

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.401 of 2007

EEM PEE TEX,
Partnership Firm
Rep. By its Managing Partner
G.N.Maheswaran
No.23 Pughazhum Perumalpuram II Street Corner,
Gunarananthapuram,
Tirupur-641 602. ...Appellant/Complainant

Vs.

1.Dilip Garments (A-1),
(Partnership Firm),
Rep. By M.Balasubramaniam,
Partner,
51-A Gandhi Road,
Anupparapalayam Post,
Tirupur.

2.M.Balasubramaniam (A-5),
Partner,
Dilip Garments

...Respondents/Accused

Criminal Appeal preferred under Section 378 r/w 382 of
Cr.P.C against the judgment of learned Judicial Magistrate-I,
Tirupur in C.C.No.703 of 2004 on 26.03.2007.

For Appellant : Mr.G.M.Ramasubramaniam
for M/s.Ram and Ram

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J U D G M E N T

This appeal arises against the judgment of acquittal rendered by learned Judicial Magistrate-I, Tirupur in C.C.No.703 of 2004 on 26.03.2007.

2. Appellant is the complainant, first respondent is a Partnership firm and second respondent is the Partner in-charge of the Firm. Appellant/complainant moved prosecution informing

that first respondent firm had purchased yarn on credit to the tune of Rs.3,79,500/- from them and issued two cheques (i) cheque dated 23.03.2004 in a sum of Rs.1,46,000/- and (ii) cheque dated 14.05.2004 in a sum of Rs.1,58,800/- to them towards repayment of borrowing, which upon presentation was returned unpaid for the reason 'insufficient funds'. Appellant/complainant following the procedure envisaged u/s.138 of the Negotiable Instruments Act, preferred a complaint. The same was taken on file in C.C.No.703 of 2004 on the file of learned Judicial Magistrate No.1, Tiruppur.

3. Before trial Court, appellant/complainant examined himself as PW-1 and marked 28 exhibits. On the side of defence, 5 witnesses were examined and 11 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 26.03.2007, acquitted the respondents. Hence, this revision.

4. Heard learned counsel for appellant. Perused the materials on record.

5. In rendering a finding of acquittal, Court below has reasoned as follows:-

(i) It was the case of accused 2, 3 and 4 that they are not partners of the first accused company. A perusal of Ex.D3, Bank Account Opening Form of first accused dated 23.11.2001, informed the names of fifth accused and one Gandhimathi as its partner. When DW-5 was cross-examined on behalf of second accused, he admitted that A2 left the company on 22.05.1996 itself. Ex.D5, Deed of Withdrawal, informed that A3 and A4 had left the company in 1992 itself. Their names were also not found in Ex.D3, Bank Account Opening Form. So also in Ex.D1, Form 'A' - Registration Certificate. All these documents suggested that accused 2, 3 and 4 were not partners of first accused company in the year 2004 and the complainant has also not filed any document to prove that accused 2, 3 and 4 were partners of first accused company.

(ii) It was the contention of accused 1 and 5 that complainant has not proved that the cheque in question related to goods said to have been sold by him. Learned counsel appeared on behalf of complainant had, in the legal notice and complaint, has mentioned that cheque in question was issued towards partial payment of Rs.3,79,500/-. However, he has not mentioned how he arrived such figure. Ex.P4, Account Statement, has not been filed along with the complaint. In Ex.P4 also, the details of

transaction has not been mentioned. When the very transaction itself was denied by A1, complainant has not taken any steps to disprove such contention.

(iii) After much delay, complainant has marked Exs.P19 to P28. It was the contention of accused that they have paid the amount mentioned in Exs.P19 to P22 and P24, invoices and Ex.P4, Account Statement, also admits such position. It was not denied by complainant. It was the contention of accused that the Memo Pads in Exs.P23, P25 to P28 were written by A5 and the contents thereof were not written by him. While it was the case of complainant that Exs. P25 to P28 were issued by employees of A1, he has neither mentioned their names nor examined them."

6. On the above reasoning and for other reasons, Court below rendered a finding of acquittal. This Court finds no error in the judgment under challenge. The Criminal Appeal shall stand dismissed.

kmi

Sd/-
Assistant Registrar(ccc)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Tiruppur.
2. The Section Officer,
Criminal Section,
High Court, Madras.

Criminal Appeal No.401 of 2007

NMI (CO)
KAK (30/11/2018)

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