

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.397 of 2009

K.Thyagarajan,
No.12, 2nd Lane,
Singara Thottam,
Old Washermenpet,
Chennai-21.

... Petitioner / Respondent / Complainant

/versus/

A.Gulzar Ahmed,
Proprietor,
M/s.Niyas Traders,
No.262, M.T.H.Road, Padi,
Chennai-600 050.

... Respondent / Appellant / Complainant

Prayer:- Criminal Appeal has been filed under Section 397 Cr.P.C r/w 401 of Cr.P.C, against the order of acquittal dated 17.02.2009 passed in C.A.No.148 of 2008 on the file of the learned I Additional Sessions Judge, City Civil Court, Chennai, setting aside the conviction and sentenced dated 31.03.2008 passed in C.C.No.3670 of 2004 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai and prays to confirm the conviction and sentence dated 31.03.2008 passed in C.C.No.3670 of 2004 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.V.Prem Kumar

For Respondent : No appearance

J U D G M E N T

No representation for the appellant as well as the respondent.

2. This Appeal is directed against the judgment of the Lower Appellate Court reversing finding of the trial Court. The private complaint filed by the appellant herein ended in conviction. Challenging the same, the respondent herein preferred appeal before the 1st Additional Sessions Judge, City Civil Court, Chennai. It was allowed. Aggrieved by the same, the complainant is before this Court.

3. The brief facts as found in the complaint is that the accused and the complainant are known to each other. The complainant is running a wholesale business in fabrics, for the past 10 years. The accused used to supply fabrics on receipt of advance payment. While so, the accused after receiving a total sum of Rs.32,00,000/- had supplied fabrics for only Rs.25,10,000/-, for the balance Rs.6,90,000/- he gave the cheque dated 02.02.2004, drawn from his account. On presentation, the said cheque was returned with "insufficient fund". Hence, the statutory notice was issued on 19.02.2004 calling upon the accused to pay the cheque amount. Since, he refused to pay the cheque amount and denied the liability through reply notice dated 05.03.2004, the complaint under Section 138 of Negotiable Instrument Act has been filed alleging the cheque issued to discharge the liability not honoured.

4. Before the trial Court, the accused contended that the cheque was given only as a security, during the business transactions and there was no legally enforceable debt. Whereas, the accounts produced by the complainant and marked as Ex.P.1 was taken into consideration by the trial Court and held that the cheque was issued for discharge of debt and therefore, the accused is guilty of offence under Section 138 of Negotiable Instrument Act and convicted the accused to undergo two years S.I and compensation of Rs.6,90,000/-, in default 1 month S.I.

5. Aggrieved by the sentence and conviction, the accused preferred appeal before the 1st Additional Sessions Judge, City Civil Court, Chennai.

6. The Lower Appellate Court taking note of the fact that pending trial, the accused has filed miscellaneous application for production of accounts book. The said application though dismissed by the trial Court, on revision it was allowed.

7. The complainant was directed to produce the accounts book maintained by him related to the transactions between him and the accused (between 1994 to 22.02.2005). However, the note book marked by the complainant as Ex.P.1 was not the ledger account book or stock register. Therefore, the Lower Appellate Court considering the entries made in Ex.P.1 found that a cryptic noting in the note book, without indicating the running account between the accused and complainant does not prove any enforceable liability and therefore, the defence taken by the accused that the cheques were given only as security, has to be accepted. The complainant having failed to prove that the accused liable to pay debt and to discharge the said debt, had given the subject cheque.

8. Aggrieved by the said order, the complainant is before this Court, contending that the Lower Appellate Court has erred in blindly accepting the version of the respondent that the subject cheque has been issued only as a security. When the statutory presumption under Section 139 of Negotiable Instruments Act caused burden on the accused to prove that there was no existing liability while giving the cheque. Without discharging the said liability, the Lower Appellate Court has reversed the well considered judgment of the trial Court. As per the direction of the Additional City Civil Judge in Crl.M.P.No.3704 of 2005, the complainant produced the note book maintained by him in the normal course of business transaction. While so, taking exception to the fact that the complainant has not produced the day book, ledger and stock register, which were not maintained by the complainant, the Lower Appellate Court has reversed the finding of the trial Court. Hence, prayed that the Lower Appellate Court order has to be set-aside.

9. It is a case of the complainant that the cheque was issued to discharge the existing liability. The relationship between the complainant and the accused is that of the suppliers and buyers. It is a specific case of the complainant is that the accused used to supply fabrics. For the said supply, used to get money in advance. In the said course of business transaction, totally a sum of Rs.32,00,000/- was paid to the accused against the goods supplied. For the shortage of goods supplied to tune of Rs.6,90,000/-, the accused gave the subject cheque. The defence of the accused has seen from the reply notice is that there was no liability in connection with goods supplied. The accused was only an agent to the complainant. The manufactures of the fabrics where introduced by the accused to the complainant and the dealing between the suppliers and the complainant was done directly as an agent. The accused was entitled for only a commission. For the goods sold and delivered. As a security, the cheque signed by the accused, three years ago was given to the complainant. In the reply notice itself the accused has pointed out that if there was any transaction directly between him and the complainant that will reflect in the day book and ledger maintained in the normal course of business and same may be produced. The complainant has not taken any interest in producing the documents, which should have vouchsafed his contention in the complaint. Even after the order passed by the I Additional Sessions, City Civil Judge, Chennai, to produce the account books to substantiate his claim, the complainant has not filed any documents except a note book, which does not indicate any direct liability on the part of the accused.

10. When the trial Court has overlooked this fact, the Lower Appellate Court had pointed out that Ex.P.1 does not disclose any enforceable debt. By rebutting the presumption through preponderance of probability, the accused has discharged the reversed onus and therefore, the finding of the Lower Appellate Court is in accordance with law and facts, which requires no interference. Hence, the Criminal Appeal is dismissed.

Bsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To,

1. The I Additional Sessions Judge, City Civil Court, Chennai.
2. The XV Metropolitan Magistrate, George Town, Chennai.
3. The Section Officer, Criminal Section, High Court, Madras.

+lcc to Mr.V.prem Kumar, Advocate, S.R.No.31487 of 2019

NAM(CO)
VJI (/28/05/2019)

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