

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.36 of 2016

M/s.Rungta Iron and Steel Pvt. Ltd.,
Represented by its Manager and
Power of Attorney Holder
Narayan Sharma
No.16, Sembudoss Street,
Chennai - 600 001.

... Appellant

versus

Y.Vasant Rao
Sole Proprietor of
M/s.Sharada Steels & Bearings Co.
Off.No.33/17, Post Office Street,
Chennai - 600 001.

... Respondent

Prayer: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 16.11.2015 made in C.C.No.548 of 2013, on the file of the Fast Track Court-IV, Metropolitan Magistrate, George Town, Chennai - 600 001.

For Appellant : Mr.Rajendra Prasad Tayal

For Respondent : Mr.H.Mohamed Ghouse

J U D G M E N T

The complainant is the appellant.

2. This Appeal is directed against the order of acquittal dated 16.11.2015 in C.C.No.548 of 2013, on the file of the Fast Track Court-IV, Metropolitan Magistrate, George Town, Chennai - 600 001.

3. The appellant/complainant is a Company engaged in the business of trading and selling of Iron and Steel. The respondent is the Proprietor of 'M/s.Sarada Steels and Bearings Co.' He used to purchase goods for his Concern from the complainant on credit basis. He agreed to pay interest at the rate of 24% for payment made after 10 days from the date of invoice.

4. After giving credit to payments made by the respondent for the goods supplied by the complainant under various invoices Rs.14,99,439/- remained due and payable by him. The respondent has paid Rs.3,00,000/- by means of Cheque bearing No.2163. Thereafter, on 08.08.2012, he paid Rs.7,00,000/- by means of Demand Draft. A total sum of Rs.4,99,439/- was due from the respondent.

5. The respondent issued the post-dated cheque [bearing No.001906 dated 29.11.2012 for Rs.4,99,439/-] in question for the discharge of the said liability. After issuing the cheque, he sent a notice alleging that the complainant along with certain persons visited his shop and forcibly obtained the post-dated cheque. A reply was sent denying all the averments of his notice. Thereafter, the cheque was presented for collection on 29.11.2012. It was returned with an endorsement "payment stopped by the drawer". Hence, the complainant issued legal notice dated 04.12.2012 calling upon the respondent to pay the cheque amount. As the respondent failed to make payment, he has filed the complaint. The complainant examined himself as P.W.1 and examined his Banker [P.W.2] and marked 17 documents [Ex.P.1 to Ex.P.17].

6. The case of the respondent is that he has sold his property to the complainant in the name of "Mrs.Geetha Rungta" [D.W.2] wife of Vikas Rungta [D.W.1], one of the Directors of the Company and the sale price was fixed at Rs.21,60,000/-. However, the Sale Deed was executed for Rs.12,04,000/-. The complainant agreed to adjust the balance amount due under invoice No.1400/11-12 dated 24.11.2011 and pay the balance of the sale consideration of Rs.4,56,561/- to the respondent. However, on 29.10.2012, the

complainant along with certain persons visited the respondent's shop and obtained a post-dated cheque for Rs.4,99,439 under threat. The respondent examined himself as D.W.3 and examined D.W.2 and D.W.3 and marked 4 documents [Ex.D.1 to Ex.D.4].

7. The Trial Court has held that the respondent has rebutted the presumptions drawn in terms of Section 138 of the Negotiable Instruments Act and that, thereafter the appellant failed to prove that the cheque was issued for the discharge of legally enforceable debt. The respondent was found not guilty. Aggrieved by the order of acquittal, the appellant filed the present appeal after obtaining leave.

8. The learned counsel appearing for the appellant would submit that the respondent admitted his liability of Rs.4,99,439/- and that, therefore the Trial Court ought to have convicted him. In support of his contentions, the learned counsel relied on the judgments in ***“GOA PLAST (P) LTD. vs. CHICO URSULA D'SOUZA [(2004) 2 SCC 235], SHUBH SHANTI SERVICES LTD. vs. MANJULA S. AGARWALLA [AIR 2005 SC 2506], HITEN P. DALAL vs. BRATINDRANATH BANERJEE [AIR 2001 SC 3897], VIJAYAN vs. SADANANDAN, K. [2009 (3) CTC 786], K.N.BEENA vs. MUNIYAPPAN [2001 (4) CTC 382], RAMES vs. K.SUNDAR [2015 (2) MWN (Cr.) DCC 7 (Mad.)”***.

9. The learned counsel appearing for the respondent would submit that the respondent has raised probable defence and rebutted the presumptions drawn against him under Sections 118 and 139 of the Negotiable Instruments Act. In support of his contentions, the learned counsel relied on the judgments in “*LAXMI DEYCHEM vs. STATE OF GUJARAT [(2012) 13 SCC 375]*, *RANGAPPA vs. SRI MOHAN [(2010) 11 SCC 441]*, *KUMAR EXPORTS vs. SHARMA CARPETS [(2009) 2 SCC 513]*, *KRISHNA JANARDHAN BHAT vs. DATTATRAYA G.HEGDE [(2008) 4 SCC 54]*, *M.S.NARAYANA MENON vs. STATE OF KERALA [(2006) 6 SCC 39]*”.

10. It is an admitted fact that the cheque in question belongs to the respondent and it bears his signature. However, the respondent would contend that the cheque was obtained from him under threat. It is not in dispute that the respondent purchased goods on credit basis from the complainant and he was liable to pay Rs.14,99,439/-. It is also not in dispute that he has paid Rs.10,00,000/- by means of cheque and demand draft. The balance amount payable under the said transaction is Rs.4,99,439/-, the amount covered by the cheque. In these circumstances, it can be presumed in terms of Section 118 and 139 of the Negotiable Instruments Act that the cheque had been issued for the discharge of the said liability. It is a rebuttable

presumption and the respondent can rebut the presumptions by preponderance of probabilities. This presumption may be rebutted by the accused by adducing evidence to support his plea. It may also be rebutted by admissions made or circumstances elicited from the evidence led by the complainant vide **[RANGAPPA vs. SRI MOHAN [(2010) 11 SCC 441]**.

11. It is to be seen whether the initial burden has been discharged by the respondent. The respondent has executed a sale deed in favour of Geeta Rungta [D.W.2], wife of Vikas Rungta [D.W.1] [one of the directors of the complainant] on 30.07.2012. The value of the property [Ex.D.1] as per the valuation report is Rs.21,60,000/-. The case of the respondent is that the complainant purchased the property in the name of D.W.2 and the sale price was fixed at Rs.21,60,000/-, however the sale deed was executed as per the guideline value for Rs.12,04,000/- and that, the Directors of the Company agreed to adjust the balance amount due under the invoice and pay the reminder to him. According to him, a sum of Rs.4,56,561/- . [Rs.21,60,000 value - paid under sale deed Rs.12,04,000/- = Rs.9,56,000/- less Rs.4,99,439/-].

12. The learned counsel appearing for the appellant relied on the judgment of the Hon'ble Supreme Court in **SHUBH SHANTI SERVICES LTD. vs.**

MANJULA S. AGARWALLA [AIR 2005 SC 2506] would submit that in the absence of any authorisation/resolution the Directors of the Company could not have agreed to make adjustment as alleged by the respondent. The Sale Deed has been executed in favour of an individual [D.W.2]. In the absence of any resolution or authorisation it cannot be held that the complainant has purchased the property under Ex.D.2. It is significant to note that the Sale Deed was executed on 30.07.2012. The respondent [D.W.3] in his evidence would admit that he has paid Rs.7,00,000/- by means of Demand Draft. This Demand Draft was received on 08.08.2012, as could be seen from Ex.P.3 accounts. If there was an agreement to adjust the amount as alleged by the respondent, he would not have paid Rs.7,00,000/- by means of Demand Draft on 08.08.2012. In the Sale Deed, he has acknowledged the receipt of the entire sale consideration. In these circumstances, it cannot be said that the respondent has raised a probable defence.

13. The respondent would contend that the cheque was obtained under threat. According to him, he has lodged a complaint [Ex.D.3]. A copy of the complaint was sent by him to the Commissioner of Police, Egmore only on 19.11.2012 and it was received on 21.11.2012 [Ex.D.4]. There is no explanation for the delay in lodging the complaint. He has sent the notice Ex.P.6 calling

upon the complainant to return the cheque only on 17.11.2012. Therefore, it cannot be held that the cheque was obtained under threat.

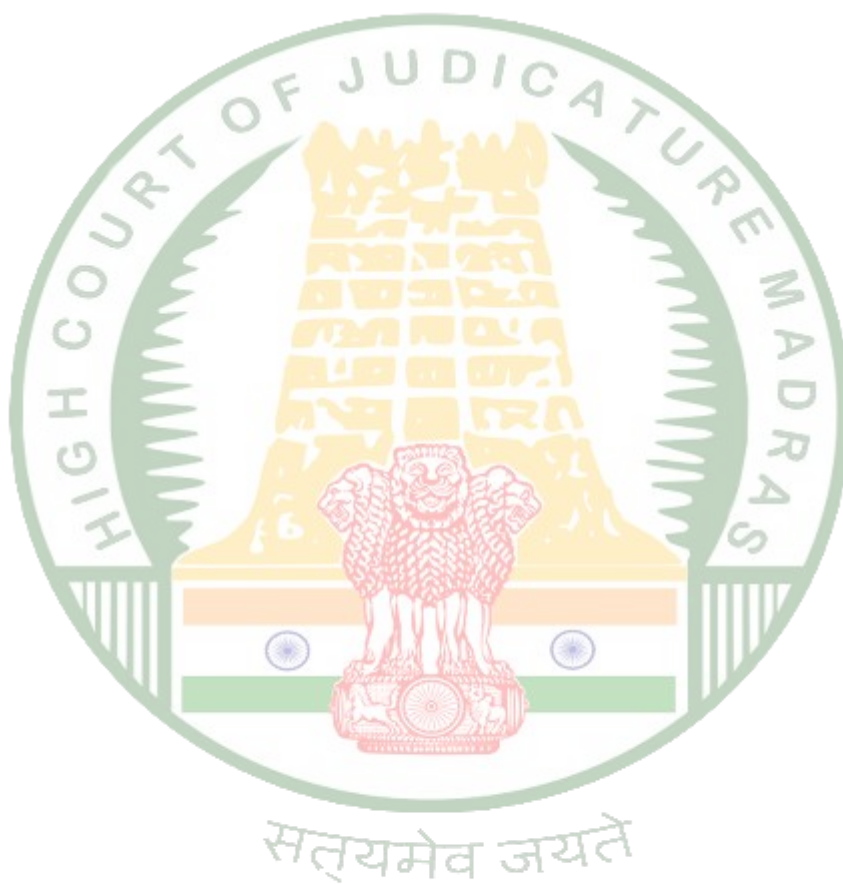
14. In view of the circumstances noticed above, it cannot be held that the respondent has discharged his initial burden of proof. The Trial Court has held that the respondent has rebutted the presumptions drawn under Sections 118 and 139 of the Negotiable Instruments Act. The Trial Court does not appear to have analysed the case in its proper perspective. The view taken by the Trial Court is impermissible on the evidence of record. Therefore, the judgment of the Trial Court cannot be supported and it warrants interference. The respondent is found guilty of the offence under Section 138 of the Negotiable Instruments Act.

15. In the result, this Criminal Appeal is allowed and the order of acquittal dated 16.11.2015 in C.C.No.548 of 2013, on the file of the learned Fast Tract Court-IV, Metropolitan Magistrate, George Town, Chennai - 600 001 is set aside. The respondent is found guilty and convicted under Section 138 of the Negotiable Instruments Act.

16. Registry is directed to post the matter before this Court for hearing the respondent on the question of sentence on 20.09.2017.

28.08.2017

Index : Yes/No
Internet : Yes
sri



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To

1.The Fast Track Court-IV,
Metropolitan Magistrate,
George Town,
Chennai - 600 001.

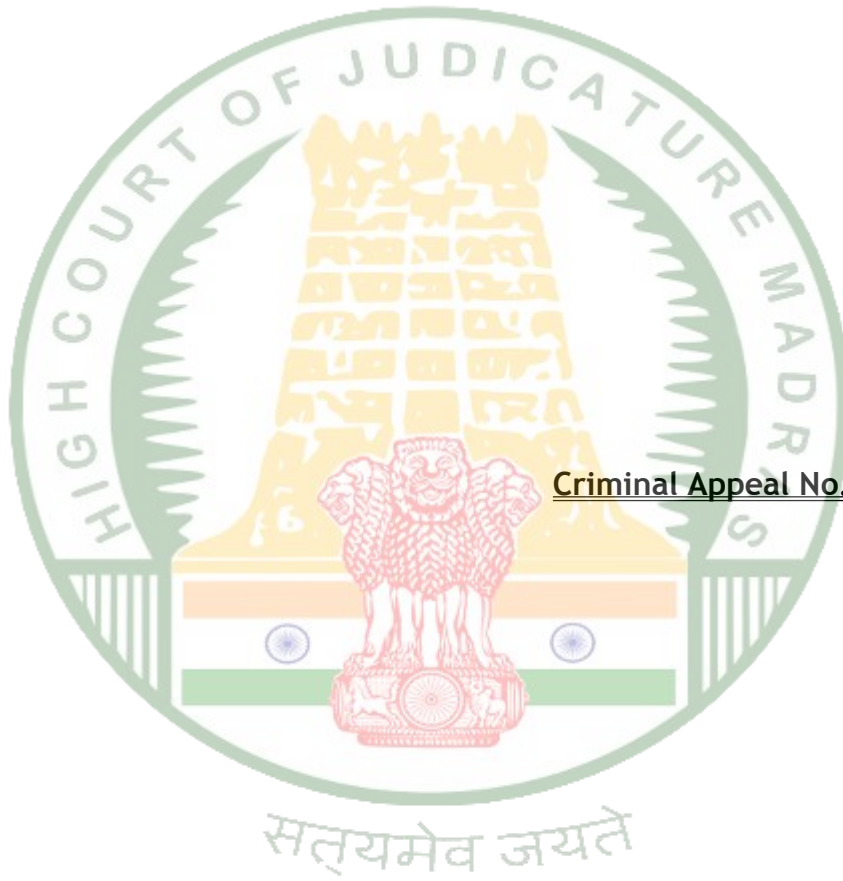
2.The Public Prosecutor,
High Court of Madras,
Chennai.



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N.AUTHINATHAN, J.,

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