

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2017

PRONOUNCED ON : 20.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.229 of 2007

and

Crl.M.P.No.1610 of 2016

M/s.Chinthamani Foods &
Feeds (P) Ltd.,
Managing Director,
K.Palaniappa Mudaliar,
S/o. Kuppusamy Mudaliar,
Mettupatti, Salem - 636110.
rep. by its
Power of Attorney
R.Murugan,
S/o.P.Raju, Accountant,
M/s. Chinthamani Foods &
Feeds(P) Ltd.,
Mettupatti, Salem - 636 110. Appellant

Vs

D.Chandrasekar .. Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C.,
to set aside the order dated 06.03.2006 passed in C.C.No.473
of 2001 on the file of the Judicial Magistrate Court No.3,
Salem.

For Appellant : Mr.P.Mani

For Respondent : Mr. Elanthireyan
for M/s.Sai Bharath & Ilan

JUDGEMENT

The appeal is preferred against the judgment of acquittal passed by the learned Judicial Magistrate No.3, Salem in C.C.No.473 of 2001 dated 06.12.2006.

2.The case of the appellant/complainant, is as follows:-

The appellant/complainant is doing business in selling cattle feeds, and the respondent/accused, purchased cattle feeds from the appellant/complainant; in the above transaction, there was a due of Rs.2,52,014/-, and in order to discharge the above debt, the respondent/accused issued a cheque dated 21.05.2001; when the appellant presented the same for collection, it was returned as "insufficient funds" . Thereafter, the appellant issued a legal notice on 11.06.2001, even after receipt of the notice, the respondent has failed to pay the amount. Hence, the appellant has filed a complaint before the trial court for an offence under Section 138 of Negotiable Instrument Act.

3. After considering the complaint and sworn statement of the Power of Attorney, the court below took the case on file and issued summons to the accused and proceeded with the trial. During the trial, the appellant examined his Accountant/ Power of Attorney as P.W.1 and marked 5 exhibits. On the side of the respondent/accused, he examined the Bank Manager of Canara Bank as DW1, and after considering all the materials, the court below acquitted the accused from the charge. Now, challenging the above order of acquittal, the present appeal has been filed.

4. Mr. P.Mani, learned counsel appearing for the appellant/complaint submits that this is a case where the accused accepted the signature found in the cheque, hence, the presumption under Sections 118 and 139 of Negotiable Instrument Act will come into play, and the initial burden is on the respondent/accused to rebut the presumption, but the respondent did not rebut the presumption with any probable defence. Hence, the court below ought not to have acquitted the accused and by mere examination of Bank Manager to show that the cheque was issued long prior to the alleged date found in cheque and account was also closed, cannot be considered as a probable defence and he prayed for allowing the appeal.

5) Per contra, Mr. Elanthireyan, learned counsel appearing for the respondent/accused submits that the cheque was found to be issued to the complainant by the Bank long

respondent also examined the Bank manager to show that the cheque was issued long prior and the account was also closed. Hence, it creates doubt about the legally enforceable debt and the respondent has successfully rebutted the presumption, and the burden is shifted on the appellant/complainant to show that there is a legally enforceable liability, but, absolutely, there is no evidence on the side of the appellant/complainant to prove the same. Considering all the above material, the trial court rightly acquitted the accused and he prayed for dismissal of the appeal.

6. I have considered the rival submissions and perused the records carefully.

7. The case of the appellant/complainant is that there was a business transaction between the appellant and the respondent and during the course of business, there is a liability and the respondent has to pay a sum of Rs.2,52,014/-, in order to discharge the debt, he issued a cheque on 21.05.2001 and when the same was presented for collection on 26.05.2001, it got dishonoured. It is the specific case of the respondent that the account, which was maintained by the respondent in the Canara Bank, was closed in the year 1995, since there was no transaction in the bank account from the year 1992 and the cheque in dispute was also issued long prior to the date of issuance of debt.

8. It is true that once the respondent/accused admitted the cheque, there is a presumption in favour of the complainant that the holder of the cheque received the cheque for discharge of whole or part of any debt or liability, but the presumption is rebuttable presumption. To disprove the presumption, the accused can adduced direct evidence to prove that the cheque in question was not supported by consideration or that he had not incurred any liability or debt. The accused can also rely upon circumstantial evidence and if circumstances to be relied upon are compelling, the burden shifts on the complainant.

9. In the instant case, by examining the Bank Manager to show that the cheque facility was given to the accused 10 to 12 years prior to the date of cheque and the account was also closed in the year 1995, but the cheque was stated to have been issued to the complainant only in the year 2001, which creates a doubt in the case of the complainant that under what circumstance the cheque was issued to the complainant in the year 2001, and in the above circumstances, the burden shifts on the complainant to prove that there was a legally recoverable debt. But, except the oral evidence of P.W.1, the Accountant of the complainant company, neither the account book nor any other documentary evidence was placed

before the Court to show that the amount is due to the complainant from the accused in the year 2001 and based on the oral evidence of P.W.1 alone, it cannot be concluded that there was a due from the respondent.

10. Considering all the above materials, the trial court has acquitted the accused, and, I find no perversity in the impugned judgment of the trial Court. In the above said circumstances, I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

11. In the result, the Criminal Appeal fails and accordingly, the same is dismissed and the impugned order of acquittal passed by the court below is hereby confirmed. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/
Sub Assistant Registrar

To

1 The Judicial Magistrate No.3,
Salem.

2 do thro the chief judicial magistrar, salem.

+1cc to Mr.P.mani, Advocate SR.No.10629

+1cc to Mr.Sai Bharath & Illan, Advocate SR.No.10891

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Pre-delivery Judgment
in

Cr1.A.No.229 of 2007

SDR 08.03.2017

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