

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.11.2017
CORAM
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN
Crl.A.No.447 of 2002

P.Balasubramanian .. Appellant
vs.

1. M/s. Kalamani Tex
Rep. by its Partner
B.Subramanian
S/o. Balan,
No.202, Thennampalayam
Tiruppur - 4.

2. B.Subramanian
Partner of
M/s. Kalamani Tex,
202, Thennampalayam, Tiruppur - 4. .. Respondents

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C.,
against the order of acquittal in Judgment, dated 04.10.2001
made in C.C.No.195 of 2001 on the file of the first class
Judicial Magistrate No.1, Tiruppur.

For Appellant : Mr.S.Rajendrankumar
for Mr.B.Harikrishnan

For Respondents : Mr.K.Sudhakar

JUDGMENT

This Criminal Appeal is directed against the Judgment of the
Judicial Magistrate No.1, Tiruppur dated 04.10.2001 in
C.C.No.195 of 2001 acquitting the accused for the offence under
Section 138 of Negotiable Instruments Act.

2. The case of the complainant is that in the garment
business jointly done by the complainant and the accused,
accused owed Rs.11,20,000/-, for that the second accused on
behalf of his firm, first accused issued the cheque, dated
07.11.2010. When the same was presented for collection with the
bank, the same was returned with endorsement saying that there
was no sufficient fund in the account of the accused. After
issuing notice within the stipulated time, the complainant
lodged the complaint in time. The accused was questioned as to
the alleged offence and he denied.

3. On the side of the complainant, two witnesses were examined and 10 Exhibits marked. With respect to the incriminating evidence, the accused was questioned under Section 313 (1) (b) Cr.P.C and the accused denied his complicity with the crime. On the side of the accused, one witness was examined and no Exhibit was marked on his side.

4. The trial Court after analysing the evidence both oral and documentary acquitted the accused. Aggrieved by the Judgment, the complainant has preferred this Criminal Appeal.

5. The learned counsel appearing for the appellant / complainant mainly argued that as per Sections 118 and 139 of the Negotiable Instruments Act, every negotiable instrument is to be presumed to have been drawn for consideration and the holder of a cheque is to be presumed to have received the same for the discharge in whole or in part of any debt or other liability unless the contrary is proved. It is contended that there is abundant evidence as to the joint business by the complainant and the accused and as per Ex.P.10 Debt Confirmation Deed, the accused is bound to pay Rs.11,20,000/- and only for that he issued the cheque and therefore liability has been established by the complainant. Without looking into the above aspects, the trial Court acquitted the accused and therefore, Judgment is to be reversed.

6. The learned counsel appearing for the respondents / accused per contra contends that the trial Court has rightly found Ex.P.10 as unbelievable and therefore, the trial Court acquitted the accused on the ground that there is no existing liability.

7. There is no doubt in this case as to the issuance of cheque, Ex.P.1, return of the same on presentation with the bank for want of sufficient fund, issuance of notice in time and filing of case within the stipulated period. The business transaction between the parties is also admitted. Ex.P.1, Cheque and Ex.P.10, Debt Confirmation Deed are the documents based on which the complaint has been filed. Ex.P.1 is the cheque alleged to have been issued by the second accused and Ex.P.10 is the alleged debt confirmation deed executed by the second accused as a partner of the first accused firm, wherein he agreed to pay Rs.11,20,000/- on or before 07.11.2000 to the complainant. The signatures in both the cheque as well as the above Debt Confirmation Deed, Ex.P.10 are admitted.

8. The only contention raised by the accused is that he never executed the Debt Confirmation Deed, Ex.P.10 and as requested by the complainant, he only signed in the stamp papers and issued the blank cheque, only to convince the bank authorities not to initiate any action against the complainant,

for his dues to the Bank.

9. It is further contended by the learned counsel appearing for the respondents that the signature alone was put in the blank stamped papers without any seal of the first accused firm and Ex.P.10 was created using the signed blank stamp papers.

10. As per Section 118 of the Negotiable Instruments Act, presumption is to be drawn that the cheque was issued by the accused for consideration mentioned therein, as the accused admits his signature in the cheque. As per Section 139 of the Negotiable Instruments Act, it shall be presumed that the holder of the cheque received the same for the discharge in whole or in part of any debt or other liability unless the contrary is proved. When the accused took a plea that the cheque was not issued for any liability and Ex.P.10 was not executed by him, it is for him to establish that there is no existing liability and also circumstances under which he signed Ex.P.10. No doubt the complainant has not mentioned about Ex.P.10 either in his notice or in the complaint but as per the above said provisions of the Negotiable Instruments Act when presumption is in favour of the complainant, he is not bound to disclose all materials that he possessed.

11. This Court carefully perused Ex.P.10. The signature of the accused has been put over the seal of the firm and therefore, the contention of the learned counsel appearing for the respondents that the accused put his signature alone without any seal in the blank stamp paper cannot be accepted.

12. For the aforesaid reasons, this Court holds that the cheque was issued by A2 on behalf of the firm A1 for the existing liability under Ex.P.10 and therefore, both the firm as well as A2 committed the offence under Section 138 of Negotiable Instruments Act.

13. In the result, this Criminal Appeal is allowed and accordingly, the Judgment dated 04.10.2011 passed in C.C.No.195 of 2001 on the file of the Judicial Magistrate No.1, Tiruppur is set aside. Both the respondents 1 and 2 are found guilty for the offence under Section 138 of Negotiable Instruments Act.

The second accused is directed to undergo Simple Imprisonment for three months and also to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for 20 (Twenty) days. The first accused firm is directed to pay a fine of Rs.5,000/-, in default, the second accused, who is a partner of the above firm has to undergo Simple Imprisonment for one month. The trial Court is directed to secure the accused /

second respondent to undergo the period of sentence by issuing NBW.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The first class Judicial Magistrate No.1,
Tiruppur.

2. The Public Prosecutor
High Court of Madras.

3. The Section Officer
Criminal Section
High Court, Madras

+2 ccs to Mr.K.Sudhakar Advocate sr 80015 & 79567

Cr1.A.No.447 of 2002

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