

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.1605 of 2002

P.V.Balasubramaniam ... Appellant/Complainant

Vs

C.Nagarajan ... Respondent/Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973 against the Judgment dated 22.08.2002, passed in C.C.No.9094 of 1999, by the learned XIV Metropolitan Magistrate, Egmore, Chennai.

For Appellant : Mr.C.S.Dhanasekaran

For Respondent : No appearance

J U D G M E N T

Challenging the judgment of acquittal passed in C.C.No.9094 of 1999, dated 22.08.2002, by the learned XIV Metropolitan Magistrate, Egmore, Chennai, this appeal has been preferred by the complainant, as appellant.

2.The case of the appellant/complainant is that for the enforceable liability, the accused has issued two cheques of Union Bank of India, Chamiers Road Branch, Chennai, for a sum of Rs.60,000/- each dated 13.07.1999 and another cheque drawn in Tamil Nadu Mercantile Bank, Anna Salai Branch, Chennai, for a sum of Rs.50,000/- on the same date, totalling a sum of Rs.1,70,000/-. When the cheques were presented by the appellant/complainant in Indian Overseas Bank, Chennai, Apollo Hospital extension counter on 14.08.1999, the same were returned with a memo saying that there was no sufficient fund in the account. Therefore, he preferred a complaint before the Metropolitan Magistrate.

3.The accused denied the offence, when questioned. On the side of the complainant, four witnesses were examined and thirteen exhibits were marked. With respect to incriminating

evidence, the accused was questioned under Section 313[1][b] of Cr.P.C. and he denied his complicity with the offence.

4.The learned Metropolitan Magistrate, after analysing the evidence, found that on the same cause of action, second notice was issued and on that basis, case was filed and therefore, the accused is entitled to acquittal.

5.Learned counsel for the appellant/complainant contends that the accused has not disputed the issuance of cheques and has also not produced any evidence, rebutting the presumption under Section 139 of the Negotiable Instruments Act, 1881 and the learned trial Judge is not correct in acquitting the accused relying on Ex.P7.

6.In Ex.P7 notice, it has been clearly stated that the cheques were presented on 15.07.1999 and the same were returned on 16.07.1999 and within fifteen days i.e., on or before 31.07.1999, notice should have been issued. From Ex.P7, it is seen that on 21.07.1999, a notice was issued and no case was filed within the stipulated period from the date of issuance of such notice i.e., on 21.07.1999. But, it is also seen that on 20.08.1999, another notice was issued and taking the date of that notice, complaint was filed.

7.It is well settled that creation of successive cause of action is impermissible. The Hon'ble Supreme Court in M.S.Uniplas India Limited and others Vs State [Govt. of NCT of Delhi] reported in 2001[3] CTC 309, in paragraph No.9, it is held as follows :

"If any notice is issued under Section 434 of the Companies Act within 15 days of the information from the Bank regarding return of the cheque drawn by a company as unpaid, such a notice would as well be good enough under clause (b) of the proviso to Section 138 of the NI Act. This Court has held in Sadanandan Bhadrar 1998[2] CTC 462 that a complainant cannot create successive cause of action with the same cheque. If no complaint is filed on the first cause of action the payee is disentitled to create another cause of action to file a complaint for the purpose of launching a prosecution on it. Para 6 of the said decision contains the thrust of the reasoning. After referring to the four actual premises necessary to concatenate into a cause of action M.K.Mukherjee, J. has said thus:

"If we were to proceed on the basis of the generic meaning of the term "cause of action", certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b)

of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (c) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under Section 142 is to be reckoned accordingly. The combined reading of the above two sections of Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises-and can arise-only once."

8. Therefore, filing of the complaint on the creation of second cause of action cannot be accepted and therefore, the trial Court has rightly acquitted the accused. This Court does not find any reason to interfere with the judgment of the trial Court.

9. In fine, this Criminal Appeal is dismissed and the judgment of acquittal passed in C.C.No.9094 of 1999, dated 22.08.2002, by the learned XIV Metropolitan Magistrate, Egmore, Chennai is confirmed.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To
The XIV Metropolitan Magistrate,
Egmore, Chennai.

Copy to:

The Public Prosecutor,
High Court, Madras

Cr1. Appeal No.1605 of 2002

MD: 10/11/2017