IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.548 of 2006

Shri Sujies Benefits Fund Ltd.,
rep.by its Managing Director
S.Bhupathi
262, Pollachi Main Road
S.B.Towers,
Sundarapuram Main Road
Coimbatore 641 024

... Appellant/Complainant

Vs.

H.Sultan ... Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment made in S.T.C.No.1806 of 2005 dated 10.4.2006 on the file of the Judicial Magistrate No.VII, Coimbatore.

For appellant : Mr.A.Natarajan,
Senior counsel for
Mr.S.Silambu Selvam

For Respondent : Mr.Palani Selvaraj

JUDGMENT

Challenge in this Criminal Appeal is to the dismissal order dated 10.4.2006 passed in S.T.C.No.1806 of 2005 by the Judicial Magistrate No.VII, Coimbatore.

2. The appellant herein, as complainant, has filed the complaint in question under section 138 of Negotiable Instruments Act, 1881 on the file of the trial court and the same has been taken on file in S.T.C.No.1806 of 2005, wherein, the present respondent has been shown as sole accused.

3. In the complaint, it is averred that on 22.11.1996, the accused has given an application for getting a loan of Rs.5 Lakhs from the complainant and accordingly, it has been decided to advance loan to the accused for a sum of Rs.5 Lakhs and on the disbursement of Rs.5 Lakhs, Rs.90,000/- has been taken towards interest. The accused is bound to pay the entire amount in 10 instalments. Since the accused has not been able to discharge his entire liability, on 3.12.2003, he has given the cheque in question for a sum of Rs.12 Lakhs in favour of the complainant and the same has been put into the concerned bank and the concerned bank has returned the same stating "accounts closed" and consequently statutory notice has been issued and even after receipt of the same, the accused has not discharged the liability and thereby committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

4. The trial court, after considering the rival contentions raised on either side, has dismissed the complaint. Against the dismissal order, present Criminal Appeal has been preferred at the instance of the complainant as appellant.

5. The learned counsel appearing for the appellant/complainant has repeatedly contended that the respondent/accused has clearly admitted the transaction and in fact, he has paid part of the amount till the year 1998 and the cheque in question has been given by him, but the trial court, without considering the nature of the transaction and also without considering the evidence available on record, has erroneously given a finding to the effect that the entire transaction is barred by limitation and therefore, the cheque in question has not given in connection with an enforceable debt and therefore, the finding given by the trial court is totally incorrect and the order of acquittal passed by the trial court is liable to be set aside.

6. The learned counsel appearing for the respondent/accused has contended that the respondent/accused has already discharged his entire liability and since the documents of the respondent/accused are in the custody of the complainant, he tried to get the same. Under the said circumstances, present proceeding has been initiated and the trial court, after considering the divergent contentions raised on either side, has rightly dismissed the complaint and therefore, the dismissal order passed by the trial court need not be set aside.

7. On the basis of the rival submissions put forth on either side, the Court has to look into as to whether the cheque in question has been issued by the respondent/accused in connection with an enforceable debt?

8. Even from a mere reading of the averments made in the complaint, the Court can easily discern that the money transaction has taken place between the complainant and accused on 22.11.1996. As per Ex.P.9, the last transaction has taken place in the year 1998. The cheque in question has been given on 3.12.2003.

9. In paragraph 6 of the judgment passed by the trial court, it has been specifically stated that in respect of loan amount mentioned in the complaint, a promissory note has come into existence on 22.11.1996 and the same is barred by limitation on 21.11.1999, whereas the cheque in question has been given on 3.12.2003 and therefore, the cheque in question has not been issued in connection with an enforceable debt and ultimately dismissed the complaint.

10. As adverted to earlier, the cheque in question has been given on 3.12.2003. The last transaction has taken place between the complainant and accused only in the year 1998 and after lapse of five years, the cheque in question has been given. Under the said circumstances, a legal question arose as to whether the cheque in question has been given only in connection with legally enforceable debt.

11. It is a settled principle of law that the cheque in question must be given only in respect of legally enforceable debt. It has already been pointed out that the entire transaction has become time barred and thereafter on 3.12.2003, the cheque in question has been given by the accused. Since the cheque in question has not been issued in connection with legally enforceable debt, the Court cannot come to a conclusion that the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

12. The trial court, after considering the evidence available on record, has rightly found that the cheque in question has been issued in respect of time barred debt and therefore, the accused cannot be fastened with liability under section 138 of Negotiable Instruments Act, 1881. In view of the

discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/complainant and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The dismissal order dated 10.4.2006 passed by the trial court in S.T.C No.1806 of 2005 is confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Judicial Magistrate No.VII,
   Coimbatore.

2. Do Through The Chief Judicial Magistrate,
   Coimbatore.

3. The Public Prosecutor,
   High Court, Chennai.

+1cc to Mr.S.Silambu Selvam, Advocate, S.R.No.1887
+1cc to Mr.Palani Selvaraj, Advocate, S.R.No.1545

Crl.A.No.548 of 2006

SV(CO)
CA(27/01/2016)