IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.746 of 2007

M/s.Shriram Investments Ltd.,
Rep. by Sri M.Narayanan,
Divisional Manager,
Shriram Investments Ltd.,
Admn. Office,
No.4, Lady Desikacary Road,
Mylapore,
Chennai - 4. .. Appellant/Complainant

Vs

1.Mr.V.M.Athulla
2.Mr.V.M.Kalaimulla
3.Mr.V.M.Ehasanulla .. Respondents/A 1 to 3

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to call for the records of the judgment passed in C.C.No.2484 of 1998 dated 28.12.2006, on the file of the Learned XI Metropolitan Magistrate, Saidapet, Chennai set aside the same and convict the respondents.

For Appellant : Mr.K.V.Sridharan

For Respondents : Notice sent, service awaited

JUDGMENT

The appellant is the complainant in a private complaint filed against the respondent for the offence under Sections 406, 420 r/w.34 IPC in C.C.No.2484 of 1998 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. The trial Court, after trial, acquitted the accused from all the charges. Now, challenging the order of acquittal, the present appeal has been filed.

2. The case of the complainant in brief is as follows:-

The complainant is a financial company. The respondents are directors and proprietors of one M/s.S.N.P.Foods Limited and they have availed a loan for a sum of Rs.7,30,000/- and agreed to repay the same in 60 monthly installments. Out of the loan amount sanctioned , they have received a sum of Rs.1,32,000/- for purchasing air conditioner. They received the balance sum of Rs.5,98,000/- for the interior decoration work in their corporate office. But, they did not purchase any machineries and also failed to repay the amount. It is further stated that the respondents/accused had also shows vouchers in the name of non-existent companies, thereby committed the offence under Sections 420 and 406 IPC.

3. The Court below taken cognizance and issued summons to the respondent. In order to prove its case P.W.1 to P.W.3 were examined and Ex.Ps.1 to 6 were marked. When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the accused the Form No.32 of M/s.N.P.Foods Ltd was marked as Ex.D.1.

4. Considering all those materials, the trial Court acquitted the accused holding that it is the specific case of the complainant that after obtaining loan, the accused had purchased the machineries and materials, thereafter disposed the properties, and misappropriated the sale proceeds in violation of loan agreement, but the loan agreement was not produced by the complainant. Apart from that, there is also dispute regarding the repayment of the loan amount. The complainant accepted the receipt of part of loan amount. The respondents were not able to pay the remaining loan amount as a company become sick and there is no intention on the part of the respondents to cheat the complainant and hence, the offence under Section 420 will not be attracted. So far as the submission of bogus voucher/purchase of machineries is concerned, the complainant failed to prove the same. Now, challenging the order of acquittal, the present appeal has been filed.

5. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on records carefully.

6. So far as the charge under Section 420 IPC is concerned, it is the case of the complainant that the respondents obtained the loan for purchasing air conditioner and also doing interior decoration. But, P.W.1 in his evidence has stated that the machineries have been purchased, subsequently in violation of the loan agreement , the respondents have sold the machineries without the knowledge of the complainant and they have committed the offence. As rightly held by the trial Court, the loan agreement was not produced to establish the condition stipulated in the loan agreement. Apart from that, it is also admitted by P.W.1 that the accused had also repaid part of the loan amount and there is also some dispute regarding the actual repayment. It is the case of the complainant that part payment was also

made and the remaining amount could not be paid since the company become sick.

7. To bring home an offence under Section 420 of IPC, the complainant should prove that the accused had been acted with fraudulent and dishonest intention from the very inception of the transaction. But from the evidence available on record, this Court could not find that there is any fraudulent intention on the part of the accused to cheat the complainant . Admittedly, a part of the loan amount has been paid and only due to their inability the accused were not able to repay the loan amount. At any rate, the act of the respondents/accused will not attract an offence under Section 420 IPC. If there is any due from the respondents, it is for the complainant to seek civil remedy for recovery and they cannot recourse to the criminal remedy.

8. So far as the allegation of forgery is concerned, after considering the entire material the trial Court came to the conclusion that the complainant failed to prove that the accused had forged the vouchers. It is settled principal of law that in an order of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

9. In the above circumstances, I am of the considered view that the complainant failed to prove the charge against the accused beyond any reasonable doubt and the trial court considering all the materials, acquitted the accused. I find no illegality or irregularity in the order passed by the court below and there is no merit in the appeal and the same is deserves to be dismissed.

10. 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dh/mrp

To

1.The XI Metropolitan Magistrate,
Saidapet, Chennai

2.The Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The Director General of Police,
Chennai,

4.The District Collector, Chennai.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.85454

Crl.A.No.746 of 2007

NRI(CO)

rrs 18/09/2018