

Subba Rao Vs. the Water Base Limited, Rep. by Authorized Signatory, R. Chandramohan

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Court : Chennai

Decided On : Nov-15-2012

Reported in : 2013(1)MLJ(Crl)167

Judge : C.S. Karnan

Appeal No. : Crl. R.C. Nos. 59, 60 & 61 of 2012 & M.P. No. 1 of 2012

Appellant : Subba Rao

Respondent : The Water Base Limited, Rep. by Authorized Signatory, R. Chandramohan

Advocate for Pet/Ap. : For the Petitioner: M. Kosalaraman, Advocate. For the Respondent: S.A. Rajan, Advocate.

Judgement :

(Prayer: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for the records in Crl.M.P.No.84 of 2012 in C.A.No.5 of 2012, dated 04.01.2012, on the file of the Principal District and Sessions Judge, Chennai and set-aside the same.)

1. The revision petitioner herein / petitioner / appellant / accused has preferred the present revision in Crl.R.C.No.59 of 2012 against the order passed in

Crl.M.P.No.84 of 2012 in C.A.No.5 of 2012, on the file of the Principal District and Sessions Judge, Chennai, directing the petitioner to pay a sum of Rs.1,50,000/- into the credit of C.C.No.283 of 2007, on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent / complainant's case is as follows:-

The complainant is doing aqua culture business and are the manufacturers of prawn feeds in various brand names and selling the feed to the parties as per their requirement. The accused is doing aqua culture business in the name of M/s.Sri Suresh Enterprises and appointed as one of the dealer for the complainant's prawn feed products. As per requirement, the accused purchased the prawn feed through various invoices from the complainant on credit basis from time to time and had assured to pay the due amount in time, but failed to pay the amount. In the course of business transactions, the accused had to pay a sum of Rs.38,57,343/- to the complainant. The accused in order to discharge a part payment of the above admitted liability, issued a cheque dated 25.09.2006 (cheque No.421692) for a sum of Rs.4,18,575/- drawn on Indian Overseas Bank, Chirala - 523 155, to and in favour of the complainant. When the complainant presented the said cheque for encashment with his bankers, viz., Andhra Bank, Mowbray's Road Branch, Chennai, on 26.09.2006, it was returned unpaid on 29.09.2006 with an endorsement of "exceeds arrangement" and this was intimated to the complainant on 10.10.2006. The complainant sent a statutory notice to the accused on 03.11.2006, which was received by the accused on 15.11.2006. As the accused failed to pay the cheque amount, even after receipt of notice, the complainant had filed a complaint against the accused for an offence under Section 138 of Negotiable Instruments Act before the XVIII Metropolitan Magistrate, Saidapet, Chennai.

3. On being questioned, the accused pleaded not guilty and hence trial was conducted. On the side of the complainant, the Regional Manager, Marketing of the complainant's firm was examined as P.W.1 and ten documents were marked as Exs.P1 to P10, viz., Ex.P1-Board of resolution, Ex.P2-cheque, Ex.P3-return memo, Ex.P4-debit advice, Ex.P5-lawyer's notice, Ex.P6-tapal receipt, Ex.P7-

returned cover, Ex.P8-returned cover, Ex.P9-statement of accounts and Ex.P10-letter sent to Bank. On the side of the accused, no witness, no documents.

4. P.W.1, R.Chandramohan adduced evidence that he is the power of attorney holder of the complainant and had marked Ex.P1, the board of resolution authorizing him to adduce evidence. P.W.1 adduced evidence which is corroborative of the statements made in the complaint and in support of his evidence, he had marked the exhibits listed as Exs.P1 to P10.

5. It was argued on the side of the accused that the blank signed cheques were given by the accused to the complainant, along with the order form, as a guarantee, for supply of prawn feeds and that the said cheques were not returned to the accused even after payment was made by the accused. It is seen that the accused had filed a petition under Section 91 of Cr.P.C. before this Court, to call for those order forms and that it was dismissed. The accused had filed a revision petition and this Court observed that the accused is entitled to raise presumption in his favour if the document is not produced.

6. The learned Magistrate, after scrutiny of Ex.P9, the statement of accounts showing the business transactions between the complainant and accused for the period from 1999 to 2008, observed that these transactions were not denied by the accused. in Ex.P9, it is shown that the balance payable by accused is Rs.38,57,343.12/-. The learned Magistrate opined that if the accused had repaid the amount and there is no dues, he should have produced the documents to show his repayment. Instead the only defence of the accused is that a blank cheque was obtained by the complainant as guarantee. The learned Magistrate also opined that the accused, being a dealer of the complainant's company, should have the copy of the purchase order and should also have maintained a statement of accounts. However, it is seen that the accused did not produce any evidence to show he repaid the amount.

7. The learned Magistrate opined that mere non-production of purchase order, on the part of the complainant, is not sufficient ground to prove that there was no legally enforceable debt. The learned Magistrate observed that as the accused had admitted his signature in the cheque, it is evident that the cheque was issued

by the accused in favour of the complainant towards the discharge of the liability. It was contended on the side of the accused that Ex.P9 ought not to have been marked on the complainant's side, as this document did not comply with the provisions of Indian Evidence Act. The learned Magistrate held that a document prepared through a computer is also deemed to be a valid document as per the said Act and rejected the said contentions.

8. Hence, the learned Magistrate on holding that the accused had neither produced the statement of accounts nor the auditor report to prove the genuineness of his claim held the accused guilty of offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for three months and directed him to pay a compensation of Rs.8,37,150/- (i.e., double the cheque amount) to the complainant under Section 357(3) of Cr.P.C. and in default of payment of compensation, the accused was to undergo further period of simple imprisonment for three months.

9. Aggrieved by the conviction and sentence imposed by the trial Court, the accused has filed an appeal in C.A.No.5 of 2012, before the Principal District and Sessions Judge, Chennai. It was contended on the side of the appellant / accused that the trial Court has failed to appreciate the material facts enlisted in the reply note of the accused in which it had been stated the supply of prawn feed was on the basis of order form along with blank signed cheques issued by the accused in favour of the complainant, as guarantee to the purpose of payment, for the amount of prawn feed product to be supplied as per the order form. It was contended that the learned trial judge failed and erred in considering the evidence of the complainant, wherein the complainant admitted in his evidence that the said order form was available in their office and the same would be produced before this Court. It was pointed out that only after verifying the same, the details regarding prawn feed supply and mode of payment can be ascertained. As such, it was pointed out that the learned trial judge ought not to have held that the non-production of purchase order by the complainant is not fatal to the complainant's case.

10. During the pendency of appeal, the accused has preferred a petition in Crl.M.P.No.84 of 2012 along with an affidavit stating that the blank signed cheques given by him as security towards supply of prawn feeds, along with order form, to the complainant has been misused by him. It was stated that the ink found in the signature varies with that of the ink found in the date and name filled up in the cheque. It was stated that the accused had filed a petition under Section 91 Cr.P.C. before the said trial Court for production of order form and that the said application was dismissed. Against the dismissal, the accused had preferred a revision before the High Court, in which, there was a finding by the High Court that the accused is entitled to raise presumption in his favour, if the document is not produced by the complainant and hence adverse inference should be drawn against the complainant. It was stated that the trial Court failed to appreciate the defence raised by the accused and had mechanically convicted him to undergo three months simple imprisonment and also awarded compensation of double the cheque amount. Hence, it was prayed to the Court to suspend the sentence of simple imprisonment and compensation passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.283 of 2007, dated 09.12.2011, pending disposal of the appeal.

11. When the matter was taken for final hearing on 04.01.2012, the Principal Sessions Judge, Chennai, after hearing the arguments of the learned counsels on either side and after perusing the records observed that the petitioner had been on bail throughout the trial and that the trial Court has also suspended the sentence. The learned judge observed that the petitioner is willing to deposit Rs.1,50,000/- towards the compensation awarded by the trial Court. Hence, learned judge allowed the petition and granted bail and suspended the sentence of imprisonment. The learned judge further ordered that the bail bond executed in the trial Court shall continue till the disposal of appeal. The learned judge directed the petitioner to deposit Rs.1,50,000/- into the trial Court within 20 days from the date of their order.

12. Aggrieved by the conditional order passed in Crl.M.P.No.84 of 2012 in C.A.No.5 of 2012 by the Principal District and Sessions Judge, Chennai, the petitioner / accused has preferred the present revision.

13. The learned counsel for the revision petitioner has contended that the learned appellate judge erred in passing conditional order by directing the petitioner to deposit a sum of Rs.1,50,000/- before trial Court within 20 days without considering the merits of the case. It was contended that the appellate Court has erred in passing conditional order while the arguments have been put forth by the counsel for the petitioner for suspension of sentence of imprisonment. It was pointed out that the appellate Court had mechanically passed the order on its own as if the petitioner was willing to deposit the sum of Rs.1,50,000/- towards the compensation awarded by the trial Court and has failed to see that the said compensation awarded is not binding upon the petitioner. It was pointed out that the lower appellate Court had exceeded its jurisdiction by ordering for deposit of part of compensation by assuming the duty of a revenue recovery officer, who is supposed to pass appropriate orders for recovery of compensation in the event of appropriate petition to be filed by the respondent after the coming to finality of the present calendar case proceedings.

14. The learned counsel for the complainant submitted that the case has been proved against the accused under Section 138 of Negotiable Instruments Act. Therefore, the learned Magistrate had imposed adequate punishment on the accused including compensation. The same was challenged by the accused before the appellate Court along with suspension of sentence petition. The learned judge, after considering the facts of the case directing the accused to deposit a sum of Rs.1,50,000/- within 20 days from the date of order. Subsequently, bail was granted and suspension of sentence was also ordered. The learned judge imposed the conditions as per his discretion which is the choice of the Court and the same cannot be challenged before this Court. The learned counsel further submitted that this Court had also imposed a condition, while admitting the criminal revision that the accused has to deposit a part amount of the cheque amount for granting interim relief, i.e., suspension of sentence and granted a bail order. These types of interim order are usual orders issued in cheque dishonour cases. As such, the learned appellate judge had not committed any irregularity.

15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order

passed in Crl.M.P.No.84 of 2012 in C.A.No.5 of 2012, on the file of the Principal District and Sessions Judge, Chennai dated 04.01.2012, this Court is of the view that a modification is required in the instant case. Therefore, this Court,

(i) suspends the sentence passed in C.C.No.283 of 2007,

(ii) the accused has to execute a bond for a sum of Rs.10,000/- with one security for a like sum to the satisfaction of the learned XVIII Metropolitan Magistrate, Saidapet. Consequently, the condition imposed on the accused by the appellate Court in its order dated 04.01.2012, i.e., to deposit a sum of Rs.1,50,000/- into the trial Court within 20 days is set-aside.

16. This court gives specific direction to the learned Principal and Sessions Judge, Chennai to dispose the appeal in C.A.No.5 of 2012, on or before 31.01.2013.

17. Resultantly, the above revision is partly allowed with the above modifications. Consequently, the order passed in Crl.M.P.No.84 of 2012 in C.A.No.5 of 2012, on the file of the Principal District and Sessions Judge, Chennai dated 04.01.2012 is modified. Consequently, connected miscellaneous petition is closed. Accordingly ordered.

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