

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2018

CORAM:

THE HONOURABLE MR . JUSTICE S.VAIDYANATHAN

Criminal Appeal No.681 of 2006

M/s.S.Albert & Company (P) Limited,
rep. By its Accountant,
M.Ramachandran,
S/o.A.Muthu,
No.13/1, Whannels Road,
Egmore, Chennai 600 008.

... Appellant

vs.

1. M/s.Sree Meghana Distributors (P) Limited,
rep. By its Director,
P.Chandramohan

2. P.Chandramohan
Director,
M/s.Sree Meghana Distributors (P) Limited.

3. Sumathi Chandramohan,
Director,
M/s.Sree Meghana Distributors (P) Limited,
B-54, D.D.Colony, Bagh Colony, Amberpet,
Hyderabad - 500 007.

... Respondents

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment acquitting the Respondents/Accused in C.C.No.100 of 2000, dated 09.05.2006 passed by the X Metropolitan Magistrate, Egmore, Chennai, and set aside the same.

For Appellant : Mr.L.Rajasekar

For Respondents : Mr.V.Gopinath, Senior Counsel
for Mr.S.K.Srinivasan and
Mr.E.Venkatesh Babu

J U D G M E N T

The Appellant/Complainant has come up with the present Appeal, seeking to set aside the judgment dated 09.05.2006 passed by the X Metropolitan Magistrate, Egmore, Chennai in C.C.No.100 of 2000, acquitting the Respondents/Accused.

2. The case of the Prosecution, is as follows:

(i) The Appellant-M/s.Albert & Company Private Limited is the Complainant. It had taken over the assets and liabilities of the erstwhile partnership firm M/s.S.Albert & Co., including the loan advanced to the firm. The 2nd and 3rd Respondents/Accused had taken a sum of Rs.15,00,000/- as hand loan to meet the commitments of the 1st Accused Company from the erstwhile partnership Company, i.e. M/s.Albert and Company, vide Cheque dated 10.07.1998 bearing No.97861 drawn on Bank of Ceylon, Poonamallee High Road, Chennai - 7 and the same was encashed by the 1st, 2nd and 3rd Respondents/ Accused on 15.07.1998.

(ii) The 2nd and 3rd Respondents/Accused have promised to repay the said loan amount within one month, but gained time from the Appellant/Complainant Company stating that they are not doing well in the business. After repeated requests from the Appellant, the 2nd and 3rd Respondents/Accused are said to have issued a Cheque drawn on M/s.Bank of Madura Limited, Besant Nagar Branch, Chennai - 90, bearing No.168538, dated 03.11.1999 for a sum of Rs.15,00,000/- towards part payment for the above said debt and the interest thereon. The said cheque was presented by the Appellant/Complainant Company for encashment with their Banker, M/s.Bank of Ceylon, Poonamallee High Road Branch, Chennai, on 03.11.1999 and the same was returned unpaid for the reasons 'Funds insufficient' vide Memorandum dated 04.11.1999 and the same was intimated to the Appellant/Complainant Company by their Banker vide Debit Advice dated 04.11.1999.

(iii) On receipt of the dishonour intimation, the Appellant/Complainant Company issued a Legal notice dated 16.11.1999 demanding payment of dishonoured cheque amount, vide Speed Post to the Registered Office and to the residential address of the 2nd and 3rd Respondents/Accused. The Notice covers addressed to the Registered Office of the 2nd and 3rd Respondents/Accused were returned with an endorsement 'Refused, Returned to sender' dated 18.11.1999 and the said covers were received by the Appellant's counsel on 20.11.1999. The Notice covers addressed to the residential address of the 2nd and 3rd Respondents/Accused were returned with an endorsement 'Not claimed', dated 19.11.1999 and received by the Appellant's counsel on 29.11.1999.

(iv) Hence, the Appellant's counsel forwarded a complaint dated 11.12.1999 to the Superintendent, Customer Care Centre, Greams Road Post Office, Thousand Lights, Chennai - 6. Though the said complaint was acknowledged by the above said Official on 13.12.1999, the Customer Care Centre of Greams Post Office has not replied so far. As the act of the Respondents/Accused in not honouring the cheque and not making the payment within the statutory period falls within the ambit of Section 138 of the Negotiable Instruments Act, the Appellant/Complainant Company prayed for compensation for the loss due to dishonour, damages and costs.

3. In order to establish the charges, the Prosecution examined 3 witnesses and marked 14 documents vide Exs.P1 to P14. The Defence examined 7 witnesses and marked 58 documents vide Exs.D1 to D58.

4. When the Respondents/Accused were questioned under Section 313(1)(b) Cr.P.C. about the incriminating factors in the evidence of Prosecution Witnesses, they denied the same as untrue.

5. After analysing the evidence on record and considering the facts and circumstances of the case, the Trial Court acquitted the Respondents/Accused, holding that the claim of the Appellant/Complainant Company has been disproved due to the rebuttal evidence placed by the Respondents/Accused. Aggrieved by the same, the Appellant/Complainant Company is before this Court by way of the present Appeal.

6. Learned counsel appearing for the Appellant/Complainant Company contended that the fact that the Cheque produced by the Respondents/Accused bounced itself would go to show that the provisions of Negotiable Instruments Act are attracted and that the Respondents/Accused are liable to be prosecuted. He further contended that the Trial Court has not analysed the documents marked on the side of the Prosecution. He went on to contend that none of the documents marked on the side of the Defence have nexus to the issue on hand and the Trial Judge, instead of accepting the version of the Appellant/Company, has concurred with the version of the Respondents/Accused.

7. In reply, learned Senior Counsel appearing for the Respondents/Accused submitted that the Respondents/Accused never borrowed any sum as alleged by the Appellant/Complainant Company and that the said sum of Rs.15,00,000/- was paid by way of a cheque dated 10.07.1998 only towards the reimbursement of the expenses which the Respondents/Accused incurred in promoting the product of the Appellant/Complainant Company and also for the

future expenses, which the Respondents/Accused were supposed to incur while marketing and that they have not issued any Cheque towards the repayment of the alleged loan to the Appellant/Complainant Company. He went on to contend that the Appellant/Complainant Company has not furnished any documents such as Promissory Note and other related documents in respect of their claim that they advanced a sum of Rs.15,00,000/- to the Respondents/Accused towards loan. Thus, according to the learned Senior Counsel, the conduct of the Appellant/Complainant Company substantiates the case of the Respondents/Accused and also rebuts the presumption arising under Section 139 of the N.I. Act.

8. Heard the learned counsel on either side and carefully examined the material evidence available on record and the decision rendered by the Trial Court.

9. The issue that arises for consideration before this Court is whether the Trial Court is right in acquitting the Respondents/Accused, holding that the claim of the Appellant/Complainant Company has been disproved due to the rebuttal evidence placed by the Respondents/Accused.

10. While the allegation of the Appellant/Complainant Company is that the Respondents/Accused have failed to repay the loan amount of Rs.15,00,000/-, the Respondents/Accused have denied the same that there is no loan transaction between the Respondents/Accused and the Appellant/Complainant Company. It is the case of the Respondents/Accused that they only had business transaction with the Appellant/Complainant Company and nothing else.

11. D.W.1, in his evidence, has stated that the authorized persons of the Appellant/Complainant Company approached the Respondents/Accused informing that the Appellant/Complainant Company was appointed as the Clearing and Forwarding Agent for Rajasthan Breweries Limited and market the products of the said Rajasthan Breweries Limited's Beer called 'Stroh' in the State of Andhra Pradesh. D.W.1 has further stated that the Appellant/Complainant further requested D.W.1 to pay all the charges upfront with regard to the promotional work and get the same reimbursed and adjust with the advance expenses amount from the Appellant/Complainant. At the time of appointment, the Appellant/Complainant insisted to issue two blank cheques duly signed by the Respondents/Accused as 'Security' to have overall control on them in running the business and as they are going to deal with the Appellant/Complainant's money in marketing their products. Accordingly, the Respondents/Accused gave two blank unfilled cheques upfront to the Appellant/Complainant, one from Bank of Madura, Chennai bearing No.168538 and another from Bank

of Madura, Secundrabad, bearing No.330624, in the month of May 1998, as security for the 'Stroh' beer transaction in accordance with the liquor trade procedure in the State of Andhra Pradesh. Therefore, according to D.W.1, the allegation of the Appellant/Complainant that he has issued the cheque on 03.11.1999 is totally false and that the case of the Appellant/Complainant is an abuse of process of Law with a view to extract money from him and to reduce their loss in the Stroh Beer business.

12. Further, it is seen that from the evidence of D.W.3, one Varaprasad that he was the Sales Representative of M/s.Albert Company for marketing Stroh Beer in twin cities of Andhra Pradesh. He has further deposed that he and other Sales Representative were asked by the Appellant/Complainant Company to get the particulars of the expenses incurred from the 1st Respondent/Accused, by signing Vouchers and that 15 Vouchers vide Ex.D35 series totalling to Rs.1,04,250/- was received by him towards T.A., D.A. and salary. D.W.3 has further deposed that he was doing sales promotion of Stroh Beer, supervising the unloading, taking EVC, giving discounts, and all necessary works for marketing Stroh Beer. He also deposed that the Appellant/Complainant Company failed, as the Cans were not good enough and were leaking and also the supply was not made in time, when there were demand and that the said Company closed their business in the year 1999. The evidence of D.W.2, D.W.3 and D.W.4 has supported the documents filed by the Respondents/Accused and clearly shows that the entire loan transaction was in the course of business.

13. Advancing enormous amount to a person who is not familiar and whose background is also unknown spreads shadow in the mind of the Court. Section 139 of the N.I. Act would come to the rescue of the Appellant/Complainant Company only if there is no rebuttal evidence on the side of the Respondents/Accused. In other words, the said Section shall be presumed only if the contrary is not proved. In the instant case, the Respondents/Accused have filed certain documents contradicting the claim of the Appellant/Complainant Company as could be seen from the evidence.

14. The version of the Appellant/Complainant Company that the Respondents/Accused are in no way concerned in the business activities is totally disproved by the evidence coupled with documents filed by the Respondents/Accused. Therefore, the documents filed by the Respondents/Accused are contrary to the claim of the Appellant/Complainant Company. The stand of the Appellant/Complainant Company that loan has been advanced and Respondents/Accused have no connection with the business is also disproved by the evidence, both oral and documentary marked by

the Respondents/Accused.

15. To support the case of the Appellant/Complainant Company, the complaint made by him should have basis and should not have any contrary or rebuttal evidence. Once the Respondents/Accused are able to produce certain documents rebutting the evidence of the complainant and also contrary to the claim of the Appellant, it is the duty of the Appellant/Complainant Company to explain as to why the rebuttal evidence should not be considered. In the case on hand, while the Appellant/Complainant Company has totally denied the participation of the Respondents/Accused in the business, the documents filed by the Respondents/Accused showing their participation in the business goes in favour of the Respondents/Accused. Further, the stand taken by the Respondents/Accused that the cheque was given as security for acting as Del-credere Agent of the Appellant/Complainant Company was also taken into account by the Trial Court, while examining the issue.

16. Though there is no Written Agreement appointing the Respondents/Accused as Del-credere Agent, the documents in the name of the Respondents/Accused concerning the business of the Appellant/Complainant are ample evidences to show that the Respondents/Accused have taken part in the marketing of the product of the Appellant/Complainant Company. Therefore, the Cheque which has been given by the Respondents/Accused for security purpose cannot be put against the Respondents/Accused. The Trial Court considered the Exhibits D8, D10, D30, D33 to D41, D45, D55 and D58 marked on the side of the Respondents/Accused as rebuttal presumption to conclude in their favour.

17. Also, the Trial Court relied on the decision of the Apex Court in Hiten P. Dalal vs. Bratindranath Banerjee, 2001 SCC (Cr1.) 960 to hold that mere explanation given by the drawer would not be sufficient. Accordingly, the Court held that the Appellant/Complainant Company failed to discharge the burden of proof to rebut the statutory presumptions.

18. For all the above reasons, the claim of the Appellant/Complainant Company that the debt is legally enforceable, by no stretch of imagination can be considered as proved and accepted. Accordingly, the trial Court acquitted the Respondents/Accused since the Prosecution has not established the case beyond all reasonable doubt. As the theory of loan is not proved by Appellant/Complainant Company, this Court is in agreement with the order of the Trial Court. Hence, this Court does not find any reason to interfere with the said finding

rendered by the Trial Court.

19. In view of the foregoing, the Criminal Appeal stands dismissed, upholding the judgment dated 09.05.2006 passed by the X Metropolitan Magistrate, Egmore, Chennai - 600 008 in C.C.No.100 of 2000.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To:

1. The X Metropolitan Magistrate,
Egmore, Chennai,
2. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

Crl.A.No.681 of 2006

RK (CO)

GMV (06/12/2018)



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