IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.1141, 1142 of 2002

B.M.Arokiasamy .. Appellant in both Crl.As./ Complainant

Vs

P.M.Swaminathan
prop: Accurate Computers &
Accurate Computer Peripherals
T.P.G. Complex (groundfloor)
1280 Mettur Road,
Erode .. Respondent in both Crl.As./ Accused

Common Prayer :- Criminal Appeal filed under Section 378 Cr.P.C., to set aside the order of acquittal made in C.C.Nos. 565 & 566 of 2000 by the Judicial Magistrate No.II, Erode dated 13/06/2002.

For Appellant : Mr. T.Muruga Manickam
For Respondent : No appearance

COMMON JUDGEMENT

Since the parties are same and the issue involved in both the appeals are one and the same, both the appeals are disposed by a common judgment.

2. Challenging the order of acquittal passed by the learned Judicial Magistrate No.II, Erode, in C.C.Nos.565 and 566 of 2000 dated 13.06.2002, the present appeals had been filed. The appellant herein filed two private complaints, for an offence under Section 138 of Negotiable Act, against the respondent herein, on the ground that the respondent/accused had some business transaction with the appellant from the September 1999 to 2000 June, and there was a due to the tune of Rs.1,35,286/- and in order to discharge the above said due, the accused had issued 10 cheques. Out of the 10 cheques, the disputed 2 cheques have been issued on 22.06.2000 for a total sum of Rs.25,000/-. When the above cheques were presented for

collection, the same were returned on the ground payments stopped by the account holder. Thereafter, he issued a legal notice directing the respondent to pay the amount, for which, the respondent issued a reply stating that he had settled the entire dues and there is no liability and requested the appellant to furnish the accounts to show the liability enabling him to proceed further. In the above circumstances, the petitioner had filed the above private complaints. The Court below also taken cognizance and issued summons.

3. In order to prove his case, the appellant/complainant examined himself as PW.1 and examined the Bank Manager as PW2 and also marked the disputed cheques (Ex.P.1 & Ex.P.2), return memos(Ex.P.3 & Ex.P.4), Legal notice (Ex.P.5), acknowledgment card (Ex.P.6) and reply notice sent by the respondent (Ex.P.7). After examining the complainant witnesses, the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same. Considering all those materials, the trial Court acquitted the accused on the ground that the appellant had failed to prove the actual liability. Eventhough in the reply notice sent by the respondent, it was clearly stated that he had already settled all the dues and also requested him to furnish the details, but without furnishing the details, straight away the complaint has been filed. Apart from that though the appellant claimed that since there was a business transaction between the parties, the appellant failed to produce the accounts before the Court and hence, an adverse inference can be drawn against him. Now, challenging the order of acquittal, the present appeal has been filed.

4. I have heard Mr.T.Muruga manickam, learned counsel appearing for the appellant and also perused the materials available on record, carefully.

5. Though notice was served on the respondent, when the respondent was called none appeared before this Court either in person or through the counsel and hence, this Court is left with no option but to pass orders hearing the learned counsel appearing for the petitioner and considering the materials placed on record.

6. The case of the appellant/complainant is that in a business transaction, there is an outstanding of Rs.1,35,286/- payable by the respondent. For that purpose, the respondent had issued 10 cheques. Out of the 10 cheques, the disputed 2 cheques had been issued for a sum of Rs.25,000/-. When the chelques were presented for collection, the same were returned on the ground that payment was stopped by the respondent/accused. Thereafter, the appellant/complainant sent a legal notice demanding money, for which, the respondent sent a reply stating that he has discharged the entire dues and the

cheques were given as a security at the time of transaction and requested the complainant to furnish the copy of the accounts enabling him to proceed further. But the appellant failed to furnish a copy of the accounts as requested by the respondent. But, he proceeded to file a complaint.

7. On perusal of the records, it could be seen that the respondent/accused has admitted the cheques. Hence, there is a initial presumption under Section 139 of Negotiable Instrument Act that the cheques had been issued to discharge the legally enforceable debt, but it is only a rebuttable presumption and it can be rebutted by raising a probable defence. In the instant case, eventhough in the reply notice sent by the respondent, he had denied the liability and he had also requested the appellant to furnish the copies of the accounts, the petitioner failed to send the accounts and he has also not produced the accounts before the Court to establish the liability.

8. In the above circumstances, I am of the considered view that the respondent has raised a probable defence, now, the burden shifts on the appellant to prove that there was a legally enforceable debt. But, absolutely, there is no material available on record, except the disputed cheques, the appellant did not produce any material to show that there was a legally enforceable liability. Even though the liability said to have arisen out of the business transaction, the appellant did not produce the account. In such circumstances, only an adverse inference can be drawn against the appellant. That apart, the cheques were not returned on the ground of insufficiency of funds, but it is only returned on the ground of stop payment made by the respondent, due to the dispute regarding the liability. Considering all those materials, the trial Court rightly came to a conclusion that the appellant had failed to prove the charge beyond reasonable doubt and acquitted the appellant.

9. Considering the above, I find no illegality or irregularity or perversity in the order passed by the court below, and no merit in the appeal, hence, the Criminal Appeal fails and deserves to be dismissed.

10. In the result, both the Criminal Appeals are dismissed. The judgments of the Court-below in C.C.Nos.565 & 566 of 2000 dated 13.06.2002 are hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate No.II,
   Erode.

2.Do- Through The Chief Judicial Magistrate,
  Erode.

3.The Public Prosecutor,
  High Court, Madras.

4.The Section Officer,
  VR Section, High Court, Madras.(2 Copies)

Crl.A.Nos. 1141 & 1142 of 2002

BR(CO)
GN(02/04/2018)