

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2018

DELIVERED ON : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.829 of 2008

Nepal Board Ltd.,
Represented by Regional Manager (South),
Mr.R.K.M.Pillai
88, N.R.Road, Bangalore 560 002. ... Appellant

Vs

1.Sre Ganesh Plywoods
represented by its Managing Partner
Mr.S.Kesavan

2.S.Kesavan
Managing Partner
Sre Ganesh Plywoods

3.The City Public Prosecutor,
Sessions Court, Chennai. ... Respondents
(The 3rd respondent is deleted as
per the order of this Court dated
09.02.2016 made in CrI.A.No.829/2008)

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the order of the learned II Additional Sessions Judge, Chennai in C.A.No.219 of 2007 dated 26.06.2008 which set aside the order of conviction of Accused in C.C.No.10933 of 2004 dated 03.09.2007 by the learned XVI Metropolitan Magistrate, George Town, Chennai who passed sentence under Section 138 of the Negotiable Instruments Act by convicting the 2nd Respondent/Accused for 6 months Simple Imprisonment and imposed fine of Rs.5,000/- in default to undergo one month simple imprisonment.

For Appellant : Mr.K.F.Manavalan

For Respondents : Mr.S.Natana Rajan

JUDGMENT

This Criminal Original Petition is directed against the Order of Acquittal made in C.A.No.219 of 2007 by the learned II Additional Sessions Judge, Chennai, reversing the Judgment of Conviction made by the learned XVI Metropolitan Magistrate, George Town, Chennai convicting and sentencing the respondent herein for an offence under Section 138 of N.I. Act on a complaint filed under Section 200 Cr.P.C. by appellant herein.

2.The appellant's case is that their company was engaged in manufacturing and selling of Plywood and allied products throughout India through branches and dealers network. The 1st respondent is one such dealer entrusted with Thiruchirapalli District to sell their products. In their business transaction goods were dispatched in various dates by the respondent and the same was in due towards payment of goods delivered by the appellant. In view of payment the respondent issued two cheques dated 08.03.2004 and 12.03.2004 bearing No.022105 and No.022104 for Rs.84,984/- and Rs.88,000/- respectively. However as the said cheques were dishonored by the bank holding 'payment stopped by the drawer'' a statutory notice was issued on the respondent calling upon him to make payment. Even then as the respondent failed to pay the outstanding due amount, the complaint in C.C.No.10933 of 2004 came to be filed by the appellant.

3.On the side of complaint 2 witnesses were examined and 13 documents were marked. On the side of defense one witness was examined and 13 documents were marked.

4.According to appellant on appraisal of oral and documentary evidence adduced by either side, the trial Court had rightly concluded holding respondent guilty of an offence under N.I. Act and accordingly convicted and sentenced A2 to undergo 6 months of simple imprisonment and pay a fine of Rs.50,000/-, in default of payment of fine he shall undergo a further period of one month simple imprisonment. A1 though was found guilty and convicted but being a company there was no separate sentence passed, further no compensation awarded holding that complainant failed to prove loss.

5.Aggrieved over the said order of conviction the respondents filed an appeal in C.A.No.219 of 2007 before the Second Additional Sessions Court, Chennai. The learned Appellate Judge on appraisal of oral and documentary evidence reversed the conclusion of the trial Court holding that the allegation and claim of liabilities were disproved by the accused/respondent. Accordingly holding the complaint and allegations as untenable and untrue the complaint of the appellant was dismissed by acquitting the respondents. The said order of acquittal is under

challenge.

6.On perusal of the Trial Court Judgment, it is seen that the respondents were convicted holding that they failed to prove that the complainant/appellant company was not in any due payable by respondents. Holding so and drawing presumption under Sections 118 and 139 of N.I Act, the respondents were held to be guilty by the trial Court. It was further held by the trial Court that though the respondents claimed that the blank cheques given to complainant/ appellant was misused, the said contention was not proved by reliable evidence. Once the cheque has been given it is presumed that the accused/respondents have given right to the drawee to fill it up.

7.On the above grounds the trial Court has found the respondents guilty of offence under N.I. Act and accordingly convicted and sentenced in above terms.

8.On appraisal of Appellate Court's Judgment, it is seen that the respondents were acquitted holding that the appellant has failed to establish a legally enforceable debt existed at the time of presentation of cheque and that the cheque also suffered out of material alteration. It was also found by the Lower Appellate Court that the respondents has disproved the claim of appellant as untrue as the amount so claimed as outstanding due to the appellant was found paid by respondents even prior to the filing of complaint. By holding so, the Lower Appellate Court has acquitted the respondents herein.

9.At this Juncture, on perusal of the case record and more particularly the complainant's statement and deposition, it is seen that PW1 has mutated the Name of payee of the cheque by the striking out from the name of Nepal Goods Limited i.e "அதாவது வா.சா.ஆ4 காசோலையில் முதலில் பெறுபவர் என்ற தலைப்பக்கு நேராக நேபால் கூடஸ் லிமிடெட் என்ற பெயரில் எழுதப்பட்டு, அது அடிக்கப்பட்டு சிட்டி பேங்க் என் ஏ நேபால் இசட் இசட் ஆர் ஏ டி என்று திருத்தப்பட்டுள்ளது."

10.It is needless to say that filling up of a cheque differ from mutation of a cheque. In simple words filling up of cheque means a fresh filling in the blank area, whereas material alteration means striking or altering the word and number in the cheque.

11.Therefore at the 1st instance I am of the view that the complainant firstly has to establish as to how and in what manner the amount claimed outstanding is payable to the complainant.

12.It is seen that the case of the complainant is that the outstanding amount was due as of March 2004 to an amount of Rs.1,99,010/-. More particularly the PW1 has stated that the actual outstanding amount was Rs.2,21,176/- due to appellant, from which Lorry fare has to be deduced. PW1 has deposed that in

said Rs.2,21,176/- after deduction of lorry fare, Rs.1,99,010 was due to the appellant.

13.At this juncture, it is seen that PW1 has specifically admitted on 24.03.2004 Rs.50,000/- was paid by D.D. and on 31.03.2004 payment through a cheque payment was made for a sum of Rs.49,984/- and subsequently on 19.04.2004 a sum of Rs.70,000/- was paid through D.D. by respondents. In such circumstances, it is needless to say that the version of PW1 that as of March Rs.1,69,984/- was due to company is baseless.

14.In the said circumstances it is found that the contentions of the respondents that two cheques issued for security purpose towards delivery of books were misused by the appellant.

15.It is further seen that having paid the outstanding amount the respondents has instructed the bank to stop payment to the said cheques.

16.It is equally important to state that in the relevant period of dishonor of cheque an amount of Rs.4,25,918/- was found maintained in the respondent's bank account, which was much higher than that of the alleged due payable by the respondent. It is not a case of dishonor of cheque for want of sufficient fund whereas involves "Stop Payment".

17.The appellant in support of his case rely upon two decision of the Hon'ble Apex Court reported in (1996) 2 SCC 739 Electronic Trade and Technology Development Corporation Ltd., Secunderabad Vs Indian Technologists & Engineers (Electronics) (P) Ltd. and another; Rangappa Vs Srimohan reported in (2010) 11 Supreme Court Cases 441.

18.In as much as the facts involving in the matter of Electronic Trade and Technology Development Corporation Ltd., Secunderabad Vs Indian Technologists & Engineers (Electronics) (P) Ltd. and another, the facts are inapplicable to appellant's case for reason that it was a case of dishonor of cheque for want of sufficient funds whereas the appellant case remains that "Stop Payment" in lieu of payment.

19.Coming to the facts of Rangappa Vs Srimohan stated above, the said decision palpably demonstrates that the presumption under Section 139 is rebuttable. The facts and circumstance also differs from the appellant case.

20.As seen above the respondents through sufficient oral and documentary evidence has rebutted the presumption under N.I. Act and thereby it is proved that the case of appellant/complainant is unbelievable.

21.Absolutely the appellant failed to establish that there was legally enforceable debt during the contemporary period of March 2004. From the Statements of Accounts and the admissions

made by the complainant it is revealed that the amount claimed as due stood paid by the respondents.

22.It is equally important to state that subject cheque suffer Material Alteration, therefore in view of above reasons, I am unable to find any irregularity or infirmity over the Appellate Court's Judgment of Acquittal which came is found passed on due appraisal above facts.

23.In the result, this Criminal Appeal fails and the same is hereby dismissed confirming the judgment of Learned II Additional Sessions Judge, Chennai.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

vs

To

- 1.The II Additional Sessions Judge, Chennai.
2. -do- through The Principal Sessions Judge, Chennai.
- 3.The XVI Metropolitan Magistrate,
George Town, Chennai.
4. - Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

Copy To :

The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.S.Natanarajan, Advocate SR.No.76241

Criminal Appeal No.829 of 2008
GMY (22/11/2018)

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