilliputhur, Virudhunagar District. Under common judgment dated 25.04.2008, the appeals were dismissed and the finding of the trial court stood confirmed. There against, the accused have moved the criminal revisions. Learned Counsel for the accused raised the following contentions:

1. The cheques had not been issued for a legally enforceable debt. According to the complainant, the cheque amount reflected both the dues owed in the business transaction as also the interest thereon. It is contended that the interest when calculated, as claimed by the complainant, upon the sums due in the business transaction, would not add up to the cheque amounts. Learned Counsel would inform that in answer to a question raised by the trial court, the complainant had informed that payment of interest had been orally agreed upon. He would contend that even if so, interest could be levied only at 6% as provided for in the Interest Act. Even if so calculated, the nett sum would not be as reflected in the cheques. Hence, the cheques were not in respect of legally enforceable debt.

2. The cheques were drawn not on an account maintained by the accused but on one standing in the name of his son. Hence, the accused could not be made liable. The accused was a mere mandate holder, in whose favour a power of attorney has been executed by his son and therefore the cheque was not one drawn on an account "maintained by him" as required by Section 138 of the Negotiable Instruments Act.

3. The statutory notice had not been duly served on the accused.

3. Learned Counsel for the complainant submitted that in these cases, the evidence of PW-1 in chief separately was recorded, thereafter a petition had been moved for joint trial, which was allowed and cross examination of PW-1 and also the examination of the defence witnesses, followed the joint trial process. The same was done at the instance of the accused. Aggrieved by the finding of the trial court rendered on 06.09.2005, the accused had moved appeals in CrI.A. Nos. 133 to 135 of 2005 before the Principal Sessions Judge, Srivilliputhur, which court under judgment dated 25.06.2007 had set aside the finding of the lower court. The challenge at the

earlier instance primarily had been that the accused knew only Hindi and the procedure contemplated u/s 281 and 282 Code of Criminal Procedure had not been followed at the stage of Section 313 Code of Criminal Procedure questioning. Thereafter, the lower court duly had followed the procedure informed by the Appellate Court in its order dated 25.06.2007 and arrived at a finding of conviction and passed sentence against the accused on 29.08.2007. The Appellate Court had confirmed the findings under judgment dated 25.04.2008.

4. Learned Counsel would submit that it is now not open to the accused to raise the question of the cheques not having been issued in respect of a legally enforceable debt since Exh. P-2 Agreement would make clear that the cheques had been issued towards duly acknowledged debts. Placing reliance on the findings of the court below he would inform that No. interference there with, on the question of conviction, was called for. He, however, would urge that this Court would find merit in Crl. R.C. Nos. 900 to 902 of 2007 for enhancement. Learned Counsel for the accused would contend that in any event No. case for enhancement of sentence as prayed for, in Crl.R.C. No. 900 to 902 of 2007 etc., stood made out.

5. On consideration of the rival submissions and on perusal of the material on record, this Court finds absolutely No. error in the judgment of the lower Appellate Court in Crl.A. Nos. 195 to 197 of 2007. On the question of legally enforceable debts or otherwise, the lower court has meticulously considered the material aspects of the amount due, gone into the period of transactions and informed that when interest is duly calculated for such period, the amounts due would be in excess of the cheque amounts. The acknowledgment of the liability of the amount as informed in one of the cheques is to be found in Exh.P 2. DW-4 admits his signature thereupon. Considering the approximate dates of the three cheques, it would be reasonable to conclude that all of them had been issued for sums agreed upon.

6. On the question of the cheque having been drawn on account, not maintained by the accused, it well has been reasoned that, such contention has been raised only after completion of the prosecution evidence and at the stage of examination of the accused as DW-1. The present case had given rise to several proceedings including revisions in Crl.R.C. Nos. 616 to 618 of 2005 as also a petition for quash in Crl.O.P. No. (MD) 3599 of 2005 wherein consistent stand of the accused was that he was the proprietor of M/s. Bakeshemal Fire Works. Given such position, the lower Appellate Court is right in not going by the evidence of DW-2 a Banker that the accounts stood in the name of DW-3 the son of the accused and that he was merely a mandate holder for DW-3, particularly given the fact that DW-3 are father and son. In any event, that the accused is the signatory of the cheque stands accepted.

7. On the question of service of statutory notice which had been returned as refused/ not claimed, the admission of the accused that both the residence and official address to which the same was sent being his places of residence/ office have been taken into consideration, in negating the plea of non-service of notice.

We find No. reason to interfere the findings of the lower Appellate Court on the question of conviction and accordingly the same shall stand confirmed.

8. Coming to the question of adequacy of sentence passed by the trial Court, which is the issue raised in Crl.R.C. Nos. 900 to 902 of 2007, we do not consider it necessary to interfere with the substantial sentence of imprisonment. However, given the admitted position of a business relationship and having arrived at a finding that conviction for offence u/s 138 of Negotiable Instruments Act are well founded, it would but be proper that the complainant properly be compensated. Accordingly, the judgment of learned Judicial Magistrate in C.C. Nos. 73, 74 and 75 of 2003 dated 29.08.2007 shall stand modified to the following effect.

1. The accused would stand sentenced to undergo S.I. for a period of one year in each case (sentences to run concurrently).

2. He shall pay a fine of Rs. 20,00,000/- in C.C. No. 73/2003, Rs. 5,00,000/- in C.C. No. 74/2003 and Rs. 15,00,000/-in C.C. No. 75/2003. The fine amounts recovered shall be paid as compensation to the criminal revision Petitioner (complainant) in Crl. R.C. Nos. 900 to 902 of 2007.

9. The Criminal Revision Petitions shall stand ordered as indicated above. No. costs.