

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.08.2017
CORAM
THE HONOURABLE MR. JUSTICE C.T.SELVAM
Crl.A.No.7 of 2008

Praveen J. Bogra
Proprietor,
"Chaman" 407 - D, Priya Towers,
N.H.Road,
Coimbatore - 641 001.

... Appellant

vs

Sudha Nahar
Proprietrix,
Sri Shantinath Textiles,
No.411, N.H.Road,
Coimbatore - 641 001.

.... Respondent

Criminal Appeal filed u/s.378 of the Code of Criminal Procedure against judgment of learned Judicial Magistrate V, Coimbatore, passed in C.C.No.707 of 2005 on 25.09.2007.

For Appellant : Mr.N.Damodaran

JUDGMENT

This appeal arises against judgment of learned Judicial Magistrate V, Coimbatore, passed in C.C.No.707 of 2005 on 25.09.2007.

2. Appellant moved a prosecution informing that respondent purchased dress materials from him and issued a cheque dated 05.05.2005 drawn on Bank of Rajasthan towards payment, which upon presentation was returned unpaid for the reason 'payment stopped by drawer'. Following the procedure envisaged u/s.138 of the Negotiable Instruments Act, appellant preferred a complaint and the same has been taken on file in C.C.No.707 of 2005 on the file of learned Judicial Magistrate V, Coimbatore.

3. Before trial Court, appellant/complainant examined 1 witness and marked 5 exhibits. 1 witness was examined on the side of defence and 3 exhibits were marked. On appreciation of materials before it, trial Court under judgment dated 25.09.2007, acquitted respondent. Hence, this appeal.

4. Heard learned counsel for appellant.

5. Though notice has been directed in the present appeal against respondent, who has been acquitted in the case u/s.138 of the Negotiable Instruments Act, the same is yet to be effected. On a perusal of the judgment, which is sought to be challenged in this appeal, this Court finds that in acquitting respondent, trial Court has found that while it was the contention of appellant that the cheque issued towards payment has been returned unpaid for the reason 'payment stopped by drawer', it was the contention of respondent that there was dispute between them regards quality of materials supplied, that the same were settled in 2003 itself and hence, he has given stop payment instruction to his banker for the cheque which he has given towards security. Despite such position, appellant/complainant has filled the cheque and presented for collection. In support of his contention, respondent has produced Ex.D2, reply letter of respondent, in which it has been stated that goods supplied by appellant were of inferior quality and hence, he asked appellant to take back his goods, for which appellant has asked respondent to sell the goods and pay money without interest. It was further stated that respondent sold goods and paid the amount and when he requested for return of the cheque which has been given towards security, appellant/complainant replied that he misplaced the same and would give at a later point. In cross-examination, appellant/complainant has also admitted that he has not produced invoices for supply of goods. Further, there has been no reply on the side of appellant/complainant to the contention that dispute was settled in the year 2003 itself. The evidence of DW-1, Bank Manager, was to the effect that respondent has issued stop payment instruction in the year 2003 and at that time, there was a balance of Rs.4,40,000/- in his account. Trial Court has found that when cheques given after issuance of the cheque in question have been honoured, it was clear that appellant/complainant has misused the cheque which has been given towards security and there was no explanation on the side of appellant/complainant why he has waited for two years for payment for the goods which were supplied in the year 2003. On the above finding, trial Court found that appellant/complainant has not proved his case and accordingly, rendered a finding of acquittal.

6. As the appeal against acquittal would absolutely not survive on merits, this Court has no hesitation in dismissing the same finding it unnecessary to call upon respondent to answer the case of appellant.

The Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To
The Judicial Magistrate V,
Coimbatore.

+1 cc to Mr.M.Damodaran Advocate sr 62479

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