IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.29 of 2006

M/s.Indorama Synthetics(India)Ltd.,
The Metropolitan C-26/29
Basara Kurla Complex
Basara, East Bombay-400 051
Branch at No.42-A, Race Course Road
Coimbatore
Rep. By its Authorised Officer and Power Agent
J.V.V.Moorthy ... Appellant/Complainant

vs.

1.M/s.Kwality Spinning Mills Ltd.,
by its Managing Director
M.Meyappan
Udumalaipet Road
Pollachi-642 003

2.M.Meyappan ...Respondents/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973 against the judgment dated 23.04.2004 in Criminal Appeal No.390/2003 on the file of the Additional Sessions Court and Fast Track Court No.1, Coimbatore reversing the judgment dated 17.11.2003 made in S.T.C.No.3643 of 1996 on the file of Judicial Magistrate Court No.5, Coimbatore.

For appellant :Mr.R.Asokan

For respondents:Mr.G.M.Ramasubramanian for M/s.Ram & Ram

JUDGMENT

This Criminal Appeal has been directed against the order of acquittal dated 23.04.2004 passed in Criminal Appeal No.390 of 2003 by the Additional District and Sessions Court (Fast track Court No.1), Coimbatore, wherein, the conviction and sentence passed in S.T.C.No.3643 of 1996 by Judicial Magistrate No.5, Coimbatore are reversed.

2. The appellant herein as complainant has filed the complaint in question under Section 138 of the Negotiable

Instruments Act and the same has been taken on file in S.T.C.No.3643 of 1996 on the file of Judicial Magistrate Court No.5, Coimbatore, wherein, the present respondents have been shown as accused.

3. The first accused has had business dealings with the complainant and in that way, some amounts are due from the first accused and in order to discharge the same, on 27.06.1996, the first accused has given a cheque for a sum of Rs.7,67,727/-; on 28.06.1996, has given another cheque for a sum of Rs.7,57,121/- and on 16.07.1996 has given a cheque for a sum of Rs.7,24,892/- in favour of the complainant and the same have been put into State Bank of India. But the said Bank has returned all the cheques stating "funds insufficient" and subsequently, statutory notice has been issued and even after receipt of the same, the accused have not discharged their liability. Under the said circumstances, they have committed offences under Section 138 of the Negotiable Instruments Act.

4. The trial court, after considering the available evidence on record has found both the accused guilty under Section 138 of the Negotiable Instruments Act and imposed sentences as noted down in the judgment. Against the conviction and sentence passed by the trial court, the accused as appellants have preferred Criminal Appeal No.390/2003 on the file of the First Appellate Court.

5. The First Appellate Court, after hearing arguments of both sides and upon perusing the relevant record, has allowed the appeal and thereby, set aside the convictions and sentences passed by the trial court and ultimately, dismissed the complaint. Against the order passed by the First Appellate Court, this Criminal Appeal has been preferred at the instance of the complainant as appellant.

6. The learned counsel appearing for the appellant/complainant has repeatedly contended that the first accused has had business dealings with the complainant and due to that some amounts are due to the first accused and in order to discharge the same, the cheques in question have been issued on 27.06.1996, 28.06.1996 and 16.07.1996 in favour of the complainant and the same have been put into concerned Bank, but the concerned Bank has returned the same stating "funds insufficient". Subsequently, a statutory notice has been issued and even after receipt of the same, the accused has not discharged their liability and under the said circumstances, the complaint in question has been filed. The trial court, after considering the available evidence has rightly found the accused guilty under Section 138 of the Negotiable Instruments Act, but the First Appellate Court has given an erroneous finding that Ex.P.8 - statutory notice has not been properly issued and

further the First Appellate Court has found that the appellant/complainant has not produced relevant documents for the purpose of showing the alleged liability of the accused and therefore, the finding given by the First Appellate Court is not proper and the same is liable to be set aside.

7. The learned counsel appearing for the respondents/accused has contended that the specific case put forth on the side of the appellant/complainant is that only due to business dealings, the amounts mentioned in the cheque are due from the first accused, but for the purpose of proving such liability, no documents have been filed and further Ex.P.8, statutory notice has been simply issued to the Managing Director of the 1st accused and the First Appellate Court, after considering lack of evidence and also lapse committed on the side of the appellant/complainant has rightly dismissed the complaint and therefore, the dismissal order passed by the First Appellate Court does not call for any interference.

8. The learned counsel appearing for the appellant/complainant has drawn the attention of this Court to the decision reported in 2015 (8) SCC page 28, [KIRSHNA TEXPORT & CAPITAL MARKETS LTD. Versus ILA A. AGRAWAL & ORS.,], wherein, the Honourable Supreme Court has observed as follows:-

> "Section 141 states that if the person committing an offence under Section 138 is a Company, every director of such Company who was in charge of and responsible to that Company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a Company would be run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the Company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such Company. It is precisely for this reason that no notice is additionally contemplated to be given to such directors. The opportunity to the drawer Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of

defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138."

9. Even as per the dictum given by the Honourable Apex Court, Ex.P.8 has been properly issued, the court has to further analyse the rival submissions on either side.

10. In the complaint, it has been specifically stated that through Invoice Numbers, the first accused has purchased the goods from the complainant. The defence put forth on the side of the accused is that once the first accused has had business dealings with the complainant and at the time of having business dealings some blank cheques have been given as security and by way of utilising the same, present proceeding has been issued and further no amount has been due from the first accused.

11. It is true that the cheques in question have been given by the first accused. It is an acknowledged principle of law that presumption available under the Negotiable Instruments Act, 1881 is not a conclusive proof of evidence, but it is rebuttable presumption. In the instant case, on the side of the appellant/complainant, no documents have been filed for the purpose of showing that the cheques in question have been issued with regard to existing liability.

12. If really such amounts are due from the first accused, definitely, the appellant/complainant would have filed relevant documents for the purpose of showing liability of the first accused. But as taunted earlier, no such documents have been filed. Since no such documents have been filed, the court cannot automatically come to the conclusion that the cheques in question have been issued in respect of an enforceable debt. Since on the side of the appellant/complainant, it has not been positively established that the cheques in question have been issued in respect of an enforceable debt, it is needless to say that the provision of Section 138 of the Negotiable Instruments Act is not attracted. Since the provision of Section 138 of the Negotiable Instruments Act is not attracted, it is very clear that the accused have not committed an offence punishable under the said section.

13. The trial court, without considering lack of evidence on the side of the appellant/complainant has simply found the accused guilty under the said section on the basis of the fact that the cheques in question have been issued by the first accused. The approach made by the trial court is totally erroneous and the First Appellate Court after having threadbare discussion and has rightly found that the accused have not committed an offence punishable under Section 138 of the

Negotiable Instruments Act. In view of the foregoing discussion on both factual and legal premise, this Court has not found any acceptable force put forth on the side of the appellant/complainant and altogether the criminal appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The judgment passed in Criminal Appeal No.390 of 2003 by the Additional Sessions Court [Fast Track Court No.1] Coimbatore is confirmed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvsri

To
1.The Additional Sessions Judge,
Additional Sessions Court[Fast Track Court No.1] Coimbatore

2.The Judicial Magistrate, The Judicial Magistrate Court No.5, Coimbatore.

3.Do-Thro'The Cheif Judicial Magistrate, Coimbatore.

+1 cc to M/s.R.Asokan, Advocate, sr.59451
+1 cc to M/s.Ram & Ram, Advocates, sr.59036

Crl.A.No.29 of 2006

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