IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.1443,1445 &1446 of 2004

M/s.Ses Technologies Limited
by Mr.Mukesh Kalmadi,
Managing Director and rep. by
Mr.S.Sriram, Executive Commercial,
Tatabad, Coimbatore. .. Appellant in all Criminal Appeals

Vs.

1. M/s.Divine Peripherals India Pvt. Ltd.
   Rep. by its Managing Director,
   Mr.P.Manoharan
   15 - B, 100 Feet Road,
   Gandhipuram, Coimbatore.

2. P.Manoharan,
3. R.Balachandra
4. Suresh Kumar
5. A.Joseph Peter .. Respondents in Criminal Appeals

Prayer : Criminal Appeals filed under sections 378 of Criminal Procedure Code to set aside the judgment dated 26.10.2004 made in C.c.No.801 of 2001, 802 of 2001 and 800 of 2001 respectively on the file of the Judicial Magistrate No.II, Coimbatore and punish the respondents in accordance with law.

For Appellant in all Criminal Appeals : Mr.D.Raj Kumar for Sai Raaj Associates

For Respondents in all Criminal Appeals : Mr.R.Rajiv Gandhi for R2 & R3
Mr.Saravana Sowmiyan for R5
No Appearance for R4

COMMON ORDER

These appeals have been filed against the order of acquittal. Since the appellant and the respondents are same in both the Criminal Appeals and the dispute between the parties in both the appeals are one and the same, these appeals are disposed of by this common order. The appellant is the complainant in a private complaint for the offence under Section 138 of the Negotiable Instruments Act. The complaint has been filed on the ground that the appellant is engaging in supplying computer spare parts and accessories and they supplied the materials to the respondents/accused, in 9 invoices and there is a liability of Rs.6,82,752/-. In order to discharge the above liability, the respondent/accused issued seven cheques out of which 3 cheques were drawn on Global Trust Bank Limited, Coimbatore Branch) and when the above cheques were presented before the ICICI Bank, Trichy, the same was returned as "Insufficient Funds". Thereafter, the appellant issued a legal notice demanding the said amount, and the respondents issued a reply disputing their liability. Thereafter completing the legal procedures, the appellant filed three complaints in C.C.Nos.800 to 802 of 2001 on the file of the learned Judicial Magistrate No.II, Coimbatore. The Court below after taking cognizance offence, issued summons to the accused.

2. In order to prove its case, the complainant examined one Sriram, Commercial Executive of the company and also a Power of Attorney, as P.w.1 and examined the Bank Manger of the Global Trust Bank as P.W.2, and filed 27 documents, namely, the resolution passed by the company (Ex.P.1), Power of Attorney executed by the company (Ex.P.2), return cheques (Exs.P3 to 5) and the return memo (Exs.P6 to 8) and various invoices and the legal notice issued by the appellant, and reply notice sent by the respondents, and also filed the account statement of the company in respect of the respondents.

3. When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, they examined, A4 in the complaint as D.W.1, the Global Trust Bank Manger as D.W.2 and the Assistant Manager of ICICI Bank as D.W.3.

4. Considering all these materials, the trial court acquitted the accused/respondent on the ground that there is a dispute in the account maintained by the appellant Company and the invoices filed by them did not reflect correct statement. Especially when the accused disputing their liability it is the duty of the complainant to prove it. The trial Court mainly acquitted the respondent/accused holding that the appellant/complainant failed to prove that liability. Apart from that A4 and A5 are the share holders of the first accused company and there is no material available on record to show that they are actually involved in the day to day affairs of the first accused company. Now challenging the above said order of acquittal, the appellant/complainant is present before this

Court with these appeals.

5. I have heard, Mr.D.Raj Kumar, learned counsel appearing for the appellant and Mr.R.Rajiv Gandhi, learned counsel appearing for Respondents2 & 3 and Mr.Saravana Sowmiyan, learned counsel appearing for the 5th Respondent. I have perused the records carefully.

6. The learned counsel for the appellant would submit that the invoices filed by the appellant company, clearly reflects the liability of the respondents, especially when the respondents have admitted the issuance of cheque there is a initial presumption against them. But they failed to raise the presumption. In the said circumstances the courts below ought not to have held that the appellant/complainant failed to prove the liability. Apart from that the trial Court erred in holding that the P.W.1 did not personally aware of the transaction between the parties, where as the documentary evident clearly proved the liability of the respondent. The Court below also erred in acquitting A4 and A5 are partners of the first accused company and actively involved in the affairs of the company.

7. The learned counsel for the respondents would submit that when there is a dispute in the account maintained by the appellant and the appellant failed to produce the correct account and the liability is in dispute the initial presumption has been raised and it is the duty of the appellant to prove the liability. But the appellant failed to prove the liability as P.W.1 examined the appellant company has clearly stated that he did not personally aware of the transactions between the appellant and the first respondent. Apart from that A4 and A5 are only the sleeping partners and they were not responsible for the affairs of the first accused company. The court below after carefully considering evidence acquitted the accused and there is no infirmity in it.

8. I have considered the rival submissions. It is the specific case of the appellant/complainant is that the respondent/accused had some business transaction with the appellant, and they have purchased computer spare parts in 9 invoices for a sum of Rs.6,82,752/-. In order to discharge the same, is for the above amount they have issued 7 cheques and when the cheques were presented and the same were returned on the ground of “insufficient funds” to the respondent’s account. In order to prove the same, the appellant have marked 9 invoices and they have also examined Commercial Executive of the appellant Company as PW1. But the respondent/accused disputed the liability, stating that they have already paid the amount and stated that invoices filed by the appellant do not reflect

the correct liability. PW1, the commercial executive of the appellant also deposed that he did not personally aware about the transaction.

9. Now the respondent/accused has raised a doubt about the liability thereby raised the probable defence that there is no liability. Once a probable defence has been raised, the initial presumption on the accused under Section 139 of the Negotiable Instruments Act has been raised and it is for the complainant to prove the liability.

10. P.W.1, Commercial Executive Manager of the company, has stated that he was not able to say anything about the liability. Apart from that the trial Court considered the entire documents and doubted the invoices filed by the appellants as the amounts varies. Considering all these materials, the Trial Court acquitted the accused. I have carefully considered entire materials available on record.

11. It is settled law that in a case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him. Every person shall be presumed to be an innocent, unless his guilt is proved by a competent Court. 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 the evidence on record, the appellate Court should not disturb the finding and the acquittal recorded by the trial Court. In the instant case, the trial Court, after considering the entire evidence, has acquitted the accused. In the facts and circumstances, I find no illegality or irregularity or perversity in the order passed by the court below. Hence, these appeals fail and the same deserves to be dismissed.

12. In the result, these Criminal Appeals are dismissed and the order of acquittal passed by the learned Judicial Magistrate No.II, Coimbatore in C.C.Nos.800 to 802 of 2001 dated 26.10.2004 are confirmed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.II,
Coimbatore.

Crl.A.Nos.1443, 1445 & 1446 of 2004

MP(CO)
GN(09/07/2018)