IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.11.2018

CORAM
THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

Crl.A.Nos.22 to 24 of 2009

K.M.Projects & Technologies (Pvt) Ltd.,
Rep.,by its authorized signatory A.Suresh Kumar,
No.6, Bragadammal Road,
Nungambakkam, Chennai - 600 034. .. Appellant in all the appeals

Versus

1.M/s.Bhanu Constructions Co.Ltd., (A1)
Rep.,by its Managing Director B.V.Rao.

2.B.V.Rao, (A2)
Managing Director, M/s.Bhanu Constructions Co.Ltd.,
Both at No.6-3-354/812/B,
Hindi Nagar, Banjara Hills P.O.,
Hyderabad - 500 034. ... Respondents in all the appeals

Common Prayer: Criminal Appeals are filed under Section 378 of Criminal Procedure Code, against the acquittal judgment passed by the learned III Additional Sessions Judge, Chennai in Crl.A.Nos.59,60 & 61 of 2008 respectively dated 16.10.2008 against the judgment dated 28.01.2008 in C.C.Nos.263,264 & 265 of 1997 respectively, from the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

For Appellant : Mr.Venkatavaradhan

For Respondents : Mr.Deepan Rajkrishna (Legal Aid Counsel)

C O M M O N J U D G M E N T

All these appeals are filed by the complainant who instituted C.C. Nos. 264, 263 and 265 of 1997 respectively before the learned XIV Metropolitan Magistrate, Egmore under Section 138 of The Negotiable Instruments Act. Upon trial, the respondents herein were convicted for the offence under Section 138 of The Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of three months and also to pay the cheque amount as compensation. Aggrieved by the same, the accused/respondents herein have filed Crl.A. Nos. 60, 59 and 61 of 2008 respectively before the learned III Additional Sessions

Judge, Chennai. The Appellate Court, by Judgment dated 16.10.2008 allowed the appeal and thereby acquitted the respondents herein. It is as against the Judgment dated 16.10.2008 passed in Crl.A. Nos. 60, 59 and 61 of 2008, the present Criminal Appeals are preferred.

2. The appellant herein is the complainant in C.C. Nos. 264, 263 and 265 of 1997 respectively. According to the complainant, the accused have issued three cheques bearing Cheque Nos.772998, 772994 and 772999 respectively for Rs.19,10,000/-, Rs.10,30,000/- and Rs.20,60,000/- drawn on Federal Bank Limited, Abithab Road Branch, Hyderabad in favour of the complainant. When the complainant presented the cheques through their bankers State Bank of India, Thousand lights Branch, Chennai - 600 006 on 08.10.1996, the same were returned on 12.10.1996 for the reason “insufficient funds”. The same was intimated to the complainant by the bankers through return memo dated 05.11.1996. The complainant issued legal notice on 19.11.1996 calling upon the accused to make payment and the said notice was received by the accused on 03.12.1996 and the accused have sent a reply dated 14.12.1996 stating that the period for bill of exchange was extended for a further period and therefore there was no enforceable debt on the cheques issued by them. Thereafter the respondent has instituted the respective C.C. Nos. 264, 263 and 265 of 1997 praying to initiate appropriate proceedings against the respondents for having dishonoured the cheques.

3. The Complaints were resisted by the accused/ respondent herein by contending that the cheques were not issued for any legally enforceable debt or liability, rather, they were issued with an expressed understanding to provide financial facilities to the tune of Rs.50 lakhs under three bills of exchanges and the bills of exchange are in the nature of a revolving one. The accused/respondents used to give undated cheques however, subsequent to the issuance of the cheques, the period of bills of exchange was extended. Thus, as on the date of issuance of the cheques in question, there was no liability. As the period under the bills of exchange were extended by the accused/respondents by writing letters, the question of enforceable liability will not arise.

4. The learned counsel appearing for the appellants would contend that the accused/respondents herein have admitted the issuance of the cheque and thereby the respondent has raised a strong presumption as regards the issuance of the cheque. Prior to institution of the Calander Cases, the respondent has also issued a statutory notice for which a reply was sent by the accused/respondents with untenable averments. The trial Court, on appreciation of the aforesaid facts has rightly convicted the respondents/accused for the offence punishable under Section 138

of The Negotiable Instruments Act, but it was erroneously overturned by the First Appellate Court. The First Appellate Court failed to note that the cheques in question have been issued for a legally enforceable debt and liability and that the cheques were dishonoured for the reason insufficient funds. The Appellate Court misdirected itself by observing that a portion of the debt has been paid, which itself would go to show that the cheques were issued for a legally enforceable debt and liability.

5. The learned counsel for the respondents/accused would contend that there were transaction between the appellant and the respondents by raising bills of exchange. During the course of business transaction, the period for enforceabiliity of the bills of exchange will get extended due to various business reasons. Similarly, the cheques in question were issued based on bills of exchange and the period covered under those bills of exchange were subsequently extended. Thus, as on the date of presentation of the cheques in question, based on the bills of exchange, there was no legally enforceable debt or liability on the part of the respondents/accused. This was rightly appreciated by the First Appellate Court while setting aside the judgment of conviction passed by the trial Court. Above all, the learned counsel for the respondent would contend that normally an order of acquittal will not be interfered with by the Appellate Court unless there is a strong case made out by the appellant.

6. Heard both sides. Before the trial Court, separate evidence was let in the three Calander Case. In all the Calander Cases, on behalf of the complainant, one Govindarajulu was examined as PW1 and Exs. A1 to A-15 were marked. On the side of accused/respondents one Tr. Sessiah was examined as DW1 and Exs. D-1 to D-31 were marked.

7. It is the vehement contention of the complainant that the cheques were issued by the accused/respondents for a legally enforceable debt and liability and that the accused/respondents also did not dispute the issuance of the cheques in favour of the complainant. Therefore, it is contended that the presumption that the cheques were issued for a legally enforceable debt and liability is in favour of the complainant, which was not taken note of by the first Appellate Court.

8. The learned counsel for the respondent mainly contended that the accused/respondents, in response to the statutory notice sent by the complainant on 19.11.1996, has issued a reply notice dated 14.12.1996 to rebut the initial presumption raised by the complainant that the cheques were issued for a legally enforceable debt and liability. In the reply notice, it was stated as follows:-

"We have received your notice dt.19.11.1996 on 04.12.1996 only. We bring to your notice that your client M/s.K G M Projects & Technologies Pvt. Ltd., granted a U.O.E. for Rs.19.1 lakhs. As per the understandings we issued an un-dated cheque bearing No.772998 on 19.12.1995.

The U.O.E. is extended from time to time and last extension is dt.15.11.1996 vide Lr.No.KMPT/INV/96/1482 for a period of 180 days from 18.11.96 (A copy of the same is enclosed). The due date, as per the above letter is 18.5.1997, prior to this there was an extension to this U.O.E. from 20.7.1996 to 18.11.96. As this U.O.E. is in operation as per the sanction letter dt.15.11.1996, your notice which is not timely may please be withdrawn."

9. The reply notice dated 14.12.1996 clearly indicates that there was an understanding between the complainant and the accused and during the course of their business transaction, the accused has issued three Bills of exchange. As per the business understanding, the accused had issued the three bills of exchange along with three undated cheques. Subsequently, the validity and/or period covered under the bills of exchange were extended from time to time. Therefore, as rightly pointed out by the counsel for the respondent, as on the date of presentation of the cheques in question, there was no enforceable debt on the part of the accused. Even though the accused have admitted the issuance of cheques, which gives rise to a legal presumption, yet in a proceeding under Section 138 of The Negotiable Instruments Act, such presumption is a rebuttable presumption. In order to rebut such presumption, the accused/respondents have examined witness on their side and also marked several documents to show that there was no existence of liability in issuing the cheques in question.

10. The first Appellate Court in para-12 of the judgment dated 16.10.2008 in Crl.A. No. 60 of 2008, against which Crl.A. No. 22 of 2008 has been filed, has rendered a specific finding that on perusal of Ex.D-24, letter dated 30.03.1996 sent by the complainant/appellant it is seen that the appellant himself has sought for payment of the amount covered in the Bill of Exchange No.7 dated 23.11.1995, failing which the appellant called upon the respondent/complainant to pay the amount together with interest. Based on this letter dated 30.03.1996, the first Appellate Court came to the conclusion that on the date of presentation of the cheques in question, there was no legally enforceable debt or liability on the part of the accused/respondents. In this context, useful reference can be made to Ex.D-24 letter sent by the appellant, which reads

as follows:-

> "We have been reminding you time and again for repayment of the above bill and also penal interest leviable for the delayed payment after 23.02.96. So far you have not paid the full payment or part payment as you have been promising time and again. Any further delay beyond 31st March, 1996 may adversely effect our future business relationship with you, apart from your company's name appearing in the defaulters list.
>
> You are once again requested to clear the payment through a Demand Draft in favour of M/s.K & M Projects & Technologies Pvt. Ltd., payable at Madras for the entire amount of Rs.19,10,000/- along with the penal interest before 31.03.1996 in the interest of both of our company's and our future relationship."

11. Similar was the case in respect of Bill of Exchange Nos. 12, 13 and 14 and in connection with the same, the respondent/accused have written a letter dated 19.04.1997 to the appellant wherein it was stated as follows:-

> "We refer to the above letter wherein we have indicated that we will pay the interest charges of BOE No.12,13 & 14 as on 31.03.1997 i.e.Rs.2,00,000/- by the end of this month and the balance Rs.3,12,986/- by the end of May 1997. However, we are enclosing the following cheques in the fashion you desired by taking a safe period of two days.
>
> (1) Cheque No.940366 dt.10.05.1997 for Rs.2,00,000/-
>
> (2) Cheque No.940367 dt.10.06.1997 for Rs.3,12,986/-
>
> The interest calculated as on the date of payment also will be made at the time of payment.
>
> Kindly acknowledge the receipt of the above two cheques."

12. These letters altogether would indicate that the period covered under the Bills of exchange have been extended from time to time and therefore, on the date of presentation of the cheques in question, there was no legally enforceable debt or liability on the part of the accused/respondent and this was rightly appreciated by the First Appellate Court. In fact, in the letter dated 07.10.1995, extracted supra, the accused/respondent specifically requested the appellant to return the cheques issued by them in view of the fact that they have paid the entire amount payable towards the Bill of Exchange No.2 for Rs.10,30,000/- which is the subject matter of Crl.A. No. 23 of 2009 arising out of Crl.A. No. 59 of 2008.

13. Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was recorded by the Appellate Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

14. Having regard to the above parameters laid down by the Honourable Supreme Court in the above decisions, this Court is of the view that the order of acquittal recorded by the First Appellate Court does not suffer from any legal infirmity warranting interference by this Court. Accordingly, all the Criminal Appeals are dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AT

To

1.The XIV Metropolitan Magistrate,
Egmore, Chennai.

2.The III Additional Sessions Judge,
Chennai.

+3ccs to Mr.R,Venkatavarathan, Advocate, S.R.No.79063 to 79065
+1cc to Mr.V.Deepan RAjkrishna, Advocate, S.R.No.78708

Crl.A.Nos.22 to 24 of 2009

SS(CO)

rrs 20/12/2018