

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.06.2018

JUDGMENT PRONOUNCED ON : 06.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.408 of 2011

M/s.Colormax,
Proprietor Anil P.Nair,
S/o.Parameswaran Nair,
120, Sampath Nagar,
Erode - 638 011.
Rep. by its Manager and
Power of Attorney Holder,
A.Rameshkumar,
S/o.Arumugam

... Appellant / Respondent /
Complainant

versus

1.M/s.Good Luck Dyers,
Rep. by its Managing Partner,
K.R.Rajendran,
3A/10, Amman Nagar,
Behind Super Casting,
Kumarapalayam - 638 183.
Namakkal District.

2.K.R.Rajendran,
Managing Director,
M/s.Good Luck Dyers,
3A/10, Amman Nagar,
Behind Super Casting,
Kumarapalayam - 638 183.
Namakkal District.

3.K.M.Karunakaran,
Partner,
M/s.Good Luck Dyers,
3A/10, Amman Nagar,
Behind Super Casting,
Kumarapalayam - 638 183.
Namakkal District.

.. Respondents / Appellants / Accused

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 30.06.2010 made in C.A.No.89 of 2010 on the file of the Principal Sessions Court, Erode reversing the order of conviction dated 20.10.2008 made in C.C.No.669 of 2007 on the file of the Judicial Magistrate No.I, Erode by allowing this Criminal Appeal.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.T.Gowthaman

J U D G M E N T

This Criminal Appeal is directed against the judgment rendered by the learned Principal Sessions Judge, Erode, in Crl.A.No.89 of 2010 dated 30.06.2010, wherein, he allowed the appeal filed by the respondents and set aside the conviction and sentence passed by the learned Judicial Magistrate No.I, Erode in C.C.No.669 of 2007 dated 20.10.2008.

2. The case of the appellant / complainant in the Trial Court is as follows:

2.1. The appellant / complainant was doing dyes business under the name and style of "M/s.Colormax". The first respondent is the Partnership Firm, in which, the respondents 2 and 3 are the partners. The respondents had purchased dyes from the appellant on credit basis under various bills from November 2006 to May 2007. In the course of business transaction, the respondents have to pay a sum of Rs.10,66,230/- to the appellant.

2.2. In order to discharge the said liability, the respondents had issued 24 cheques totalling to Rs.10,28,270/- and all the cheques were contained various dates. With regard to this case, the Cheque bearing serial no.039559 dated 01.09.2007 for Rs.25,350/- drawn on The Lakshmi Vilas Bank Limited, Erode - 6, in favour of the appellant. On 03.09.2007, the appellant presented the cheque [Ex.P.2] for collection through Axis Bank Limited, Erode Branch, but the same was returned on 05.09.2007 as unpaid for the reason of "insufficient funds". The said Return Memo has been marked as Ex.P.3. Thereafter, on 26.09.2007, the appellant issued a statutory notice [Ex.P.4], in which, he demanded the respondents to pay the cheque amount within 15 days. The Acknowledgment Cards with regard to receipt of the statutory notice issued by the appellant has been marked as Ex.P.6. The said notice was served on the respondents 1 and 2

on 28.09.2007, but the third respondent had refused to receive the notice, which was returned on 08.10.2007 and the same was marked as Ex.P.7. Subsequent to that notices, the accused had neither paid the amount nor sent any reply. Thus, the appellant lodged a private complaint through one A.Ramesh Kumar, who is the power holder of the appellant before the learned Judicial Magistrate No.I, Erode, for punishing the respondents for the offence under Section 138 of the Negotiable Instruments Act, 1881.

2.3. After taking cognizance in the Trial Court, the power holder had himself examined as P.W.1, besides 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2, none of the documents were exhibited on their side. After concluding the trial, the learned Judicial Magistrate No.I, Erode, convicted the accused and sentenced the first respondent [Firm] to pay a fine of Rs.2,000/-, in default to undergo one month Simple Imprisonment and the respondents 2 and 3 are sentenced to undergo one year Simple Imprisonment with a fine of Rs.3,000/- each, in default to undergo one month Simple Imprisonment. As against the said conviction, the respondents filed the Criminal Appeal [Crl.A.No.89 of 2010] before the learned Principal Sessions Judge, Erode.

2.4. After elaborate enquiry, on 30.06.2010, the learned Principal Sessions Judge, Erode, allowed the appeal and set aside the order of conviction. Against which, now the appellant being the complainant in the Trial Court approached this Court for setting aside the judgment passed by the learned Principal Sessions Judge, Erode and for restoring the order of conviction [C.C.No.669 of 2007] passed by the learned Judicial Magistrate No.I, Erode dated 20.10.2008.

3. Heard Mr.N.Manokaran, learned counsel appearing for the appellant, Mr.T.Gowthaman, learned counsel appearing for the respondents and perused the material documents available on record.

4. The first and foremost contention raised by the learned counsel appearing for the appellant is that the First Appellate Court has failed to take into account the presumptions under Section 139 of the Negotiable Instruments Act in favour of the appellant / complainant and it can be presumed that the cheque was issued for the discharge of the legally enforceable debt. He would further submit that the presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act are rebuttable in nature and the initial burden is on the accused to rebut the said presumptions. For which, the respondents have to raise probable defence for proving the cheque has not been

issued for discharging the debt. In spite of that, the First Appellate Court had not discussed those aspects, while acquitting the respondents, is not in accordance with law and thereby, he seeks to allow this appeal.

5. On the other hand, the learned counsel appearing for the respondents would submit that in the Trial Court during the time of cross-examination P.W.1 [power holder] has clearly admitted that they had maintained the account book, income tax account, day book and other relevant documents. Further, they made assurance to produce the said documents within a reasonable period. Subsequently, contrary to the said assurance on the side of the appellant, except the invoice copy [Ex.P.8], no document was exhibited for proving the existence of debt. So, the conclusion arrived by the First Appellate Court is found to be correct and it does not warrant any interference.

6. In this regard, the learned counsel appearing for the appellant relied on the judgment of our Honourable Apex Court in RANGAPPA vs. SRI MOHAN reported in AIR 2010 SC 1898 wherein, it has held as follows :

"7....."6. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the accused in order to rebut the presumption is different from each case under the given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court."

7. Further, in the case of BHARAT BARREL & DRUM MANUFACTURING COMPANY vs. AMIN CHAND PAYRELAL reported in [1999] 3 SCC 35, in which our Honourable Apex Court has observed as follows:-

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution

of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument....."

8. In the said situation, in the case at hand, on the side of the respondents, the signature found in the cheque is not disputed then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised in favour of the appellant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the respondents in order to rebut the presumption is different from each case under the given circumstances. Therefore, in order to prove the non-existence of debt, the respondents have to place probable defence, particularly for proving the cheque has not been issued for discharging the debt.

9. The fact that the cheque was issued as a security during the time of purchasing the dyes, for which, on the side of the appellant, the copy of the invoice was marked as Ex.P.8. The corresponding documents to the invoice, i.e., ledger, day book etc., have not been produced by the appellant. Even after admitting the evidence as they maintained those documents, till finalising the case in the Magistrate Court, the appellant has not produced the same. No doubt, the non-producing of the relevant documents would create a adverse situation against the appellant. However, in the business transaction it is not necessary to withhold the cheque issued for the purpose of security after the completion of specific transaction. Only for the non-production of the documents, the First Appellate Court came to the conclusion that the appellant has not proved the existence of debt. The view taken by the First Appellate Court may be a reasonable one. But, in the Trial Court, the second respondent was examined as R.W.2, in his evidence, he clearly deposed that due to the supply of inferior quality, the appellant is not entitled to the amount now claimed through the cheque.

10. On the other hand, R.W.2 [second respondent] admitted in his evidence that as of now he is willing to settle 50% of the amount in the entire loan liable to pay to the appellant. The said evidence clearly established the fact that the respondents are admitting the existence of debt. The admitted facts need not be proved. In general, there is a practice followed among the business people for sending the debit notice if the quality or other purchased articles are not in accordance with the agreement made at the time of purchasing the same. In this case, the respondents had not sent any advise or notice by stating that the products supplied by the appellant are having the poor quality. Even after receiving the statutory notice, they have not chosen to send a reply by stating the defence now taken in this case. It shows that the respondents alternatively admitted the liability. If the liability is accepted by the drawer, it is not necessary for the appellant to prove the existence of debt by means of relevant documents. So, these circumstances clearly reveals that the cheque pertaining to this case was issued by the second respondent only in order to discharge the liability. Even if the contention of the respondents is true, the provisions are available for claiming damages from the appellant. But without choosing any of the mode available in law, now they wanted to compromise the issue by way of paying 50% of amount, which is legally not justifiable.

11. In the light of the above discussion, this Criminal Appeal is allowed and the judgment rendered by the learned Principal Sessions Court, Erode in C.A.No.89 of 2010 dated 30.06.2010 is set aside. The conviction and sentence awarded by the learned Judicial Magistrate No.I, Erode in C.C.No.669 of 2007 dated 20.10.2008 is modified as below:

- [i] The first respondent [Firm] is directed to pay a fine of Rs.2,000/-, which has to be paid by the second respondent;
- [ii] The respondents 2 and 3 are sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.3,000/- each, in default to undergo one month simple imprisonment;
- [iii] The sentence awarded in the connected cases [i.e. C.C.Nos.490, 416, 622, 397, 396, 628 and 577 of 2007] are ordered to run concurrently.

The Trial Court is directed to take steps to secure the custody of the respondents /accused for undergoing the remaining period of sentence. Bail bonds executed, if any, shall stand terminated.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Court,
Erode.

2.The Judicial Magistrate No.I,
Erode.

Copy to

The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.44215

+1cc to Mr.T.Gowthaman, Advocate, S.R.No.44386

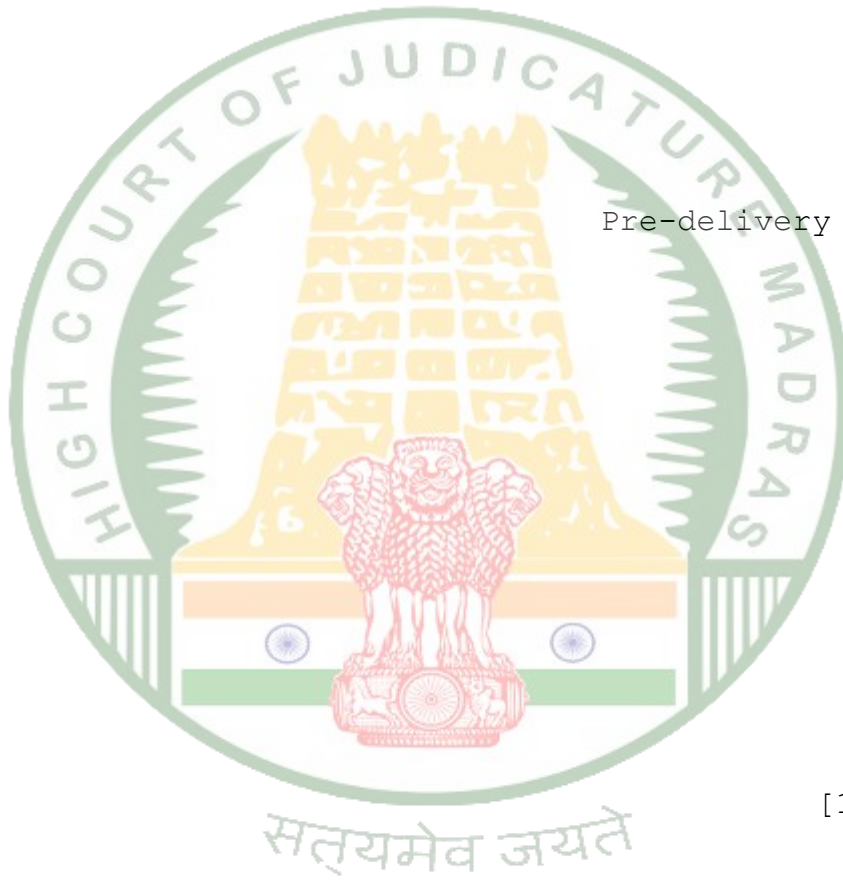
Cr1.A.No.408 of 2011

PPA(CO)
GSP(31/07/2018)

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R.PONGIAPPAN, J.,
sri



Pre-delivery Judgment in

06.07.2018
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