

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.123 of 2006

R.Ramanathan
S/o.Ramanathan

.. Appellant

Vs.

M/s.Sam Industries
represented by its Proprietor,
S.Karunanidhi
156, Lakshmi Mills Colony,
Pappamaickanpalayam - 641 037.
Salem.

.. Respondent

Criminal Appeal preferred under Section 378 of Cr.P.C against the judgment of acquittal passed by learned Additional Sessions Judge, Fast Track Court II, Salem, passed in C.A.No.18 of 2004 on 18.10.2005.

For Appellant : Mr.A.R.L.Sundaresan, senior counsel
for Mrs.A.L.Gandhimathi

For Respondent : Mr.R.Angalaparameswari

J U D G M E N T

This appeal arises against the judgment of acquittal passed by learned Additional Sessions Judge, Fast Track Court II, Salem, passed in C.A.No.18 of 2004 on 18.10.2005.

2. Appellant/complainant has filed C.C.No.187 of 2000 on the file of learned Judicial Magistrate III, Salem, alleging offence under Section 138 of the Negotiable Instruments Act against respondent herein informing that it had issued a cheque dated 05.02.2000 in a sum of Rs.2,00,000/- towards repayment of borrowing, which upon presentation was returned unpaid for the reason 'insufficient funds'. Appellant/complainant caused statutory notice and in keeping with section 138 of the Negotiable Instruments Act, preferred the complaint.

3. Before the trial Court, appellant/complainant examined three witnesses and marked six exhibits. One witness was

examined on behalf of the defence and four exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 06.01.2003, convicted the respondent and sentenced him to 6 months S.I. and compensation in a sum of Rs.1,00,000/- to appellant/complainant i/d 3 months S.I. Against such finding, respondent preferred C.A.No.18 of 2004 on the file of learned Additional Sessions Judge, Fast Track Court II, Salem. Appellate Court, under judgment dated 18.10.2005, acquitted the respondent. There against, the present appeal has been filed.

4. Heard learned senior counsel for appellant and learned counsel for respondent.

5. Learned senior counsel for appellant submitted that Court below has allowed the appeal on the ground that the proprietary concern represented by its proprietor/respondent has been arrayed as an accused and such position has been informed unacceptable in judgments of this Court reported in 1996 CrI. LJ. 180 and 1999 (1) L.W. 405. Learned senior counsel further submitted that following a proper line of reasoning, trial Court had found that the intimation of return of the cheque unserved by drawee bank under registered post was received by appellant only on 26.02.2000 and therefore, the issue of statutory notice by appellant on 11.03.2000 was within the prescribed period of 15 days u/s.138 of the Negotiable Instruments Act. Learned senior counsel submitted that appellate Court had gone wrong in holding that statutory notice had not been issued within 15 days of 14.02.2000, the date of return of the cheque unpaid. Learned senior counsel submitted that when the trial Court had, on the basis of material available before it in the form of annexure, i.e., a copy of the registered letter No.914 dated 26.02.2000 issued by the drawee bank under RPAD to the appellant intimating the return of the cheque unpaid, held that the issue of statutory notice on 11.03.2000 was within time, Appellate Court ought not to have interfered. Learned senior counsel further submitted that though such annexure was a xerox copy of the registered letter No.914 dated 26.02.2000, the marking thereof had not been objected to by respondent at the trial Court and hence, such was not a issue that called for consideration.

6. This Court has recorded in detail the submissions of learned senior counsel for appellant on the question of issue of statutory notice within prescribed period of 15 days merely to inform our fullest agreement therewith. The records are available before this Court but the annexure which was informed as found by trial Court along with Ex.P4 is not to be presently found. However, this Court would draw a presumption that which happened before the trial Court as informed by such Court and in keeping with Section 114 of the Indian Evidence Act.

7. Again, as rightly contended by learned senior counsel where no objection had been taken by respondent/accused to marking of a xerox copy of a registered letter No.914 dated 26.02.2000, the same now cannot be made a issue of. An objection rightly taken affords the opposite side an opportunity to set right matters by producing original documents or by introducing secondary evidence thereof and in keeping with provisions of the Evidence Act. By not raising an objection at the relevant time, the need for a party to prove his case other than through the copy of document erroneously marked does not arise and secondly, the opportunity for him to do so is lost. Once such loss of opportunity has been caused owing to neglect of the opposing party, then such opposing party cannot be permitted to turn around and make an issue thereof.

8. Unlike a Company, Firm or other Body of Associates, a proprietary concern has no identity other than its proprietor. To state, that a complaint would be maintainable when the cause title informs 'ABC - Proprietor of XYZ' would be maintainable and that 'XYZ represented by its proprietor ABC' would not, would be hyper technical. The question that arises for consideration is whether an alternative nomenclature has caused prejudice to the accused in his defence. The answer, necessarily is 'No'. When we keep in mind that the liability under a cheque primarily is civil in nature, there is no reason why the procedure found acceptable under Or.XXX R.10 CPC, informed hereunder, should not be adopted:

'10. Suit against person carrying on business in name other than his own. - Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.'

9. Sections 138 to 147 fall under Chapter XVII of the Negotiable Instruments Act. Chapter XVII has been inserted by Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988), with effect from 01.04.1989. A perusal of Statement of Objects and Reasons of such enactment inter alia informs that one of the objective sought to be achieved is :

'(xi) to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the

drawer, with adequate safeguards to prevent harassment of honest drawers.'

Necessarily, the interpretation would have to be one which furthers the object sought to be achieved by introduction of Section 138 of Negotiable Instruments Act and not one which would defeat its purpose.

The Criminal Appeal shall stand allowed. The judgment of acquittal passed by learned Additional Sessions Judge, Fast Track Court II, Salem, passed in C.A.No.18 of 2004 on 18.10.2005 shall stand set aside. On the facts of the present case, it is considered appropriate while affirming the finding of conviction by trial Court and confirming substantive sentence of imprisonment of 6 months S.I., to enhance the compensation payable to appellant/complainant by respondent/accused to a sum of Rs.2,00,000/- instead of Rs.1,00,000/- imposed by trial Court i/d 3 months S.I. Trial Court is directed to secure the presence of the accused towards serving the remaining period of sentence. The sentence in default of payment of compensation shall begin to run after completion of substantive sentence.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate III,
Salem.
- 2.The Additional Sessions Judge,
Fast Track Court II,
Salem.
- 3.The Superintendent of Police, Salem
- 4.The Chief Judicial Magistrate, Salem

Copy to:The Section Officer
Criminal section,
High Court, Madras

+1cc to M/s.A.R.L.Sundaresan, Senior Counsel SR.No.

MP(co)
sm:26.3.2018

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