IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.295 and 430 of 2009

T.V.M.Chit Funds (P) Ltd.,
represented by its Director
T.V.Mylsamy
... Appellant in both the appeals/Respondent/Complainant

Vs.

1.Veerappa Steels (P) Ltd.,
represented by its Managing Director
C.Krishnamurthi

2.C.Krishnamurthi ... Respondents in Crl.A.No.295 of 2009 /Appellant/Accused

1.V.Murugesan
2.K.Saravanan ... Respondents in Crl.A.No.430 of 2009 /Appellants/Accused

Common Prayer:

Appeals filed under Section 378 of Cr.P.C. seeking to set aside the order of acquittal passed by the learned District and Sessions Judge, Fast Track Court No.III, Coimbatore in Crl.A.Nos.356 and 369 of 2006 dated 13.11.2008 and restore the order of conviction passed by the learned Judicial Magistrate No.2, Coimbatore in C.C.No.345 of 2005 dated 09.08.2006.

For Appellant : Mr.N.Damodaran in both the appeals

For Respondents: Mr.M.Guru Prasad in Crl.A.No.295 of 2009
No Appearance in Crl.A.No.430 of 2009

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

Crl.A.No.430 of 2009 is not listed today. However, at the instance of the learned counsel for the appellant and with the consent of the learned counsel for the respondents in Crl.A.No.295 of 2009, the appeal papers in Crl.A.No.430 of 2009 were called for, heard and a common judgment is passed.

2.The criminal appeals are filed seeking to set aside the order of acquittal passed by the learned District and Sessions Judge, Fast Track Court No.III, Coimbatore in Crl.A.Nos.356 and 369 of 2006 dated 13.11.2008 and to restore the order of conviction passed by the learned Judicial Magistrate No.2, Coimbatore in C.C.No.345 of 2005 dated 09.08.2006.

3.The appellant in both the appeals is the complainant and the respondents in both the appeals are the accused in C.C.No.345 of 2005. The appellant in both the appeals is a Company i.e., T.V.M.Chit Funds (P) Limited. The respondents in Crl.A.No.295 of 2009 are the Company i.e., Veerappa Steels (P) Limited (R1 in C.C.No.345 of 2005) and Managing Director of the Company i.e., Veerappa Steels (P) Limited (R2 in C.C.No.345 of 2005), respectively and the respondents in Crl.A.No.430 of 2009 are the Directors of the Company i.e., Veerappa Steels (P) Limited (R3 and R4 in C.C.No.345 of 2005), respectively. For the sake of convenience, the appellant will be hereinafter referred to as the 'complainant' and the respondents will be hereinafter referred to as the 'accused' as per their rank.

4.The sum and substance of the averments in the complaint are as follows: The first accused is the Company and accused 2 to 4 are the Directors of the Company and they are actively involved in the day to day activities of the Company and are responsible for the acts and deeds of the first accused Company. The first accused Company borrowed a sum of Rs.32,50,000/- from the complainant on 12.07.2003 and agreed to repay the said amount on demand with interest at the rate of 18% per annum and also executed a pronote on the same day in favour of the complainant.

5.Thereafter, the first accused Company issued a Cheque bearing No.692919 dated 02.12.2003 drawn on City Union Bank Limited, Ram Nagar, Coimbatore, for a sum of Rs.7,87,500/- for repayment of a part of its debt. The said Cheque when presented by the complainant in Tamilnadu Mercantile Bank Limited, D.B. Road, R.S.Puram Branch, Coimbatore, on 02.12.2003 was dishonoured for the reason 'insufficiency of funds' on 03.12.2003. Thereafter, at the request of the accused, the said Cheque was once again presented on 06.05.2004 and it was again dishonoured for the reason 'insufficiency of funds' on 06.05.2004.

6.Thereafter, the complainant issued notice on 17.05.2004 to the accused calling upon them to settle the amount due under the Cheque within 15 days from the date of receipt of the notice and the accused received the notice on 20.05.2004, 20.05.2004, 20.05.2004 and 22.05.2004 respectively. Since the accused failed to comply with the notice, the complainant passed a resolution on 19.06.2004 authorising its Director to initiate criminal complaint against the accused under Section 138 of the Negotiable Instruments Act and accordingly, the case in C.C.No.345 of 2005 came to be filed.

7.On the side of the complainant, the complainant/ Director of the Company examined himself as P.W.1 and marked 10 documents as exhibits Ex.P.1 to Ex.P.10. Ex.P.1 is the resolution, Ex.P.2 is the pronote, Ex.P.3 is the Cheque, Ex.P.4 is the return memo, Ex.P.5 is the debit note, Ex.P.6 is the Advocate notice, Ex.P.7 to Ex.P.10 are the acknowledgements.

8.On the side of the accused, two witnesses were examined and six documents were marked as exhibits Ex.D.1 to Ex.D.6. The second accused examined himself as D.W.2. Ex.D.1 is the authorisation letter, Ex.D.2 and Ex.D.3 are the statement of accounts, Ex.D.4 is the passport, Ex.D.5 is Form No.32 (third accused) and Ex.D.6 is the course certificate.

9.After elaborate trial, the Trial Court convicted the accused under Section 138 of the Negotiable Instruments Act. The Trial Court sentenced A1 to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month. Since A1 is the Company, the Trial Court directed A2 to pay the said fine imposed on A1 in default to undergo simple imprisonment for one month. The Trial Court sentenced A2 to A4 to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for one month each.

10.Aggrieved by the said conviction and sentence, A1 and A2 filed the appeal in Crl.A.No.356 of 2006 and A3 and A4 filed the appeal in Crl.A.No.369 of 2006 before the lower Appellate Court. The lower Appellate Court heard both the appeals together and passed a common judgment. By the common judgment dated 13.11.2008, the lower Appellate Court allowed the appeals filed by the accused and set aside the conviction and sentence passed by the Trial Court. Aggrieved by the same, the complainant has filed these appeals before this Court.

11.The learned counsel appearing for the appellant would submit that though the appellant/ complainant has not marked the statement of accounts before the Trial Court, has marked the pronote, Cheque and the return memo as exhibits inorder to prove that the first accused Company has to repay the loan amount. Further, P.W.1 in his evidence has deposed that the first accused Company borrowed certain amount on 12.07.2003 and issued a Cheque dated 02.12.2003 in the name of the complainant. After perusing the entire documents and evidence, the Trial

Court arrived at a correct conclusion that there is legally enforceable debt by the first accused Company in favour of the complainant Company. Accordingly, the Trial Court passed conviction and sentence as against the accused.

12.The learned counsel appearing for the appellant would further submit that the lower Appellate Court accepted the evidence let in by the second accused that he was not available in India during the relevant point of time and held that the second accused could never have borrowed the money from the complainant and executed the pronote in question as alleged by the complainant. Since the statement of accounts was not marked by the complainant, the lower Appellate Court did not believe the complainant's version and believed the accused version and held that there was no legally enforceable debt by the first accused Company in favour of the complainant Company and acquitted the accused, which is un-sustainable one.

13.The learned counsel appearing for the respondents would submit that the appellant Company is registered under the Companies Registration Act and it is the duty cast upon them to maintain accounts for the amount borrowed by them and for the amount advanced by them in favour of other Companies. However, the statement of accounts was not marked by the complainant/ appellant before the Courts below.

14.The learned counsel appearing for the respondents would further submit that the third accused resigned his Directorship and left the accused Company and to substantiate the same, Form No.32 has been marked as Ex.D.5. He would further submit that the fourth accused was a student of Hindusthan Engineering College at the relevant point of time. Hence, they did not have active participation in the day to day affairs of the Company. On perusing all the documents and after analyzing the entire facts only, the lower Appellate Court arrived at a right conclusion and acquitted the accused/ respondents. Hence, the well considered judgment of the lower Appellate Court need not be interfered with.

15.Heard the arguments advanced on either side and perused the entire materials placed on record.

16.The issue that arises for consideration in these appeals is whether there was legally enforceable debt in the name of the complainant Company by the first accused Company.

17.Both the complainant as well as the first accused are Private Limited Companies registered under the Companies Registration Act and they ought to have maintain statement of accounts as per the Act.

18.The complainant avers that the first accused Company borrowed a sum of Rs.32,50,000/- from the complainant on 12.07.2003 and agreed to repay the said amount on demand with interest at the rate of 18% per annum and also executed a pronote on the same day in favour of the complainant. Thereafter, the first accused Company issued a Cheque bearing No.692919 dated 02.12.2003 drawn on City Union Bank Limited, Ram Nagar, Coimbatore, for a sum of Rs.7,87,500/- for repayment of a part of its debt. The said Cheque when presented by the complainant in Tamilnadu Mercantile Bank Limited, D.B. Road, R.S.Puram Branch, Coimbatore, on 02.12.2003 was dishonoured for the reason 'insufficiency of funds' on 03.12.2003. Thereafter, at the request of the accused, the said Cheque was once again presented on 06.05.2004 and it was again dishonoured for the reason 'insufficiency of funds' on 06.05.2004. However, no statement of accounts was marked by the complainant as exhibit.

19.In the absence of statement of accounts, producing only pronote alleged to have been executed by the first accused Company in the name of the complainant is questionable one. Even on perusal of the pronote, the signature and other columns were filled up in different ink. Even in the disputed Cheque/ Ex.P3, the signature and other columns are filled in different ink.

20.It is true that presumption always lies in favour of the complainant i.e., holder of the Cheque. However, presumption can also be rebuttable one. In the present case, the second accused has marked his passport before the Trial Court as Ex.D.4. Perusal of Ex.D.4 reveals that the second accused left India on 09.07.2003 and he came back only on 12.07.2003. Though there may be possibilities to reach Coimbatore from Chennai, in the present case, perusal of the pronote reveals that though it was signed by the second accused, however, other columns were filled by different persons.

21.The crucial point is that the initial burden lies upon the complainant Company to prove that there was legally enforceable debt by the first accused Company. In the absence of statement of accounts, mere pronote and instrument will not establish that there was legally enforceable debt by the first accused Company in favour of the complainant Company.

22.The first accused Company is alleged to have borrowed a sum of Rs.32,50,000/- from the complainant. The disputed Cheque has been given only for a sum of Rs.7,87,500/- for repayment of a part of the debt. There is no proper explanation to show that there was a legally enforceable debt during the business transaction. There is also no explanation as to the steps taken by the complainant Company for recovery of the differential amount prior to issuance of instrument.

23.In view of all the above, I do not find any error or perverse in the judgment passed by the lower Appellate Court. Unless the complainant establishes that the Judgment of the lower Appellate Court is perverse, this Court cannot interfere with the judgment in a mechanical manner.

24.The criminal appeals are dismissed. The judgment passed by the learned District and Sessions Judge, Fast Track Court No.III, Coimbatore in Crl.A.Nos.356 and 369 of 2006, dated 13.11.2008, is hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District and Sessions Judge,
Fast Track Court No.III, Coimbatore.

2.The Judicial Magistrate No.2, Coimbatore.

3. do Thro The Chief Judicial Magistrate,
Coimbatore.

Copy to:

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

+1cc to Mr.N.Damodaran, Advocate sr.no.82827

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vgi(co)
nr 24/12/2018