

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.190 of 2004

Pondy Metal and Rolling Mills Pvt. Ltd.,
represented by its Authorised,
representative-cum-Accountant,
Murugaiyan,
having office at
R.S.No45, Cuddalore Road,
Kirumampakam, Bahour,
Pondicherry - 607 402
Appellant/complainant

Vs

1. M/s. Sree Meenakshi Corporation,
represented by its Partner Mr.Ganesan,
2. Mr. Ganesan,
both having their office at No.86/B,
Padamangalam Street,
Mayaladuthurai - 609 001 ..Respondents/Accused

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to
set aside the judgment of the learned Judicial Magistrate I,
Pondicherry in C.C.No.389 of 2002 dated 18.11.2003 acquitting
the respondent/ accused.

For Appellant : Mr.C.Sreedharan

For Respondent : No appearance

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JUDGEMENT

Challenging the order of acquittal passed by the
learned Judicial Magistrate-I, Pondicherry, in C.C.No.389 of
2002 dated 18.11.2003, the complainant has filed the present
appeal.

2. The appellant is the complainant in a private complaint filed under Section 138 of Negotiable Instrument Act. The complaint has been filed on the ground that the appellant is a private limited company engaged in manufacturing and marketing iron rods, bars and allied products. The respondents/accused was regularly purchasing the products from the appellant and there was an outstanding . In order to discharge the liability the respondent issued a cheque on 07.01.2002 for a sum of Rs.75,000/- drawn on Union Bank of India, Mayiladuthurai. When the same was presented for collection, it was returned for the reason that it exceeds arrangements. Then, he had issued legal notice calling upon him to make payment. Even though he received the notice, he did not send any reply. In the above circumstances, the complaint has been filed.

3. In order to prove his case, one Murugaiyan, who was authorized by the company, was examined as P.W.1 and the invoice dated 14.06.2001, weight measurement slip, disputed cheque, return memo, cop of the notice and the postal acknowledgment were marked as Ex.P.1 to Ex.P.6.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. He did not examine any witness, but marked 4 exhibits, Bill Book was marked as Ex.D1, letter sent by them as Ex.D2, Advocate Notice and acknowledgment were marked as Ex.D3 and Ex.D4.

5. Considering the above materials the trial Court acquitted the respondent/accused on the ground that the complaint has been filed by one Murugaiyan based on the resolution said to have been passed by the Company in the year 2000, but the copy of the original resolution was not produced before the Court and no power of attorney was given to the said person to file a complaint. Apart from that the complaint has been filed beyond the statutory period and it is barred by limitation. Now, challenging the above said order of acquittal, the present appeal has been filed.

6. Even though notice was served on the respondents and the name of the respondents were also printed in the cause list, none appeared for the respondent.

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

8. The trial Court acquitted the respondents mainly on the ground that the authorisation given by the complainant to file the private complaint is doubtful, even though the authorization letter said to have been given to P.W.1 to file a complaint and give evidence, letter authorizing P.W.1 to file a complaint, the original of the authority was not filed before

the Court. Apart from that the resolution passed in favour of P.W.1 in the year 2000 and the complaint has been filed only in the year 2002 and hence, the trial Court doubted the genuineness of the authorization and also came to a conclusion based on the xerox copy of the authorization given to P.W.1 in the year 2000, the complaint has been filed only in the year 2002 and it cannot be accepted. Apart from that the lower Court also held that the cause of action for filing the complaint arises on 08.02.2002, but the complaint is not filed within one month from the date of arising cause of action. But it was only filed on 11.03.2002. Hence, the complaint is also barred by limitation.

9. I have considered the submission and carefully perused the records and I find no illegality or irregularity in the judgment of the Court below and there is no merit in the appeal and it deserves to be dismissed.

10. In the result, the Criminal Appeal is dismissed and the judgment of the Court below is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Pondicherry

Crl.A.No.190 of 2004

ssv(co)
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