IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.874 of 2007

Sri Kalaimagal Process,
Rep. by its partner,
R.Pandiyan,
Kannimar Koil Thottam,
Kuppandamopalayam,
Veerapandi Post,
Thirppur - 641 605. .. Appellant/Complainant

Vs

1. Hanshah Exports represented by its Proprietor, Thiru. Hanif Shabuddin S/o. K.M.Hanif, 22, Kangayam Main Road, Thiruppur - 641 604.

2. Hanif Shabuddin .. Respondents/Accused 1 & 2

Prayer:- Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment dated 06.08.2007 by the learned Judicial Magistrate - II, Thiruppur in C.C.No.1266 of 2004 acquitting the respondent from the case.

For Appellant : Mr.S.N.Arun Kumar for C.Ram Kumar

For Respondent : No Appearance

JUDGEMENT

The appeal has been filed against an order of acquittal. The appellant is the complainant in a private complaint filed for an the offence under Section 138 of Negotiable Instruments Act. The above complaint has been filed on the ground that, the appellant is doing business in dying and bleaching at Thiruppur, and the respondents used to do business with appellant. During the course of the business transaction, there was an outstanding amount of Rs.4,05,817/-(Rupees Four Lakh Five Thousand Eight Hundred and Seventeen Only). In order to discharge the above liability, the respondent issued three cheques, one cheque dated 03.08.2003 for a sum of Rs.23,555/- (Rupees Twenty Three Thousand Five Hundred and Fifty Five Only) drawn on Union Bank of India, Thiruppur, another cheque dated 13.09.2003 for a sum of Rs.15,000/-(Rupees Fifteen Thousand) drawn on State Bank of Trivancore, Vijayapuram, Thiruppur Branch and the third cheque dated 30.09.2003 drawn on same bank for a sum of Rs.25,000/-(Rupees Twenty Five Thousand).

2. When the above cheques were presented for collection, it was returned on the ground that there was "insufficient fund" in the respondent account. Thereafter the appellant issued a legal notice to the respondent, but the respondent refused to receive the notice, and failed to pay the amount, hence, the appellant filed a private complaint. The Court below taken cognizance of the offence, and summons were issued to the respondents.

3. In order to prove its case, the appellant examined himself as P.W.1 and marked 10 documents. The Power of Attorney given in favour of the appellant was marked as Ex.P.1 three cheques were marked as Ex.P.2 to Ex.P.4, the bank memos were marked as Ex.P.5 and Ex.P.7, the legal notice issued by the appellant to the respondent was marked as Ex.P.6, the postal cover, which the respondent refused to receive, was marked as Ex.P.8, the acknowledgment and the postal receipt were marked as Ex.P.9 and Ex.P.10.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. However, he has examined Mr.Kumar, Bank Manager as D.W.1 and marked the cheque book which contains 100 cheques as Ex.D.1.

5. Considering all the above materials, the trial Court acquitted the accused on the ground that the appellant failed to prove the liability and held that even though, the liability is arising out of a business transaction, the account book and ledger was not marked by the appellant/complainant. Now, challenging the order of acquittal, the present appeal has been filed.

6. I have heard Mr.C.Ram Kumar, learned counsel appearing for the appellant and there is no representation for the respondent. I have perused the records carefully.

7. It is the specific case of the appellant that the liability is arising out of the business transactions and there was a total liability for a sum of Rs.4,05,870/-(Rupees Four Lakh Five Thousand Eight Hundred and Seventy Only) and in order

to discharge the part of the liability, the present cheques have been issued. But the appellant did not produce the account books, ledgers and other receipts to prove that there is a liability. Apart from that, P.W.1 claimed to be a partner of the appellant partnership firm, but no documents had been produced to show that P.W.1 is the partner of the firm.

8. The trial Court considering all those materials and also following the judgment of the Supreme Court has held that In view of the non production of account book, the accused has discharged his initial burden and it got shifted to the complainant to prove the liability, but the complainant failed to prove the debt and acquitted the accused. I have carefully considered the entire materials available on record and I find no illegality or perversity in the impugned judgment of the trial Court, and I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

10. In the result, the Criminal Appeal is dismissed and the impugned order of acquittal passed by the court below is hereby confirmed. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

dh/mrp
To
1.The Judicial Magistrate - II,
Thiruppur.

2.Do Thro The Chief Judicial Magistrate
Coimbatore.

3. The Public Prosecutor
High Court, Madras 104.

4. The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.C. Ramkumar, Advocate sr 87091.

Crl.A.No.874 of 2007

VD(CO)
SP(14/09/2018)