

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22ND DAY OF AUGUST 2008

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

CRIMINAL REVISION PETITION NO.1664/ 2004

BETWEEN:

Sri H.Srikanth
Proprietor
M/s.Sigma Services
C/o.99, Nanja Reddy Layout
B.P.A.Main road
Office of the Airport Road
Bangalore-560 017.

...Petitioner

(By Sri Ramesh Chandra, Adv.,)

AND:

M/s.Johnsons Maritime
& Mercantile Company (P) Ltd.,
No.24, Church Road
Shanthinagar
Bangalore-560 027
Represented by its
Managing Director
Mr.John Fernandes.

...Respondent

(By Sri G.Papi Reddy, Adv.,)

This Cr.L.R.P is filed u/s.397 r/w. 401 Cr.P.C.
praying to revise and set aside the order dated
28.8.2000 in C.C.No.26395/99 on the file of the XIV
A.C.M.M., Bangalore and confirmed by the XIII Addl.

S.J., B'lore by order dated 15.8.2004 in
Crl.A.No.15104/2000.

This petition coming on for admission this day, the
Court made the following;

ORDER

The matter is listed for admission. Lower Court
records are received. With the consent of learned
Counsel for parties, matter is taken up for final
disposal.

2. There are concurrent findings of the trial court
and the appellate court about the guilt of accused for an
offence punishable under Section 138 of N.I.Act.

3. In view of concurrent findings recorded by the
courts below, it is necessary to refer to judgment of the
Supreme Court reported in 2008 CrLLJ 1627. The
Supreme Court at para 9 has held:

"Revisional jurisdiction of the High Court in terms
of Section 397 r/w. Section 401 of the Code of Criminal
Procedure is limited. The High Court did not point out
any error of law on the part of the learned trial judge. It
was not opined that any relevant evidence has been left

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In view of what has been held above, it is necessary to find out if the courts below have committed any error of law; the courts below have taken into consideration irrelevant evidence and left out of its consideration of relevant evidence. Courts below have acted with material irregularity.

5. It is not in dispute that petitioner had issued cheques in favour of respondent and cheques were drawn on the account held by petitioner. Therefore, in terms of Sec.138 of the N.I.Act, there is a presumption that cheques were issued by petitioner to respondent to discharge legally recoverable debt. In order to rebut this

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presumption, petitioner had made an unsuccessful attempt to establish that he was appointed as a distributor by respondent for sale of its products. In that connection, respondent had collected two blank signed and undated cheques from petitioner.

In order to appreciate this contention, it is necessary to state that petitioner has not produced any document or agreement or memorandum of understanding entered into between petitioner and respondent to prove that petitioner was required to deposit signed blank undated cheques with respondent. On the other hand, documents produced by respondent would reveal that respondent was supplying products to petitioner by raising invoices in the name of petitioner.

The learned Counsel for petitioner has contended that invoices do not bear signatures of petitioner. It is not in dispute that during the period between 29.3.1998 and 15.6.1998 petitioner was the distributor of products, manufactured by respondent. In that connection, goods were delivered to petitioner and

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invoices were raised. It is true that invoice bereft of signature of petitioner without there being anything more was not sufficient to fasten liability on petitioner. But, we find that petitioner had issued cheques after the invoices were raised in his name. Therefore, absence of signature on the invoices raised by respondent in the name of petitioner is not sufficient to rebut the presumption available in favour of respondent.

7. In this view of the matter, I do not find any material irregularity committed by the courts below. The courts below have not committed any glaring error in appreciation of evidence.

8. For these reasons, I do not find any merit in the petition. In the result, Crl. Revision Petition is dismissed.

nas.

Sd/-
Judge