IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.11.2018

CORAM:
THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.324 to 326 of 2009
and
Crl.M.P.Nos.10160 to 10162 of 2018

M/s.Grobest Feeds Corporation Ltd.,
rep. by Mr.I.Shanmughasundaram,
No.38/1, Nowroji Road, Chetpet,
Chennai - 600 031. .. Appellant in all the appeals

Vs.

T.R.Pandian,
Prop. M/s.Meenakshi & Co.,
No.9, 1st Street, N.G.O.Nagar,
Thenpathy-Sirkali,
Tamil Nadu - 609 111. .. Respondent in all the appeals

PRAYER in Crl.A.No.324 of 2009: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for the records in STC.No.2870 of 2007 on the file of the XIII Small Causes/ Special Metropolitan Magistrate, Chennai and set aside the judgment of acquittal dated 18.09.2008 made in STC.No.2870 of 2007 passed by the learned XIII Small Causes/ Special Metropolitan Magistrate, Chennai and consequently punish the accused in accordance with law with maximum punishment and also liberally compensate the appellant/ complainant.

PRAYER in Crl.A.No.325 of 2009: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for the records in STC.No.2871 of 2007 on the file of the XIII Small Causes/ Special Metropolitan Magistrate, Chennai and set aside the judgment of acquittal dated 18.09.2008 made in STC.No.2871 of 2007 passed by the learned XIII Small Causes/ Special Metropolitan Magistrate, Chennai and consequently punish the accused in accordance with law with maximum punishment and also liberally compensate the appellant/ complainant.

PRAYER in Crl.A.No.326 of 2009: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for the records in STC.No.2872 of 2007 on the file of the XIII Small Causes/ Special Metropolitan Magistrate, Chennai and set aside the judgment of acquittal dated 18.09.2008 made in STC.No.2872 of 2007 passed by the learned XIII Small Causes/ Special Metropolitan Magistrate, Chennai and consequently punish the accused in accordance with law with maximum punishment and also liberally compensate the appellant/ complainant.

For Appellant : Mr.Aashish Jain

For Respondent : No appearance

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

In all these three appeals the complainant and the accused are one and the same. The appellant is the complainant and the respondent is the accused in STC.Nos.2870, 2871 and 2872 of 2007. For the sake of convenience the parties will be herein after referred to as the appellant and the respondent.

2. The appellant is a company supplying prawn feeds to the respondent. They have business understanding and accordingly the appellant supplied prawn feeds from 2001 onwards. During the business transaction, the respondent issued cheques in favour of the appellant and in all these three appeals, the total number of disputed cheques are five cheques.

3. In STC.No.2870 of 2007, two cheques, for sum of Rs.3,80,428/- dated 25.01.2005 and for a sum of Rs.6,08,750/- dated 10.02.2005 were issued by the respondent and when the same were presented on 22.04.2005 they were returned by the bank with an endorsement 'insufficient funds' on 22.04.2005. Thereafter, legal notice was issued to the respondent on 14.05.2005 and the same was served on 17.05.2005. After receipt of the legal notice, since no reply was received from the respondent, the appellant/complainant filed a complaint in June, 2009.

4. On behalf of the complainant one Shanmughasundaram, the authorized representative of the appellant company who had filed the complaint was examined as PW1 and exhibits Exs.P1 to P9 were marked. On behalf of the respondent one Pandiyan who is the Proprietor of respondent/accused company was examined as DW1 and exhibits Exs.D1 to D3 were marked.

5. In STC.No.2871 of 2007, one cheque for Rs.3,11,000/- dated 24.03.2005 was issued and when the same was presented on 26.04.2005 it was returned by the bank with an endorsement 'insufficient funds'. Thereafter, legal notice was issued to the respondent on 14.05.2005 and the same was served on 17.05.2005. After receipt of the legal notice, since no reply was received from the respondent, the appellant/complainant filed a complaint in June 2009.

6. On behalf of the complainant one Shanmughasundaram, the authorized representative of the appellant company who had filed the complaint was examined as PW1 and exhibits Exs.P1 to P8 were marked. On behalf of the respondent one Pandiyan who is the Proprietor of respondent/accused company was examined as DW1 and exhibits Exs.D1 to D3 were marked.

7. In STC.No.2872 of 2007, two cheques for a sum of Rs.4,50,000/- dated 02.02.2005 and for a sum of Rs.4,47,350/- dated 16.03.2005 were issued and when the same were presented on 26.04.2005, they were returned by the bank with an endorsement 'insufficient funds'. Thereafter, legal notice was issued to the respondent on 14.05.2005 and the same was served on 17.05.2005. After receipt of the legal notice, since no reply was received from the respondent, the appellant/complainant filed a complaint in June, 2009.

8. On behalf of the complainant, one Shanmughasundaram, the authorized representative of the appellant company who had filed the complaint was examined as PW1 and exhibits Exs.P1 to P8 were marked. On behalf of the respondent one Pandiyan who is the Proprietor of respondent/accused company was examined as DW1 and exhibits Exs.D1 to D3 were marked.

9. After framing of charges, since the respondent/ accused had not pleaded guilty and insisted to proceed trial, the trial was conducted and after elaborate trial, the lower court dismissed the complaint and acquitted the accused. Against the order of acquittal, the present appeals are filed.

10. All the cheques were issued by the respondent in favour of the complainant company on different dates, however they were presented on the same day. Though presentation was on the same date, the cheques were returned by the bank on 22.04.2005 in Crl.A.No.324 of 2009 and in other 2 cases on 26.04.2005. Since the cheques were returned by the bank, the appellant/ complainant company had sent legal notices to the respondent, and the legal notices were received by the respondent on 17.05.2005. Though the respondent/ accused filed documents showing that the cheques were issued in the year 2003, but the same were presented in the year 2005.

11. The learned counsel for the appellant would submit that there was legally enforceable debt by the respondent/ accused who purchased several prawn feeds from the complainant company. He would further submit that it is true that there is a legally enforceable debt and inorder to prove the case that the respondent has to pay the amount, the appellant had filed Ex.P2, invoice and Ex.P3, statement of accounts in STC.No.2870 of 2007 and invoice were marked as Ex.P2 in STC.Nos.2871 and 2872 of

2007. In order to establish that there is legally enforceable debt in favour of the appellant/ complainant, the said cheques were marked as Ex.P4 and Ex.P5 in STC.No.2870 of 2007, as Ex.P3 in STC.No.2871 of 2007 and Ex.P3 and Ex.P4 in STC.No.2872 of 2007.

12. The learned counsel for the appellant would further submit that the appellant has clearly established the case before the lower court that there was a legally enforceable debt by the accused company in favour of the appellant company. However, the lower court had drawn inference by perusing Ex.D1, cheque record slip, as if the cheques were issued in the year 2003 and after 2½ years, the cheques were presented for collection in the year 2005. Accordingly, arrived at a conclusion that the accused had clearly disproved the complaint given by the complainant and draw rebuttable presumption in favour of the respondent and acquitted the accused.

13. On a perusal of all the 3 cases, though cheques were issued in different dates and months, but same year, they were presented one case on 22.04.2005 and other case on 26.04.2005 and the same was returned on different dates. However, legal notices were issued on 14.05.2005 and the same was served on 17.05.2005. All these legal notices were marked as Ex.P6 in STC.No.2871 of 2007, Ex.P7 in STC.No.2872 of 2007 and Ex.P8 in STC.No.2870 of 2007. The cheques were also marked as exhibits in all the three cases. The Board Resolution is marked as Ex.P1. As per the board resolution PW1 was authorized to present the complaint and pursue the case. Accordingly, PW1 was examined as complainant witness and he deposed that he was authorized agent to file a complaint on behalf of the appellant company. In his evidence, he deposed that there was a business transaction from 2001 onwards and he denied all 5 cheques were collected as security and he also denied that the cheques were given as a blank cheque and was subsequently filled up by the complainant. PW1 has admitted that the feeds supplied by the appellant company are perishable goods and after a particular date, feeds were not fit for using for prawn culture. He has also admitted that other than Ex.P2, Invoice no other documents were available to prove the goods supplied in favour of the respondent accused. Except the invoices no other documents were produced before the court in order to establish that there was legally enforceable debt in favour of the complainant.

14. On perusal of the Ex.D1 and Ex.D2, Ex.D1 marked through DW1 is cheque book marked along with record slip. The record slip shows that the cheque Nos.684643 to 684647 all 5 cheqes were issued on 21.06.2003 in favour of the appellant company and prior to that cheque No.684636, 684637, 684638 are also in favour of the appellant company and the cheque No.684648 is in favour of the complainant company by way of demand draft.

15. On perusal of the above and statement of accounts marked as Ex.D2 it can be arrive at a conclusion that the cheques were issued in the year 2003 for the purpose of security after that a demand draft was in favour of the appellant company. The statement also shows that after the year 2003 several transactions are there in between the appellant and the respondent. However, the appellant did not establish the case that there was legally enforceable debt. The order of acquittal cannot be interfered with in the routine manner unless there is error in the order of the lower court or the order of the lower court is perverse. In the present case, the appellant did not establish the case before this court that there was legally enforceable debt by the accused company. In the absence of sufficient records, the court cannot interfere in the order of acquittal passed by the lower court.

16. Further, on perusal of the entire documents, I do not find any error in the order of acquittal made by the lower Court and the appeals are devoid of merits, accordingly, dismissed. The judgment of acquittal dated 18.09.2008 made in STC.Nos.2870, 2871 and 2872 of 2007 made by the learned XIII Small Causes/ Special Metropolitan Magistrate, Chennai is confirmed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dsa

To

1.The learned XIII Small Causes/
Special Metropolitan Magistrate, Chennai.

+3ccs to Mr.N.Srinivasulu, Advocate, S.R.No.79671 to 79673
+3ccs to M/s.Surana and Surana, Advocate, S.R.No.78808

Crl.A.Nos.324 to 326 of 2009

CNR(CO)

rrs 19/12/2018