

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.956 of 2004

Pandian

.. Appellant

Vs

Mahalingam

.. Respondent

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to call for the records in C.C.No.594 of 2003 on the file of the Judicial Magistrate No.I, Coimbatore and set aside the judgment of acquittal dated 02.06.2004 and convict and sentence the accused in accordance with law.

For Appellant : Mr.Rajendra Kumar
For Respondent : Mr.C.Ramkumar

JUDGMENT

This appeal has been filed against an order of acquittal. The appellant is the complainant in a private complaint filed for the offence under Section 138 of Negotiable Instruments Act.

2. The above complaint has been filed on the ground that the appellant was carrying on business dealing with fertilizers and the respondent had business transaction with the complainant. During the course of the business transaction, the respondent has to pay a sum of Rs.2,97,420/- (Rupees Two Lakh Ninety Seven Thousand Four Hundred and Twenty Only) to the complainant. In order to discharge part of the above liability, the respondent/accused issued a cheque for a sum of Rs.1,00,000/- (Rupees One Lakh Only) drawn on Syndicate Bank, Ooty Branch dated 01.02.2002, and another cheque for a sum of Rs.1,00,000/- (Rupees One Lakh Only) drawn on Canara Bank, Ooty Branch dated 01.02.2003. When the above cheques were presented for collection, the same got returned with an endorsement "Insufficient Funds". Thereafter, the appellant issued a notice demanding payment, but notice was returned with an endorsement "not claimed". Thereafter he had filed the private complaint. The Court below after taking cognizance of the offence, issued summons to the respondent.

3. In order to prove the case, the complainant examined himself as P.W.1 and marked 12 documents as Exs.P1 to P12 on his side. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. In order to prove his case, the respondent/accused examined one Pandiyan as DW1 and also exhibited 12 documents.

4. Considering all the above materials, the trial Court acquitted the accused. Challenging the same, the appellant/complainant is before this Court with this Criminal Appeal.

5. I have heard, Mr.Rajendra Kumar, learned counsel appearing for the appellant and Mr.C.Ramkumar, learned counsel appearing for the respondent and also perused the records carefully.

6. Mr.Rajendra Kumar, learned counsel appearing for the appellant submitted that in order to prove the business transactions with the respondent, the complainant produced Exs.P10 to P12 being the Statement of Accounts and also invoices. The above statement of accounts and the invoices clearly prove the liability of the respondents. Apart from that, the respondent did not dispute the signatures found in the cheque, and he did not come forward to examine himself, to raise the initial presumption. But the trial Court, without considering all these materials, acquitted the accused on the ground that the invoice filed by the appellant stands only in the individual name of the respondent, and the alleged transaction said to have taken place on 01.02.2003, only with the firm. The Court below failed to consider the fact that one cheque was issued by the respondent in the name of Sriram Agro Agency. When the accused failed to raise initial presumption, the Court below ought not to have acquitted the accused mainly on the ground that the complainant failed to prove his liability.

7. Per contra, learned counsel appearing for the respondent contended that the statement of accounts and invoices filed by the appellant are in the name of one Mr. N.Mahalingam, and contains different address. According to the complainant, he was engaged in the business only with the firm, namely "Sriram Agro Agencies", which is having different address. The notice was sent to the present address and not to the address found in the invoice, and considering all the materials, the trial Court rightly acquitted the respondent.

8. I have considered the rival submissions. It is the case of the appellant that he was doing business with one Sriram Agro Agencies and during the business transaction, there is a liability to an extent of Rs.2,97,420/- (Rupees Two Lakh Ninety Seven Thousand Four Hundred and Twenty Only) and the respondent being the proprietary concern, issued the

cheques, in order to discharge the liability in part. In order to prove his case, he has marked Ex.P.10, Statement of account and Exs.P.11 and P.12 which are the invoices. A perusal of Exs.P.10 and 12 shows it is a computer print out of the statement of account, and the corresponding invoice. Namely, Ex.P.11, shows that the invoice was issued in the name of one N.Mahalingam, Market Post Office, opposite to upper bazar, Ooty.

9. Earlier the demand notice issued to the respondent was returned and the returned cover was marked as Ex.P.9. From Ex.P.9, it could be seen that the notice has been sent to the individual person not to the firm. Ex.P.2, cheque is also given in the individual name. In the said circumstances, there is no material to show that the cheque has been given by Sriram Agro Agencies.

10. Considering all the above materials, the trial Court acquitted the accused on the ground that the appellant did not prove the liability, and the complainant only purchased the goods from the complainant. I have carefully gone through the materials on record and I find no illegality or irregularity or perversity in the findings of the Court below. I find no merits in this appeal. Hence, the Criminal Appeal is dismissed.
dh/mr

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Coimbatore.

2.do-The Chief Judicial Magistrate,
Coimbatore

Copy to:The Section Officer
Criminal Section,
High Court, Madras

+1cc to Mr.C.Ramkumar, Advocate SR.NO.87090

+1cc to Mr.S.Rajendrakumar, Advocate SR.NO.86022

VD(CO)
sm:28.9.2018

Crl.A.No.956 of 2004